
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended September 30, 2015

OR

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

For the transition period from _____ to _____

Commission File No. 000-50028

WYNN RESORTS, LIMITED

(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction of
incorporation or organization)

46-0484987
(I.R.S. Employer
Identification No.)

3131 Las Vegas Boulevard South - Las Vegas, Nevada 89109

(Address of principal executive offices) (Zip Code)

(702) 770-7555

(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<u>Class</u>	<u>Outstanding at October 31, 2015</u>
Common stock, \$0.01 par value	101,568,512

WYNN RESORTS, LIMITED AND SUBSIDIARIES
FORM 10-Q
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Part I. FINANCIAL INFORMATION
Item 1. Financial Statements
WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	September 30, 2015	December 31, 2014
	(unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,900,209	\$ 2,182,164
Investment securities	125,031	240,140
Receivables, net	204,650	237,957
Inventories	66,583	72,223
Prepaid expenses and other	51,725	49,847
Total current assets	2,348,198	2,782,331
Property and equipment, net	7,090,449	5,855,842
Restricted cash	1,841	977
Investment securities	122,888	10,173
Intangible assets, net	111,580	112,367
Deferred financing costs, net	107,066	84,413
Deposits and other assets	195,691	212,515
Investment in unconsolidated affiliates	3,472	4,243
Total assets	\$ 9,981,185	\$ 9,062,861
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts and construction payables	\$ 232,999	\$ 303,284
Current portion of land concession obligation	31,613	30,814
Customer deposits	423,168	548,818
Gaming taxes payable	99,758	137,269
Accrued compensation and benefits	114,879	113,228
Accrued interest	74,780	107,318
Other accrued liabilities	131,455	67,587
Deferred income taxes, net	4,801	4,847
Total current liabilities	1,113,453	1,313,165
Long-term debt	8,748,449	7,345,262
Land concession obligation	—	15,987
Other long-term liabilities	143,496	152,131
Deferred income taxes, net	36,569	25,225
Total liabilities	10,041,967	8,851,770
Commitments and contingencies (Note 14)		
Stockholders' equity (deficit):		
Preferred stock, par value \$0.01; 40,000,000 shares authorized; zero shares issued and outstanding	—	—
Common stock, par value \$0.01; 400,000,000 shares authorized; 114,577,441 and 114,426,960 shares issued; 101,543,012 and 101,439,297 shares outstanding, respectively	1,146	1,144
Treasury stock, at cost; 13,034,429 and 12,987,663 shares, respectively	(1,152,393)	(1,145,481)
Additional paid-in capital	976,230	948,566
Accumulated other comprehensive income	1,743	2,505
Retained earnings (accumulated deficit)	(3,560)	164,487
Total Wynn Resorts, Limited stockholders' deficit	(176,834)	(28,779)
Noncontrolling interest	116,052	239,870
Total stockholders' equity (deficit)	(60,782)	211,091
Total liabilities and stockholders' equity (deficit)	\$ 9,981,185	\$ 9,062,861

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(in thousands, except per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Operating revenues:				
Casino	\$ 700,014	\$ 1,071,829	\$ 2,240,321	\$ 3,389,557
Rooms	133,460	135,734	405,427	413,565
Food and beverage	160,283	160,531	477,312	476,676
Entertainment, retail and other	87,008	100,916	264,843	306,411
Gross revenues	1,080,765	1,469,010	3,387,903	4,586,209
Less: promotional allowances	(84,480)	(99,000)	(258,922)	(290,523)
Net revenues	996,285	1,370,010	3,128,981	4,295,686
Operating costs and expenses:				
Casino	445,167	647,460	1,435,755	2,112,430
Rooms	37,293	39,235	111,563	112,239
Food and beverage	101,161	91,214	288,519	266,853
Entertainment, retail and other	39,263	40,612	118,554	125,025
General and administrative	116,639	126,834	352,546	366,631
Provision (benefit) for doubtful accounts	2,885	4,695	13,266	(743)
Pre-opening costs	19,467	6,718	52,433	14,792
Depreciation and amortization	80,649	79,027	245,428	234,037
Property charges and other	987	1,640	3,963	13,674
Total operating costs and expenses	843,511	1,037,435	2,622,027	3,244,938
Operating income	152,774	332,575	506,954	1,050,748
Other income (expense):				
Interest income	1,465	5,814	4,655	16,072
Interest expense, net of amounts capitalized	(74,079)	(79,048)	(227,298)	(236,069)
Increase (decrease) in swap fair value	(1,287)	2,360	(7,010)	(1,451)
Decrease in Redemption Note fair value	13,720	—	13,720	—
Loss on extinguishment of debt	(5,971)	(3,573)	(126,004)	(7,356)
Equity in income (loss) from unconsolidated affiliates	(2)	567	68	1,173
Other	459	(801)	1,790	(405)
Other income (expense), net	(65,695)	(74,681)	(340,079)	(228,036)
Income before income taxes	87,079	257,894	166,875	822,712
Benefit (provision) for income taxes	3,906	(4,888)	(12,589)	(8,261)
Net income	90,985	253,006	154,286	814,451
Less: net income attributable to noncontrolling interest	(17,219)	(61,600)	(68,661)	(192,243)
Net income attributable to Wynn Resorts, Limited	\$ 73,766	\$ 191,406	\$ 85,625	\$ 622,208
Basic and diluted income per common share:				
Net income attributable to Wynn Resorts, Limited:				
Basic	\$ 0.73	\$ 1.90	\$ 0.85	\$ 6.17
Diluted	\$ 0.73	\$ 1.88	\$ 0.84	\$ 6.10
Weighted average common shares outstanding:				
Basic	101,161	100,959	101,151	100,899
Diluted	101,581	101,999	101,708	101,986
Dividends declared per common share	\$ 0.50	\$ 1.25	\$ 2.50	\$ 3.75

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(in thousands)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Net income	\$ 90,985	\$ 253,006	\$ 154,286	\$ 814,451
Other comprehensive income (loss):				
Foreign currency translation adjustments, net of tax	60	(981)	(400)	(826)
Unrealized gain (loss) on investment securities, net of tax	(263)	(56)	(470)	43
Total comprehensive income	90,782	251,969	153,416	813,668
Less: comprehensive income attributable to noncontrolling interest	(17,236)	(61,327)	(68,553)	(192,023)
Comprehensive income attributable to Wynn Resorts, Limited	\$ 73,546	\$ 190,642	\$ 84,863	\$ 621,645

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except share data)
(unaudited)

	Common stock			Additional paid-in capital	Accumulated other comprehensive income	Retained earnings (accumulated deficit)	Total Wynn Resorts, Ltd. stockholders' deficit	Noncontrolling interest	Total stockholders' equity (deficit)
	Shares outstanding	Par value	Treasury stock						
Balances, January 1, 2015	101,439,297	\$ 1,144	\$ (1,145,481)	\$ 948,566	\$ 2,505	\$ 164,487	\$ (28,779)	\$ 239,870	\$ 211,091
Net income	—	—	—	—	—	85,625	85,625	68,661	154,286
Currency translation adjustment	—	—	—	—	(292)	—	(292)	(108)	(400)
Net unrealized loss on investment securities	—	—	—	—	(470)	—	(470)	—	(470)
Exercise of stock options	17,716	—	—	974	—	—	974	—	974
Shares repurchased by the Company and held as treasury shares	(46,766)	—	(6,912)	—	—	—	(6,912)	—	(6,912)
Issuance of restricted stock	132,765	2	—	—	—	—	2	—	2
Shares of subsidiary repurchased for share award plan	—	—	—	(1,077)	—	—	(1,077)	(415)	(1,492)
Cash dividends declared	—	—	—	—	—	(253,672)	(253,672)	(195,444)	(449,116)
Excess tax benefits from stock-based compensation	—	—	—	736	—	—	736	—	736
Stock-based compensation	—	—	—	27,031	—	—	27,031	3,488	30,519
Balances, September 30, 2015	101,543,012	\$ 1,146	\$ (1,152,393)	\$ 976,230	\$ 1,743	\$ (3,560)	\$ (176,834)	\$ 116,052	\$ (60,782)

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2015	2014
Cash flows from operating activities:		
Net income	\$ 154,286	\$ 814,451
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	245,428	234,037
Deferred income taxes	12,033	(462)
Stock-based compensation expense	30,324	22,714
Excess tax benefits from stock-based compensation	(549)	(6,525)
Amortization and write-offs of deferred financing costs and other	12,577	20,425
Loss on extinguishment of debt	126,004	7,356
Provision (benefit) for doubtful accounts	13,266	(743)
Property charges and other	3,698	13,701
Equity in income of unconsolidated affiliates, net of distributions	771	81
Decrease in swap fair value	7,010	1,451
Decrease in Redemption Note fair value	(13,720)	—
Increase (decrease) in cash from changes in:		
Receivables, net	20,116	36,121
Inventories and prepaid expenses and other	1,190	(4,330)
Customer deposits	(126,008)	(67,550)
Accounts payable and accrued expenses	(140,918)	(96,599)
Net cash provided by operating activities	345,508	974,128
Cash flows from investing activities:		
Capital expenditures, net of construction payables and retention	(1,331,676)	(707,083)
Purchase of investment securities	(182,600)	(124,758)
Proceeds from sale or maturity of investment securities	182,103	125,323
Restricted cash	—	199,929
Deposits and purchase of other assets	(97,938)	(63,244)
Proceeds from sale of assets	4,186	4,343
Net cash used in investing activities	(1,425,925)	(565,490)
Cash flows from financing activities:		
Proceeds from exercise of stock options	974	6,485
Excess tax benefits from stock-based compensation	549	6,525
Dividends paid	(447,504)	(690,373)
Proceeds from issuance of long-term debt	4,789,374	825,477
Repayments of long-term debt	(3,341,925)	(69,450)
Restricted cash	(864)	—
Repurchase of common stock	(6,912)	(2,062)
Shares of subsidiary repurchased for share award plan	(1,492)	—
Payments on long-term land concession obligation	(15,224)	(14,489)
Payments for financing costs	(178,906)	(13,193)
Net cash provided by financing activities	798,070	48,920
Effect of exchange rate on cash	392	(1,721)
Cash and cash equivalents:		
Increase (decrease) in cash and cash equivalents	(281,955)	455,837
Balance, beginning of period	2,182,164	2,435,041
Balance, end of period	\$ 1,900,209	\$ 2,890,878
Supplemental cash flow disclosures:		
Cash transactions:		
Cash paid for interest, net of amounts capitalized	\$ 166,465	\$ 235,325
Non-cash transactions:		
Stock-based compensation capitalized into construction	\$ 195	\$ 5,645
Change in property and equipment included in accounts and construction payables	\$ 38,942	\$ 60,435
Change in dividends payable on unvested restricted stock included in other accrued liabilities	\$ 1,612	\$ 1,563

The accompanying notes are an integral part of these condensed consolidated financial statements.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1 - Organization and Basis of Presentation*Organization*

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries, "Wynn Resorts" or the "Company") is a developer, owner and operator of destination casino resorts (integrated resorts). In the Macau Special Administrative Region of the People's Republic of China ("Macau"), the Company owns 72% of Wynn Macau, Limited and operates the integrated Wynn Macau and Encore at Wynn Macau resort. In Las Vegas, Nevada, the Company owns 100% of and operates the integrated Wynn Las Vegas and Encore at Wynn Las Vegas resort.

The Company's integrated Macau resort of Wynn Macau and Encore at Wynn Macau features two luxury hotel towers with a total of 1,008 spacious guest rooms and suites, approximately 284,000 square feet of casino space, casual and fine dining in eight restaurants, approximately 31,000 square feet of lounge and meeting space, approximately 57,000 square feet of retail space, recreation and leisure facilities, including two health clubs, spas and one pool. The Company refers to this resort as its Macau Operations.

The Company's integrated Las Vegas resort of Wynn Las Vegas and Encore at Wynn Las Vegas features two luxury hotel towers with a total of 4,748 spacious guest rooms, suites and villas, approximately 186,000 square feet of casino space, 34 food and beverage outlets, an on-site 18-hole golf course, approximately 290,000 square feet of meeting and convention space, approximately 99,000 square feet of retail space, as well as two showrooms, three nightclubs and a beach club. The Company refers to this resort as its Las Vegas Operations.

The Company is currently constructing Wynn Palace, an integrated resort containing a 1,700-room hotel, a performance lake, meeting space, a casino, a spa, retail offerings, and food and beverage outlets in the Cotai area of Macau. The Company expects to open Wynn Palace in the first half of 2016.

In November 2014, the Company was awarded a gaming license to develop and construct an integrated resort in Everett, Massachusetts, outside of Boston. The resort will be located on a 33 acre site along the Mystic River. The resort will contain a hotel, a waterfront boardwalk, meeting space, a casino, a spa, retail offerings and food and beverage outlets. The Company has begun site preparation and pre-construction activities.

Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations, although the Company believes that the disclosures herein are adequate to make the information presented not misleading. In the opinion of management, all adjustments (which include only normal recurring adjustments) necessary for a fair presentation of the results for the interim periods have been made. The results for the three and nine months ended September 30, 2015 are not necessarily indicative of results to be expected for the full fiscal year. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto in the Company's Annual Report on Form 10-K for the year ended December 31, 2014.

Note 2 - Summary of Significant Accounting Policies*Principles of Consolidation*

The accompanying condensed consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. Investment in the 50%-owned joint venture operating the Ferrari and Maserati automobile dealership inside Wynn Las Vegas, which was permanently closed in October 2015, is accounted for under the equity method. All significant intercompany accounts and transactions have been eliminated. Certain amounts in the condensed consolidated financial statements for the previous years have been reclassified to be consistent with the current year presentation. These reclassifications had no effect on the previously reported net income.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Cash and Cash Equivalents

Cash and cash equivalents are comprised of highly liquid investments with original maturities of three months or less and include both U.S. dollar-denominated and foreign currency-denominated securities. Cash equivalents are carried at cost, which approximates fair value. Cash equivalents of \$359.2 million and \$1,156.3 million at September 30, 2015 and December 31, 2014, respectively, were invested in bank time deposits, money market funds and commercial paper. In addition, the Company held bank deposits and cash on hand of approximately \$1,541.0 million and \$1,025.9 million as of September 30, 2015 and December 31, 2014, respectively.

Restricted Cash

At September 30, 2015 and December 31, 2014, the Company's non-current restricted cash consisted of cash held in trust in accordance with the Company's majority owned subsidiary's share award plan.

Investment Securities

Investment securities consist of domestic and foreign short-term and long-term investments in corporate and U.S. government agency bonds and commercial paper reported at fair value, with unrealized gains and losses, net of tax, reported in other comprehensive income (loss). Short-term investments have maturities of greater than three months but equal to or less than one year and long-term investments are those with a maturity date greater than one year. The Company's investment policy limits the amount of exposure to any one issuer with the objective of minimizing the potential risk of principal loss. Management determines the appropriate classification (held-to-maturity/available-for-sale) of its securities at the time of purchase and reevaluates such designation as of each balance sheet date. Adjustments are made for amortization of premiums and accretion of discounts to maturity computed under the effective interest method. Such amortization is included in interest income together with realized gains and losses and the stated interest on such securities.

Accounts Receivable and Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of casino accounts receivable. The Company issues credit in the form of "markers" to approved casino customers following investigations of creditworthiness. As of September 30, 2015 and December 31, 2014, approximately 84% and 85%, respectively, of the Company's markers were due from customers residing outside the United States, primarily in Asia. Business or economic conditions or other significant events in these countries could affect the collectability of such receivables.

Accounts receivable, including casino and hotel receivables, are typically non-interest bearing and are initially recorded at cost. An estimated allowance for doubtful accounts is maintained to reduce the Company's receivables to their carrying amount, which approximates fair value. The allowance estimate reflects specific review of customer accounts as well as management's experience with historical and current collection trends and current economic and business conditions. Accounts are written off when management deems them to be uncollectible. Recoveries of accounts previously written off are recorded when received.

The Company advances commissions to its games promoters in Macau. These were previously supported primarily by held checks and recognized as cash and cash equivalents (\$153.4 million as of December 31, 2014). Market conditions in Macau and other regional economic factors have impacted the liquidity of certain games promoters. As a result, the Company's advanced commissions to games promoters now are supported primarily with signed promissory notes. The advanced commissions are on terms requiring settlement within five business days of the month following the advance. The Company recognized advanced commissions of \$72.4 million as casino receivables in the accompanying Condensed Consolidated Balance Sheet as of September 30, 2015 and assesses these advanced commissions in connection with the Company's evaluation of its bad debt reserve for casino receivables. Additionally, the amount presented in the accompanying Condensed Consolidated Balance Sheet has been offset by related commissions payable to games promoters of \$37.0 million as of September 30, 2015.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Redemption Price Promissory Note

The Company recorded the fair value of the Redemption Price Promissory Note (the "Redemption Note") of approximately \$1.92 billion in accordance with applicable accounting guidance. In determining this fair value, the Company estimated the Redemption Note's present value using discounted cash flows with a probability weighted expected return for redemption assumptions and a discount rate which included time value and non-performance risk adjustments commensurate with risk of the Redemption Note.

Considerations for the redemption assumptions included the stated maturity of the Redemption Note, uncertainty of the related cash flows, as well as potential effects of the following: uncertainties surrounding the potential outcome and timing of pending litigation with Aruze USA, Inc. ("Aruze"), Universal Entertainment Corporation and Mr. Kazuo Okada (collectively, the "Okada Parties") (see Note 14 "Commitments and Contingencies"); the outcome of on-going investigations of Aruze by the United States Attorney's Office, the U.S. Department of Justice and the Nevada Gaming Control Board; and other potential legal and regulatory actions. In addition, in the furtherance of various future business objectives, the Company considered its ability, at its sole option, to prepay the Redemption Note at any time in accordance with its terms without penalty. Accordingly, the Company reasonably determined that the estimated life of the Redemption Note could be less than the contractual life of the Redemption Note.

In determination of the appropriate discount rate to be used in the estimated present value, the Redemption Note's subordinated position relative to all other debt in the Company's capital structure and credit ratings associated with the Company's traded debt were considered. Observable inputs for the risk free rate based on Federal Reserve rates for U.S. Treasury securities and credit risk spread based on a yield curve index of similarly rated debt were used.

Revenue Recognition and Promotional Allowances

The Company recognizes revenues at the time persuasive evidence of an arrangement exists, the service is provided or the retail goods are sold, prices are fixed or determinable and collection is reasonably assured.

Casino revenues are measured by the aggregate net difference between gaming wins and losses, with liabilities recognized for funds deposited by customers before gaming play occurs and for chips in the customers' possession. Cash discounts, other cash incentives related to casino play and commissions rebated through games promoters to customers are recorded as a reduction to casino revenue. Hotel, food and beverage, entertainment and other operating revenues are recognized when services are performed. Entertainment, retail and other revenue includes rental income which is recognized on a time proportion basis over the lease term. Contingent rental income is recognized when the right to receive such rental income is established according to the lease agreements. Advance deposits on rooms and advance ticket sales are recorded as customer deposits until services are provided to the customer.

Revenues are recognized net of certain sales incentives which are required to be recorded as a reduction of revenue; consequently, the Company's casino revenues are reduced by discounts, commissions and points earned by customers from the Company's loyalty programs.

The retail value of accommodations, food and beverage, and other services furnished to guests without charge is included in gross revenues. Such amounts are then deducted as promotional allowances. The estimated cost of providing such promotional allowances is primarily included in casino expenses as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Rooms	\$ 13,095	\$ 14,305	\$ 38,496	\$ 40,314
Food and beverage	26,391	30,508	81,878	90,454
Entertainment, retail and other	3,161	3,770	10,791	10,606
	\$ 42,647	\$ 48,583	\$ 131,165	\$ 141,374

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

Gaming Taxes

The Company is subject to taxes based on gross gaming revenues in the jurisdictions in which it operates, subject to applicable jurisdictional adjustments. These gaming taxes are an assessment on the Company's gross gaming revenues and are recorded as casino expenses in the accompanying Condensed Consolidated Statements of Income. These taxes totaled approximately \$272.8 million and \$446.3 million for the three months ended September 30, 2015 and 2014, respectively, and totaled approximately \$893.0 million and \$1,462.8 million for the nine months ended September 30, 2015 and 2014, respectively.

Fair Value Measurements

The Company measures certain of its financial assets and liabilities, such as cash equivalents, available-for-sale securities, interest rate swaps and the Redemption Note, at fair value on a recurring basis pursuant to accounting standards for fair value measurements. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. These accounting standards establish a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

The following tables present assets and liabilities carried at fair value (in thousands):

	September 30, 2015	Fair Value Measurements Using:		
		Quoted Market Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
Assets:				
Cash equivalents	\$ 359,220	\$ 3,521	\$ 355,699	—
Restricted cash	\$ 1,841	\$ 1,841	—	—
Available-for-sale securities	\$ 247,919	—	\$ 247,919	—
Liabilities:				
Redemption Note	\$ 1,922,723	—	\$ 1,922,723	—
Interest rate swaps	\$ 1,091	—	\$ 1,091	—

	December 31, 2014	Fair Value Measurements Using:		
		Quoted Market Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
Assets:				
Cash equivalents	\$ 1,156,285	\$ 828	\$ 1,155,457	—
Interest rate swaps	\$ 5,915	—	\$ 5,915	—
Restricted cash	\$ 977	\$ 977	—	—
Available-for-sale securities	\$ 250,313	—	\$ 250,313	—
Liabilities:				
Redemption Note	\$ 1,936,443	—	\$ 1,936,443	—

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

As of September 30, 2015 the Company had no cash equivalents categorized as Level 2 deposits held in foreign currencies. As of December 31, 2014, approximately 19% of the Company's cash equivalents categorized as Level 2 were deposits held in foreign currencies.

Recently Issued Accounting Standards

In July 2015, the Financial Accounting Standards Board ("FASB") issued an accounting standards update which changes the measurement principle for inventories valued under the first-in, first-out or weighted-average methods from the lower of cost or market to the lower of cost and net realizable value. Net realizable value is defined by FASB as estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. The effective date for this guidance is for financial statements issued for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. The Company is currently assessing the impact the adoption of this standard will have on its consolidated financial statements.

In April 2015, the FASB issued an accounting standards update that requires debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. The recognition and measurement guidance for debt issuance costs are not affected by the amendments in this update. In August 2015, the FASB issued an accounting standards update which clarifies that the guidance issued in April 2015 does not apply to line-of-credit arrangements. According to the additional guidance, line-of-credit arrangements will continue to present debt issuance costs as an asset and subsequently amortize the deferred debt issuance costs ratably over the term of the arrangement. The effective date for this guidance is for financial statements issued for fiscal years beginning after December 15, 2015, and interim periods within those fiscal years. Early application is permitted. The Company will adopt this guidance effective January 1, 2016. The Company does not anticipate the adoption of this guidance will have a material effect on the Company's financial condition, results of operations or cash flows.

In May 2014, the FASB issued an accounting standards update that amends the FASB Accounting Standards Codification and creates a new topic for Revenue from Contracts with Customers. The new guidance is expected to clarify the principles for revenue recognition and to develop a common revenue standard for U.S. generally accepted accounting principles ("GAAP") applicable to revenue transactions. This guidance provides that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services. This guidance also provides substantial revision of interim and annual disclosures. The update allows for either full retrospective adoption, meaning the guidance is applied for all periods presented, or modified retrospective adoption, meaning the guidance is applied only to the most current period presented in the financial statements with the cumulative effect of initially applying the guidance recognized at the date of initial application. In August 2015, the FASB issued an accounting standards update which defers the effective date of the new revenue recognition accounting guidance by one year, to annual and interim periods beginning after December 15, 2017. Early application is permitted for annual and interim periods beginning after December 15, 2016. The Company will adopt this standard effective January 1, 2018. The Company is currently assessing the impact the adoption of this standard will have on its consolidated financial statements.

Note 3 - Earnings Per Share

Basic earnings per share ("EPS") is computed by dividing net income attributable to Wynn Resorts, Limited by the weighted average number of common shares outstanding during the period. Diluted EPS is computed by dividing net income attributable to Wynn Resorts, Limited by the weighted average number of common shares outstanding during the period increased to include the number of additional shares of common stock that would have been outstanding if the potential dilutive securities had been issued. Potentially dilutive securities include outstanding stock options and unvested restricted stock.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

The weighted average number of common and common equivalent shares used in the calculation of basic and diluted EPS consisted of the following (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Numerator:				
Net income attributable to Wynn Resorts, Limited	\$ 73,766	\$ 191,406	\$ 85,625	\$ 622,208
Denominator:				
Weighted average common shares outstanding	101,161	100,959	101,151	100,899
Potential dilutive effect of stock options and restricted stock	420	1,040	557	1,087
Weighted average common and common equivalent shares outstanding	101,581	101,999	101,708	101,986
Net income attributable to Wynn Resorts, Limited per common share, basic	\$ 0.73	\$ 1.90	\$ 0.85	\$ 6.17
Net income attributable to Wynn Resorts, Limited per common share, diluted	\$ 0.73	\$ 1.88	\$ 0.84	\$ 6.10
Anti-dilutive stock options and restricted stock excluded from the calculation of diluted earnings per share	791	26	648	26

Note 4 - Accumulated Other Comprehensive Income

The following table presents the changes by component, net of tax and noncontrolling interest, in accumulated other comprehensive income of the Company (in thousands):

	Foreign currency translation	Unrealized loss on investment securities	Accumulated other comprehensive income
December 31, 2014	\$ 2,670	\$ (165)	\$ 2,505
Current period other comprehensive loss	(292)	(470)	(762)
September 30, 2015	\$ 2,378	\$ (635)	\$ 1,743

Note 5 - Investment Securities

Investment securities consisted of the following (in thousands):

	September 30, 2015				December 31, 2014			
	Amortized cost	Gross unrealized gains	Gross unrealized losses	Fair value (net carrying amount)	Amortized cost	Gross unrealized gains	Gross unrealized losses	Fair value (net carrying amount)
Domestic and foreign corporate bonds	\$ 220,586	\$ 23	\$ (659)	\$ 219,950	\$ 204,045	\$ 28	\$ (174)	\$ 203,899
Commercial paper	27,968	1	—	27,969	46,434	1	(21)	46,414
	\$ 248,554	\$ 24	\$ (659)	\$ 247,919	\$ 250,479	\$ 29	\$ (195)	\$ 250,313

For investments with unrealized losses as of September 30, 2015 and December 31, 2014, the Company has determined that it does not have the intent to sell any of these investments and it is not likely that the Company will be required to sell these investments prior to the recovery of the amortized cost. Accordingly, the Company has determined that no other-than-temporary impairments exist at the reporting dates.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
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The Company obtains pricing information in determining the fair value of its available-for-sale securities from independent pricing vendors. Based on management's inquiries, the pricing vendors use various pricing models consistent with what other market participants would use. The assumptions and inputs used by the pricing vendors are derived from market observable sources including: reported trades, broker/dealer quotes, issuer spreads, benchmark curves, bids, offers and other market-related data. The Company has not made adjustments to such prices. Each quarter, the Company validates the fair value pricing methodology to determine the fair value is consistent with applicable accounting guidance and to confirm that the securities are classified properly in the fair value hierarchy. The Company compares the pricing received from its vendors to independent sources for the same or similar securities.

The fair value of these investment securities at September 30, 2015, by contractual maturity, are as follows (in thousands):

	Fair value
Available-for-sale securities	
Due in one year or less	\$ 125,031
Due after one year through two years	104,565
Due after two years through three years	18,323
	<u>\$ 247,919</u>

Note 6 - Receivables, net

Receivables, net consisted of the following (in thousands):

	September 30, 2015	December 31, 2014
Casino	\$ 223,323	\$ 257,930
Hotel	15,281	15,474
Retail leases and other	43,573	39,231
	<u>282,177</u>	<u>312,635</u>
Less: allowance for doubtful accounts	(77,527)	(74,678)
	<u>\$ 204,650</u>	<u>\$ 237,957</u>

Note 7 - Property and Equipment, net

Property and equipment, net consisted of the following (in thousands):

	September 30, 2015	December 31, 2014
Land and improvements	\$ 784,308	\$ 734,625
Buildings and improvements	3,967,561	3,883,626
Furniture, fixtures and equipment	1,776,655	1,749,288
Leasehold interests in land	316,712	316,431
Airplanes	162,064	126,491
Construction in progress	2,875,425	1,666,326
	<u>9,882,725</u>	<u>8,476,787</u>
Less: accumulated depreciation	(2,792,276)	(2,620,945)
	<u>\$ 7,090,449</u>	<u>\$ 5,855,842</u>

Construction in progress consists primarily of costs capitalized, including interest, for the construction of Wynn Palace.

The Company reviews the remaining estimated useful lives of its property and equipment on an ongoing basis. For the review of estimated useful lives of buildings and improvements for Wynn Macau, the Company considers factors such as liberalization of the gaming industry in Macau, market expansion and actions taken by the Macau government regarding concession renewals. This review during the third quarter of 2015 indicated that the Company's estimated useful lives of buildings and improvements extend beyond the current expiration of the gaming concession in June 2022 and land concession in August 2029. As a result, effective September 1, 2015, the Company changed its estimate of remaining useful lives of buildings and improvements for Wynn Macau to better reflect the estimated periods during which these assets are expected to remain in service. The maximum useful life of buildings and improvements for Wynn Macau was increased to 45 years from the date placed in service. The effect of this change in estimate in the quarter ended September 30, 2015, was to reduce depreciation expense and increase net income by \$1.8 million, and increase basic and diluted earnings per share by \$0.01.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
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Note 8 - Long-Term Debt

Long-term debt consisted of the following (in thousands):

	September 30, 2015	December 31, 2014
Macau Related:		
Wynn Macau Credit Facilities:		
Senior Term Loan Facility (as amended September 2015), due September 2021; interest at LIBOR or HIBOR plus 1.50%—2.25%, net of original issue discount of \$36,344 at September 30, 2015	\$ 2,271,069	\$ —
Senior Term Loan Facility, due July 31, 2017 and July 31, 2018; interest at LIBOR or HIBOR plus 1.75%—2.50%, net of original issue discount of \$3,830 at December 31, 2014	—	948,823
Senior Revolving Credit Facility, due July 31, 2017, interest at LIBOR or HIBOR plus 1.75%—2.50% at December 31, 2014	—	132,524
5 1/4% Senior Notes, due October 15, 2021, including original issue premium of \$4,657 at September 30, 2015 and \$5,141 at December 31, 2014	1,354,657	1,355,141
U.S. and Corporate Related:		
5 3/8% First Mortgage Notes, due March 15, 2022	900,000	900,000
4 1/4% Senior Notes, due May 30, 2023	500,000	500,000
5 1/2% Senior Notes, due March 1, 2025	1,800,000	—
Redemption Price Promissory Note with former stockholder and related party, due February 18, 2022; interest at 2%, net of fair value adjustment of \$13,720 at September 30, 2015	1,922,723	1,936,443
7 7/8% First Mortgage Notes, due May 1, 2020, net of original issue discount of \$1,279 at December 31, 2014	—	345,731
7 3/4% First Mortgage Notes, due August 15, 2020	—	1,226,600
	<u>8,748,449</u>	<u>7,345,262</u>
Current portion of long-term debt	—	—
	<u>\$ 8,748,449</u>	<u>\$ 7,345,262</u>

Macau Related Debt
Wynn Macau Credit Facilities

On September 30, 2015, Wynn Resorts (Macau) S.A. ("Wynn Macau SA"), an indirect subsidiary of Wynn Macau, Limited, amended its senior secured credit facilities, dated July 30, 2012 (the "Amended Wynn Macau Credit Facilities") to, among other things, increase borrowing capacity and extend maturity dates. Borrowings under the Amended Wynn Macau Credit Facilities consist of both United States dollar and Hong Kong dollar tranches and were used to refinance Wynn Macau SA's existing indebtedness, to fund the construction and development of Wynn Palace and for general corporate purposes.

The borrowing availability under the Amended Wynn Macau Credit Facilities was increased to \$3.05 billion equivalent, representing an increase of \$550 million equivalent, consisting of a \$2.3 billion equivalent senior secured term loan facility (the "Wynn Macau Senior Term Loan Facility") and a \$750 million equivalent senior secured revolving credit facility. Wynn Macau SA has the ability to upsize the Amended Wynn Macau Credit Facilities by an additional \$1.0 billion equivalent senior secured loans upon satisfaction of various conditions.

The senior secured term loan facility is repayable in graduating installments of between 2.5% to 7.33% of the principal amount on a quarterly basis commencing December 2018, with a final installment of 50% of the principal amount repayable in September 2021 (extended from July 2018). Any outstanding borrowings from the senior secured revolving credit facility will mature in September 2020 (extended from July 2017) by which time any outstanding borrowings from the senior secured revolving credit facility must be repaid. The Amended Wynn Macau Credit Facilities bear interest at LIBOR or HIBOR plus a margin of 1.50% to 2.25% per annum based on Wynn Macau SA's Leverage Ratio (as defined in the Amended Wynn Macau Credit Facilities). The commitment fee required to pay for unborrowed amounts under the senior secured revolving credit facility, if any, is between 0.52% to 0.79% per annum, based on Wynn Macau SA's Leverage Ratio. The annual commitment fee is payable quarterly in arrears and calculated based on the daily average of the unborrowed amounts.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
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The Amended Wynn Macau Credit Facilities contain a requirement that Wynn Macau SA must make mandatory repayments of indebtedness from specified percentages of excess cash flow. If Wynn Macau SA's Leverage Ratio is greater than 4.5 to 1, then 25% of Excess Cash Flow (as defined in the Amended Wynn Macau Credit Facilities) must be used for prepayment of indebtedness and cancellation of available borrowings under the Amended Wynn Macau Credit Facilities. There is no mandatory prepayment in respect of Excess Cash Flow if Wynn Macau SA's Leverage Ratio is equal or less than 4.5 to 1.

The Amended Wynn Macau Credit Facilities contain customary covenants restricting certain activities including, but not limited to: the incurrence of additional indebtedness, the incurrence or creation of liens on any of its property, sale and leaseback transactions, the ability to dispose of assets, and making loans or other investments. In addition, Wynn Macau SA is required by the financial covenants to maintain a Leverage Ratio of not greater than 5.25 to 1 for the fiscal year ending December 31, 2015, and an Interest Coverage Ratio (as defined in the Amended Wynn Macau Credit Facilities) of not less than 2.00 to 1 at any time.

Borrowings under the Amended Wynn Macau Credit Facilities will continue to be guaranteed by Palo Real Estate Company Limited ("Palo"), a subsidiary of Wynn Macau SA, and by certain subsidiaries of the Company that own equity interests in Wynn Macau SA, and are secured by substantially all of the assets of Wynn Macau SA and Palo, and the equity interests in Wynn Macau SA. Borrowings under the Amended Wynn Macau Facilities are not guaranteed by the Company or Wynn Macau, Limited.

In connection with the gaming concession contract of Wynn Macau SA, Wynn Macau SA entered into a Bank Guarantee Reimbursement Agreement with Banco Nacional Ultramarino, S.A. ("BNU") for the benefit of the Macau government. This guarantee assures Wynn Macau SA's performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform under the terms of the concession agreement and the payment of any gaming taxes. As of September 30, 2015, the guarantee was in the amount of 300 million Macau patacas ("MOP") (approximately \$37 million) and will remain at such amount until 180 days after the end of the term of the concession agreement (2022). BNU, as issuer of the guarantee, is currently secured by a second priority security interest in the senior lender collateral package. From and after repayment of all indebtedness under the Amended Wynn Macau Credit Facilities, Wynn Macau SA is obligated to promptly, upon demand by BNU, repay any claim made on the guarantee by the Macau government. BNU is paid an annual fee for the guarantee of MOP 2.3 million (approximately \$0.3 million).

Upon closing of the Amended Wynn Macau Credit Facilities, the Company received proceeds of \$2.3 billion from the fully funded senior secured term loan facility. The proceeds were used to repay \$953.3 million in outstanding borrowings under the senior secured term loan facility dated July 30, 2012, and \$815.8 million in outstanding borrowings under the senior secured revolving credit facility dated July 30, 2012. In connection with Amended Wynn Macau Credit Facilities, the Company on September 30, 2015 recorded a loss on extinguishment of debt of \$2.1 million related to the write-off of unamortized deferred financing costs. As of September 30, 2015, the Company had \$750 million of available borrowing capacity under the Amended Wynn Macau Credit Facilities.

U.S. and Corporate Related Debt

First Mortgage Notes due 2020

On February 10, 2015, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp., an indirect wholly owned subsidiary of Wynn Resorts, Limited (together, the "Issuers") commenced a cash tender offer for any and all of the outstanding aggregate principal amounts of the 7 7/8% first mortgage notes due May 1, 2020 (the "7 7/8% 2020 Notes") and the 7 3/4% first mortgage notes due August 15, 2020 (the "7 3/4% 2020 Notes" and together with the 7 7/8% 2020 Notes, the "2020 Notes"). Wynn Las Vegas, LLC accepted for purchase valid tenders with respect to \$305.8 million of the \$377.0 million aggregate principal amount of the 7 7/8% 2020 Notes and \$1,146.5 million of the \$1,226.6 million aggregate principal amount of the 7 3/4% 2020 Notes. The note holders who validly tendered their 2020 Notes received the total consideration of \$1,054.21 for each \$1,000 principal amount of 7 7/8% 2020 Notes and \$1,073.82 for each \$1,000 principal amount of 7 3/4% 2020 Notes. The premium portion of the aggregate total consideration was \$101.2 million and was recorded as a loss on extinguishment of debt in the accompanying Condensed Consolidated Statements of Income. The Company satisfied and discharged the indentures under which the 2020 Notes were issued and redeemed the untendered 7 7/8% 2020 Notes on May 1, 2015 and the 7 3/4% 2020 Notes on August 15, 2015.

As part of the cash tender offer of the 7 7/8% 2020 Notes, Wynn Resorts tendered the \$30.0 million principal amount it held of its wholly owned subsidiary Wynn Las Vegas, LLC.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
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In connection with the cash tender, the Company expensed \$17.2 million of unamortized deferred financing costs and original issue discount related to the 2020 Notes and incurred other fees of \$0.1 million that are included in loss on extinguishment of debt in the accompanying Condensed Consolidated Statements of Income.

On May 1, 2015, the Company redeemed the remaining \$71.1 million principal amount of the untendered 7 7/8% 2020 Notes. The Company recorded a loss for the premium portion of the consideration of \$2.8 million and expensed \$1.0 million of unamortized deferred financing costs and original discount that are included in loss on extinguishment of debt in the accompanying Condensed Consolidated Statements of Income.

On August 15, 2015, the Company redeemed the remaining \$80.1 million principal amount of the untendered 7 3/4% 2020 Notes. The Company recorded a loss for the premium portion of the consideration of \$3.1 million and expensed \$0.8 million of unamortized deferred financing costs that are included in loss on extinguishment of debt in the accompanying Condensed Consolidated Statements of Income.

5 1/2% Senior Notes due 2025

On February 18, 2015, the Issuers completed the issuance of \$1.8 billion aggregate principal amount of 5 1/2% senior notes due March 1, 2025 (the "2025 Notes") pursuant to an indenture, dated as of February 18, 2015 (the "2025 Indenture"), among the Issuers, all the Issuers' subsidiaries (other than Wynn Las Vegas Capital Corp., which was a co-issuer) and U.S. Bank National Association, as trustee. The 2025 Notes were issued at par. The Company used the net proceeds from the 2025 Notes to cover the cost of purchasing the 2020 Notes and for general corporate purposes.

The 2025 Notes will mature on March 1, 2025 and bear interest at the rate of 5 1/2% per annum. The Issuers may, at their option, redeem the 2025 Notes, in whole or in part, at any time or from time to time prior to their stated maturity. The redemption price for 2025 Notes that are redeemed before December 1, 2024 will be equal to the greater of (a) 100% of the principal amount of the 2025 Notes to be redeemed and (b) a "make-whole" amount described in the 2025 Indenture, plus in either case accrued and unpaid interest, if any, to, but not including, the redemption date. The redemption price for the 2025 Notes that are redeemed on or after December 1, 2024 will be equal to 100% of the principal amount of the 2025 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but not including, the redemption date. In the event of a change of control triggering event, the Issuers will be required to offer to repurchase the 2025 Notes at 101% of the principal amount, plus accrued and unpaid interest, if any, to, but not including, the repurchase date. The 2025 Notes also are subject to mandatory redemption requirements imposed by gaming laws and regulations of gaming authorities in Nevada.

The 2025 Notes are the Issuers' senior unsecured obligations and rank pari passu in right of payment with the Issuers' 5 3/8% first mortgage notes due March 15, 2022 and the 4 1/4% senior notes due May 30, 2023 (together, the "Existing Notes"). The 2025 Notes are unsecured (except by the first priority pledge by Wynn Las Vegas Holdings, LLC of its equity interests in Wynn Las Vegas, LLC), effectiveness of which is subject to the prior approval of the Nevada gaming authorities. Such equity interests in Wynn Las Vegas also secure the Existing Notes. If Wynn Resorts, Limited receives an investment grade rating from one or more ratings agencies, the first priority pledge securing the 2025 Notes will be released.

The 2025 Notes are jointly and severally guaranteed by all of the Issuers' subsidiaries. The guarantees are senior unsecured obligations and rank senior in right of payment to all of their existing and future subordinated debt. The guarantees rank equally in right of payment with all existing and future liabilities of the Issuers' subsidiaries that are not so subordinated and will be effectively subordinated in right of payment to all of such existing and future secured debt (to the extent of the collateral securing such debt).

The 2025 Indenture contains covenants limiting the Issuers' and all of the Issuers' subsidiaries' (as guarantors), other than Wynn Las Vegas Capital Corp., ability to create liens on assets to secure debt, enter into sale-leaseback transactions and merge or consolidate with another company. These covenants are subject to a number of important and significant limitations, qualifications and exceptions.

Events of default under the 2025 Indenture include, among others, the following: default for 30 days in the payment when due of interest on the 2025 Notes; default in payment when due of the principal of, or premium, if any, on the 2025 Notes; failure to comply with certain covenants in the 2025 Indenture; and certain events of bankruptcy or insolvency. In the case of an event of default arising from certain events of bankruptcy or insolvency with respect to the Issuers or Issuers' subsidiaries (as guarantors), other than Wynn Las Vegas Capital Corp., all 2025 Notes then outstanding will become due and payable immediately without further action or notice.

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Wynn America Credit Facilities

On November 20, 2014, Wynn America, LLC ("Wynn America"), an indirect wholly owned subsidiary of the Company, entered into a \$1.25 billion senior secured credit facility, consisting of a \$375 million senior secured revolving credit facility and an \$875 million delay draw senior secured term loan facility (together, the "Wynn America Credit Facilities"). As of September 30, 2015, there were no amounts drawn under the Wynn America Credit Facilities, however, there were outstanding letters of credit totaling \$10.0 million reducing the available borrowing capacity to \$1.24 billion.

Pursuant to the terms of the Wynn America Credit Facilities, Wynn America agreed to use commercially reasonable efforts to cause a corporate restructuring (the "Wynn Las Vegas Reorganization") that would result in Wynn Las Vegas Holdings, LLC ("WLVH"), a direct wholly owned subsidiary of Wynn America, being the 100% owner of Wynn Las Vegas, LLC. Approvals required under applicable gaming laws and regulations with respect to the Wynn Las Vegas Reorganization were obtained on August 20, 2015. On September 1, 2015, Wynn Resorts Holdings, LLC transferred its equity interest in Wynn Las Vegas, LLC and effectuated the Wynn Las Vegas Reorganization.

On November 5, 2015, Wynn America amended the Wynn America Credit Facilities to extend the available borrowing period from November 20, 2015 to March 30, 2016 and June 30, 2016 for up to \$100.3 million and \$704.7 million, respectively, of the delay draw senior secured term facility. The available borrowing period for \$70.0 million of the delay draw senior secured term facility was not extended. Wynn America paid customary fees and expenses in connection with the amendment.

Debt Covenant Compliance

As of September 30, 2015, management believes the Company was in compliance with all debt covenants.

Fair Value of Long-Term Debt

The estimated fair value of the Company's long-term debt, excluding the Redemption Note, as of September 30, 2015 and December 31, 2014, was approximately \$6.3 billion and \$5.4 billion, respectively, compared to its carrying value of \$6.8 billion and \$5.4 billion, respectively. The estimated fair value of the Company's long-term debt, excluding the Redemption Note, is based on recent trades, if available, and indicative pricing from market information (Level 2 inputs). See Note 2 "Summary of Significant Accounting Policies" for discussion on the estimated fair value of the Redemption Note.

Note 9 - Interest Rate Swaps

The Company has entered into floating-for-fixed interest rate swap arrangements in order to manage interest rate risk relating to certain of its debt facilities. These interest rate swap agreements modify the Company's exposure to interest rate risk by converting a portion of the Company's floating-rate debt to a fixed rate. These interest rate swaps essentially fix the interest rate at the percentages noted below; however, changes in the fair value of the interest rate swaps for each reporting period have been recorded as an increase (decrease) in swap fair value in the accompanying Condensed Consolidated Statements of Income, as the interest rate swaps do not qualify for hedge accounting.

The Company utilized Level 2 inputs as described in Note 2 "Summary of Significant Accounting Policies" to determine fair value. The fair value approximates the amount the Company would receive if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability and fluctuation between periods. The fair value is adjusted, to reflect the impact of credit ratings of the counterparties or the Company, as applicable. These adjustments resulted in a reduction in the fair values as compared to their settlement values. As of September 30, 2015 and December 31, 2014, the interest rate swaps were recorded as a liability of \$1.1 million in other long term liabilities and as an asset of \$5.9 million in deposits and other assets, respectively.

The Company currently has three interest rate swap agreements intended to hedge a portion of the underlying interest rate risk on borrowings under the Wynn Macau Senior Term Loan Facility. Under two of the swap agreements, the Company pays a fixed interest rate (excluding the applicable interest margin) of 0.73% on notional amounts corresponding to borrowings of HK\$3.95 billion (approximately \$509.4 million) incurred under the Wynn Macau Senior Term Loan Facility in exchange for receipts on the same amount at a variable interest rate based on the applicable HIBOR at the time of payment. These interest

WYNN RESORTS, LIMITED AND SUBSIDIARIES
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rate swaps fix the all-in interest rate on such amounts at 2.48% to 3.23%. These interest rate swap agreements mature in July 2017.

Under the third swap agreement, the Company pays a fixed interest rate (excluding the applicable interest margin) of 0.68% on notional amounts corresponding to borrowings of \$243.8 million incurred under the Wynn Macau Senior Term Loan Facility in exchange for receipts on the same amount at a variable-rate based on the applicable LIBOR at the time of payment. This interest rate swap fixes the all-in interest rate on such amounts at 2.43% to 3.18%. This interest rate swap agreement matures in July 2017.

Note 10 - Related Party Transactions

Amounts Due to Officers

The Company periodically provides services to Stephen A. Wynn, Chairman of the Board of Directors and Chief Executive Officer ("Mr. Wynn"), and certain other officers and directors of the Company, including the personal use of employees, construction work and other personal services, for which the officers and directors reimburse the Company. In addition, effective January 1, 2015, Mr. Wynn also reimburses the Company for personal usage of aircraft (subject to a \$250,000 credit per calendar year) pursuant to a time sharing agreement. Mr. Wynn and other officers and directors have deposits with the Company to prepay any such items, which are replenished on an ongoing basis as needed. Mr. Wynn and the other officers and directors had a net deposit balance with the Company of \$0.5 million and \$0.6 million as of September 30, 2015 and December 31, 2014, respectively.

Villa Lease

Mr. Wynn currently leases a villa at Wynn Las Vegas for use as his personal residence. The lease, including each amendment and restatement, was approved by the Audit Committee of the Board of Directors of Wynn Resorts. Beginning in November 2013, pursuant to the 2013 Second Amended and Restated Agreement of Lease, dated as of November 7, 2013 and amended as of February 25, 2015 (the "SW Lease"), Mr. Wynn pays the Company annual rent for the villa at its fair market value of the accommodations. Pursuant to the SW Lease, Wynn Las Vegas pays for all capital improvements to the villa. The fair value is based on independent third-party expert opinions of value, which was \$525,000 per year through February 28, 2015 and \$559,295 per year from March 1, 2015 through February 28, 2017. The annual rent for the villa will be re-determined every two years during the term of the SW Lease, by the Audit Committee. Certain services for, and maintenance of, the villa are included in the annual rent.

Aircraft Purchase Option Agreement

On January 3, 2013, the Company and Mr. Wynn entered into an agreement pursuant to which Mr. Wynn agreed to terminate a previously granted option to purchase approximately two acres of land located on the Wynn Las Vegas golf course and, in return, the Company granted Mr. Wynn the right to purchase any or all of the aircraft owned by the Company or its direct wholly owned subsidiaries. The aircraft purchase option is exercisable upon 30 days written notice and at a price equal to the book value of such aircraft, and will terminate on the date of termination of the employment agreement between the Company and Mr. Wynn, which expires in October 2022.

The "Wynn" Surname Rights Agreement

On August 6, 2004, the Company entered into agreements with Mr. Wynn that confirm and clarify the Company's rights to use the "Wynn" name and Mr. Wynn's persona in connection with its casino resorts. Under the parties' Surname Rights Agreement, Mr. Wynn granted the Company an exclusive, fully paid-up, perpetual, worldwide license to use, and to own and register trademarks and service marks incorporating the "Wynn" name for casino resorts and related businesses, together with the right to sublicense the name and marks to its affiliates. Under the parties' Rights of Publicity License, Mr. Wynn granted the Company the exclusive, royalty-free, worldwide right to use his full name, persona and related rights of publicity for casino resorts and related businesses, together with the ability to sublicense the persona and publicity rights to its affiliates, until October 24, 2017.

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Note 11 - Property Charges and Other

Property charges and other for the three months ended September 30, 2015 and 2014 of \$1.0 million and \$1.6 million, respectively, consisted primarily of miscellaneous abandonments at the Company's resorts. Property charges and other for the nine months ended September 30, 2015 and 2014 of \$4.0 million and \$13.7 million, respectively, consisted primarily of charges associated with the renovation of approximately 27,000 square feet of casino space at Wynn Macau for new VIP gaming rooms. These new VIP gaming rooms opened in February 2015.

Note 12 - Noncontrolling Interest

On March 31, 2015, Wynn Macau, Limited paid a dividend of HK\$1.05 per share for a total of \$702.6 million. The Company's share of this dividend was \$507.1 million with a reduction of \$195.5 million to noncontrolling interest in the accompanying Condensed Consolidated Balance Sheets.

Note 13 - Stock-Based Compensation

The total compensation cost relating both to stock options and nonvested stock is allocated as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Casino	\$ 2,154	\$ 3,126	\$ 7,781	\$ 5,778
Rooms	83	95	232	95
Food and beverage	274	319	762	372
Entertainment, retail and other	22	26	62	26
General and administrative	6,677	6,803	21,369	16,443
Pre-opening costs	46	—	118	—
Total stock-based compensation expense	9,256	10,369	30,324	22,714
Total stock-based compensation capitalized	69	61	195	5,645
Total stock-based compensation costs	\$ 9,325	\$ 10,430	\$ 30,519	\$ 28,359

During the first quarter of 2014, the Company capitalized \$5.5 million of stock-based compensation into construction for a restricted stock award granted which immediately vested. The restricted stock award was granted to an employee of the Company's design, development and construction subsidiary and will be amortized over the useful life of the related asset.

Note 14 - Commitments and Contingencies*Cotai Development and Land Concession Contract*

The Company is currently constructing Wynn Palace, an integrated resort containing a 1,700-room hotel, a performance lake, meeting space, a casino, a spa, retail offerings, and food and beverage outlets in the Cotai area of Macau.

In September 2011, Wynn Macau SA and Palo, formally accepted the terms and conditions of a land concession contract from the Macau government for approximately 51 acres of land in the Cotai area of Macau. On May 2, 2012, the land concession contract was gazetted by the government of Macau evidencing the final step in the granting of the land concession. The initial term of the land concession contract is 25 years from May 2, 2012, and it may be renewed with government approval for successive periods. The total land premium payable, including interest as required by the land concession contract, is \$193.4 million. An initial payment of \$62.5 million was paid in December 2011, with eight additional semi-annual payments of approximately \$16.4 million each (which includes interest at 5%) due beginning November 2012. As of September 30, 2015, the remaining \$31.6 million obligation was recorded as a current liability. As of December 31, 2014, the Company recorded this obligation with \$30.8 million included as a current liability and \$16.0 million included as a long-term liability. The Company also is required to make annual lease payments of \$0.8 million during the resort construction period and annual payments of approximately \$1.1 million once the development is completed.

On July 29, 2013, Wynn Macau SA and Palo, finalized and executed a guaranteed maximum price construction ("GMP") contract with Leighton Contractors (Asia) Limited, acting as the general contractor. Under the GMP contract, the general

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contractor is responsible for both the construction and design of the Wynn Palace project. The general contractor is obligated to substantially complete the project in the first half of 2016 for a guaranteed maximum price of HK\$20.6 billion (approximately \$2.7 billion). The general contractor has notified the Company that it will not achieve the early completion milestone on January 25, 2016. However, the general contractor stated it is on schedule to complete the project on or before the substantial completion date. The Company continues to expect to open the property in the first half of 2016. Both the contract time and guaranteed maximum price are subject to further adjustment under certain specified conditions. The performance of the general contractor is backed by a full completion guarantee given by Leighton Holdings Limited, the parent company of the general contractor, as well as a performance bond for 5% of the guaranteed maximum price.

As of September 30, 2015, the Company has incurred approximately \$3.1 billion of the approximately \$4.1 billion in total project budget costs. The total project budget includes all construction costs, capitalized interest, pre-opening expenses, land costs and financing fees.

Litigation

In addition to the actions noted below, the Company and its affiliates are involved in litigation arising in the normal course of business. In the opinion of management, such litigation is not expected to have a material effect on the Company's financial condition, results of operations or cash flows.

Determination of Unsuitability and Redemption of Aruze and Affiliates

On February 18, 2012, Wynn Resorts' Gaming Compliance Committee received an independent report by Freeh, Sporkin & Sullivan, LLP (the "Freeh Report") detailing a pattern of misconduct by the Okada Parties. The factual record presented in the Freeh Report included evidence that the Okada Parties had provided valuable items to certain foreign gaming officials who were responsible for regulating gaming in a jurisdiction in which entities controlled by Mr. Okada were developing a gaming resort. Mr. Okada denied the impropriety of such conduct by members of the Board of Directors of Wynn Resorts and, while serving as one of the Company's directors, Mr. Okada refused to acknowledge or abide by Wynn Resorts' anti-bribery policies and refused to participate in the training all other directors received concerning these policies.

Based on the Freeh Report, the Board of Directors of Wynn Resorts determined that the Okada Parties are "unsuitable persons" under Article VII of the Company's articles of incorporation. The Board of Directors was unanimous (other than Mr. Okada) in its determination. After authorizing the redemption of Aruze's shares, as discussed below, the Board of Directors took certain actions to protect the Company and its operations from any influence of an unsuitable person, including placing limitations on the provision of certain operating information to unsuitable persons and formation of an Executive Committee of the Board to manage the business and affairs of the Company during the period between each annual meeting. The Charter of the Executive Committee provides that "Unsuitable Persons" are not permitted to serve on the Committee. All members of the Board, other than Mr. Okada, were appointed to the Executive Committee on February 18, 2012. The Board of Directors also requested that Mr. Okada resign as a director of Wynn Resorts (under Nevada corporation law, a board of directors does not have the power to remove a director) and recommended that Mr. Okada be removed as a member of the Board of Directors of Wynn Macau, Limited. On February 18, 2012, Mr. Okada was removed from the Board of Directors of Wynn Las Vegas Capital Corp., an indirect wholly owned subsidiary of Wynn Resorts. On February 24, 2012, Mr. Okada was removed from the Board of Directors of Wynn Macau, Limited and on February 22, 2013, he was removed from the Board of Directors of Wynn Resorts by a stockholder vote in which 99.6% of the over 86 million shares voted were cast in favor of removal. Mr. Okada resigned from the Board of Directors of Wynn Resorts on February 21, 2013. Although the Company has retained the structure of the Executive Committee, the Board has resumed its past role in managing the business and affairs of the Company.

Based on the Board of Directors' finding of "unsuitability," on February 18, 2012, Wynn Resorts redeemed and canceled Aruze's 24,549,222 shares of Wynn Resorts' common stock. Following a finding of "unsuitability," Article VII of Wynn Resorts' articles of incorporation authorizes redemption at "fair value" of the shares held by unsuitable persons. The Company engaged an independent financial advisor to assist in the fair value calculation and concluded that a discount to the then current trading price was appropriate because of, among other things, restrictions on most of the shares held by Aruze under the terms of the Stockholders Agreement (as defined below). Pursuant to its articles of incorporation, Wynn Resorts issued the Redemption Note to Aruze in redemption of the shares. The Redemption Note has a principal amount of \$1.94 billion, matures on February 18, 2022, and bears interest at the rate of 2% per annum, payable annually in arrears on each anniversary of the date of the Redemption Note. The Company may, in its sole and absolute discretion, at any time and from time to time, and without penalty or premium, prepay the whole or any portion of the principal or interest due under the Redemption Note. In no instance shall any payment obligation under the Redemption Note be accelerated except in the sole and absolute discretion of Wynn

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Resorts or as specifically mandated by law. The indebtedness evidenced by the Redemption Note is and shall be subordinated in right of payment, to the extent and in the manner provided in the Redemption Note, to the prior payment in full of all existing and future obligations of Wynn Resorts or any of its affiliates in respect of indebtedness for borrowed money of any kind or nature.

The Company provided the Freeh Report to appropriate regulators and law enforcement agencies and has been cooperating with related investigations that such regulators and agencies have undertaken. The conduct of the Okada Parties and any resulting regulatory investigations could have adverse consequences to the Company and its subsidiaries. A finding by regulatory authorities that Mr. Okada violated anti-corruption statutes and/or other laws or regulations applicable to persons affiliated with a gaming licensee on Company property and/or otherwise involved the Company in criminal or civil violations could result in actions by regulatory authorities against the Company and its subsidiaries.

Redemption Action and Counterclaim

On February 19, 2012, Wynn Resorts filed a complaint in the Eighth Judicial District Court, Clark County, Nevada against the Okada Parties (as amended, the "Complaint"), alleging breaches of fiduciary duty and related claims (the "Redemption Action") arising from the activities addressed in the Freeh Report. The Company is seeking compensatory and special damages as well as a declaration that it acted lawfully and in full compliance with its articles of incorporation, bylaws and other governing documents in redeeming and canceling the shares of Aruze.

On March 12, 2012, the Okada Parties removed the action to the United States District Court for the District of Nevada (the action was subsequently remanded to Nevada state court). On that same date, the Okada Parties filed an answer denying the claims and a counterclaim (as amended, the "Counterclaim") that purports to assert claims against the Company, each of the members of the Company's Board of Directors (other than Mr. Okada) and Wynn Resorts' General Counsel (the "Wynn Parties"). The Counterclaim alleges, among other things: (1) that the shares of Wynn Resorts common stock owned by Aruze were exempt from the redemption-for-unsuitability provisions in the Wynn Resorts articles of incorporation (the "Articles") pursuant to certain agreements executed in 2002; (2) that the Wynn Resorts directors who authorized the redemption of Aruze's shares acted at the direction of Mr. Wynn and did not independently and objectively evaluate the Okada Parties' suitability, and by so doing, breached their fiduciary duties; (3) that the Wynn Resorts directors violated the terms of the Wynn Resorts Articles by failing to pay Aruze fair value for the redeemed shares; and (4) that the terms of the Redemption Note that Aruze received in exchange for the redeemed shares, including the Redemption Note's principal amount, duration, interest rate, and subordinated status, were unconscionable. Among other relief, the Counterclaim seeks a declaration that the redemption of Aruze's shares was void, an injunction restoring Aruze's share ownership, damages in an unspecified amount and rescission of the Amended and Restated Stockholders Agreement, dated as of January 6, 2010, by and among Aruze, Mr. Wynn, and Elaine Wynn (the "Stockholders Agreement").

On June 19, 2012, Elaine Wynn asserted a cross claim against Mr. Wynn and Aruze seeking a declaration that (1) any and all of Elaine Wynn's duties under the Stockholders Agreement shall be discharged; (2) the Stockholders Agreement is subject to rescission and is rescinded; (3) the Stockholders Agreement is an unreasonable restraint on alienation in violation of public policy; and/or (4) the restrictions on sale of shares shall be construed as inapplicable to Elaine Wynn. The indenture for Wynn Las Vegas, LLC's 4 1/4% senior notes due 2023 (the "2023 Indenture") provides that if Mr. Wynn, together with certain related parties, in the aggregate beneficially owns a lesser percentage of the voting power of the outstanding common stock of the Company than is beneficially owned by any other person, a change of control will have occurred. The 2025 Indenture provides that if any event constitutes a "change of control" under the 2023 Indenture, it will constitute a change of control under the 2025 Indenture. If Elaine Wynn prevails in her cross claim, Mr. Wynn would not beneficially own or control Elaine Wynn's shares, which could increase the likelihood that a change in control may occur under the Wynn Las Vegas debt documents. Under the 2023 Indenture and the 2025 Indenture, if (1) a change of control occurs and (2) at any time within 60 days after that occurrence, the 4 1/4% senior notes due 2023 or the 5 1/2% senior notes due 2025, as applicable, are rated below investment grade by both rating agencies that rate such notes, the Company is required to make an offer to each applicable holder to repurchase all or any part of such 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 (unless the notes have been previously called for redemption). Mr. Wynn is opposing Ms. Wynn's cross claim.

The Company's Complaint and the Okada Parties' Counterclaim have been, and continue to be, challenged through motion practice. At a hearing held on November 13, 2012, the Nevada state court granted the Wynn Parties' motion to dismiss the Counterclaim with respect to the Okada Parties' claim under the Nevada Racketeer Influenced and Corrupt Organizations Act with respect to certain Company executives but otherwise denied the motion. At a hearing held on January 15, 2013, the

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court denied the Okada Parties' motion to dismiss the Company's Complaint. On April 22, 2013, the Company filed a second amended complaint. On August 30, 2013, the Okada Parties filed their third amended Counterclaim. On September 18, 2013, the Company filed a Partial Motion to Dismiss related to a claim in the third amended Counterclaim alleging civil extortion by Mr. Wynn and the Company's General Counsel. On October 29, 2013, the court granted the motion and dismissed the claim. On November 26, 2013, the Okada Parties filed their fourth amended Counterclaim, and the Company filed an answer to that pleading on December 16, 2013.

On each of February 14, 2013 and February 13, 2014, the Company issued a check to Aruze in the amount of \$38.7 million, representing the interest payments due on the Redemption Note at those times. However, those checks were not cashed. In February 2014, the Okada Parties advised of their intent to deposit any checks for interest and principal, past and future, due under the terms of the Redemption Note to the clerk of the court for deposit into the clerk's trust account. On March 17, 2014, the parties stipulated that the checks be returned to the Company for reissue in the same amounts, payable to the clerk of the court for deposit into the clerk's trust account. Pursuant to the stipulation, on March 20, 2014, the Company delivered to the clerk of the court the reissued checks that were deposited into the clerk's trust account and filed a notice with the court with respect to the same. On February 13, 2015, the Company issued a check for the interest payment due at that time to the clerk of the court for deposit into the clerk's trust account.

On April 8, 2013, the United States Attorney's Office and the U.S. Department of Justice filed a Motion to Intervene and for Temporary and Partial Stay of Discovery in the Redemption Action. The parties had been engaged in discovery at the time of the filing. The motion stated that the federal government has been conducting a criminal investigation of the Okada Parties involving the "same underlying allegations of misconduct-that is, potential violations of the Foreign Corrupt Practice Act and related fraudulent conduct-that form the basis of" the Company's complaint, as amended, in the Redemption Action. The motion sought to stay all discovery in the Redemption Action related to the Okada Parties' allegedly unlawful activities in connection with their casino project in the Philippines until the conclusion of the criminal investigation and any resulting criminal prosecution, with an interim status update to the court in six months. At a hearing on May 2, 2013, the court granted the motion and ordered that all discovery in the Redemption Action be stayed for a period of six months (the "Stay"). On May 30, 2013, Elaine Wynn filed a motion for partial relief from the Stay, to allow her to conduct limited discovery related to her cross and counterclaims. The Wynn Parties opposed the motion so as to not interfere with the United States government's investigation. At a hearing on August 1, 2013, the court denied the motion. On October 29, 2013, the United States Attorney's Office and the U.S. Department of Justice filed a Motion to Extend the Stay for a further period of six months. At a hearing on October 31, 2013, the court granted the requested extension based upon an affidavit provided under seal that outlined, among other things, concerns for witness safety. The court did, however, order the parties to exchange written discovery propounded prior to May 2, 2013, including discovery related to the Elaine Wynn cross and counterclaims referred to above. The extended Stay expired on May 5, 2014. On April 29, 2014, the United States Attorney's Office and the U.S. Department of Justice filed a Motion for a Second Extension of Temporary Stay of Discovery for a further six months. At a hearing on May 1, 2014, the court denied the motion. On September 22, 2014, the court entered a new stipulation between the parties for a discovery schedule with closing on August 1, 2016.

On September 16, 2014, Aruze filed a motion for partial summary judgment related to its counterclaim alleging the Company's directors violated the terms of the Articles by failing to pay Aruze fair value for the redeemed shares. At a hearing held on October 21, 2014, the court denied Aruze's motion.

On October 10, 2014, the Okada Parties filed a motion for partial judgment on the pleadings principally to seek dismissal of certain breach of fiduciary claims against Mr. Okada included in the Company's Complaint. On November 13, 2014, the court denied the motion and issued an order setting the trial and trial-related dates. The trial is scheduled to begin on February 6, 2017.

The lawsuit is currently in the discovery phase of litigation. The Company will continue to vigorously pursue its claims against the Okada Parties, and the Company and the Wynn Parties will continue to vigorously defend against the counterclaims asserted against them. The Company's claims and the Okada Parties' counterclaims remain in an early stage and management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of this matter or the range of reasonably possible loss, if any. An adverse judgment or settlement involving payment of a material amount could cause a material adverse effect on the Company's financial condition.

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Litigation Commenced by Kazuo Okada

Japan Action:

On August 28, 2012, Mr. Okada, Universal Entertainment Corporation and Okada Holdings ("Okada Japan Parties") filed a complaint in Tokyo District Court against the Wynn Parties, alleging that the press release issued by the Company with respect to the redemption has damaged plaintiffs' social evaluation and credibility. The Okada Japan Parties seek damages and legal fees from the Wynn Parties. After asking the Okada Japan Parties to clarify the allegations in their complaint, the Wynn Parties objected to the jurisdiction of the Japanese court. On April 30, 2013, the Wynn Parties filed a memorandum in support of their jurisdictional position. On October 21, 2013, the court dismissed the action on jurisdictional grounds. On November 1, 2013, the Okada Japan Parties filed an appeal moving the matter to the Tokyo High Court. On June 11, 2014, the Tokyo High Court ruled in favor of the Wynn Parties and upheld the motion for dismissal. On June 25, 2014, the Okada Japan Parties filed a notice of appeal to the Supreme Court of Japan. On October 28, 2014, the Wynn Parties received a copy of the brief that the Okada Japan Parties had filed to explain why they believe the Supreme Court of Japan should hear the case. The Wynn Parties filed a reply brief on February 16, 2015.

Indemnification Action:

On March 20, 2013, Mr. Okada filed a complaint against the Company in Nevada state court for indemnification under the Company's Articles, bylaws and agreements with its directors. The complaint sought advancement of Mr. Okada's costs and expenses (including attorney's fees) incurred pursuant to the various legal proceedings and related regulatory investigations described above. The Company's answer and counterclaim was filed on April 15, 2013. The counterclaim named each of the Okada Parties as defendants and sought indemnification under the Company's Articles for costs and expenses (including attorney's fees) incurred pursuant to the various legal proceedings and related regulatory investigations described above. On April 30, 2013, Mr. Okada filed his reply to the counterclaim. On February 4, 2014, the court entered an order on the parties' stipulation that: (1) dismissed all claims Mr. Okada asserted against the Company; (2) reserved Mr. Okada's right to assert, in the future, any claims for indemnity following the resolution of the Redemption Action; and (3) stayed the claims asserted by the Company against Mr. Okada pending the resolution of the Redemption Action.

Management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of this action or the range of reasonably possible loss, if any.

Macau Action:

On July 3, 2015, Wynn Macau, Limited announced that the Okada Parties filed a complaint in the Court of First Instance of Macau ("Macau Court") against Wynn Macau SA and certain individuals who are or were directors of Wynn Macau SA and/or Wynn Macau, Limited (collectively, the "Wynn Macau Parties"). The principal allegations in the lawsuit are that the redemption of the Okada Parties' shares in the Company was improper and undervalued, that the previously disclosed payment by Wynn Macau SA to an unrelated third party in consideration of relinquishment by that party of certain rights in and to any future development on the land in Cotai where the Company is building Wynn Palace was unlawful and that the Company's previously disclosed donation to the University of Macau Development Foundation was unlawful. The plaintiffs seek dissolution of Wynn Macau SA and compensatory damages. The Macau Court has not yet served the complaint on all of the defendants.

The Company believes the claims are without merit and will vigorously defend the Wynn Macau Parties against them. Management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of this matter or the range of reasonably possible loss, if any.

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Related Investigations and Derivative Litigation

Investigations:

In the U.S. Department of Justice's Motion to Intervene and for Temporary and Partial Stay of Discovery in the Redemption Action, the Department of Justice states in a footnote that the government also has been conducting a criminal investigation into the Company's previously disclosed donation to the University of Macau Development Foundation. The Company has not received any target letter or subpoena in connection with such an investigation. The Company intends to cooperate fully with the government in response to any inquiry related to the donation to the University of Macau Development Foundation.

Other regulators may pursue separate investigations into the Company's compliance with applicable laws arising from the allegations in the matters described above and in response to the Counterclaim and other litigation filed by Mr. Okada suggesting improprieties in connection with the Company's donation to the University of Macau Development Foundation. While the Company believes that it is in full compliance with all applicable laws, any such investigations could result in actions by regulators against the Company. Prior investigations by the Nevada Gaming Control Board and SEC were closed with no actions taken.

Derivative Claims:

Six derivative actions were commenced against the Company and all members of its Board of Directors: four in the United States District Court, District of Nevada, and two in the Eighth Judicial District Court of Clark County, Nevada.

The four federal actions brought by the following plaintiffs have been consolidated: (1) The Louisiana Municipal Police Employees' Retirement System, (2) Maryanne Solak, (3) Excavators Union Local 731 Welfare Fund, and (4) Boilermakers Lodge No. 154 Retirement Fund (collectively, the "Federal Plaintiffs").

The Federal Plaintiffs filed a consolidated complaint on August 6, 2012, asserting claims for: (1) breach of fiduciary duty; (2) waste of corporate assets; (3) injunctive relief; and (4) unjust enrichment. The claims were against the Company and all Company directors, including Mr. Okada, however, the plaintiffs voluntarily dismissed Mr. Okada as a defendant in this consolidated action on September 27, 2012. The Federal Plaintiffs claimed that the individual defendants breached their fiduciary duties and wasted assets by: (a) failing to ensure the Company's officers and directors complied with federal and state laws and the Company's Code of Conduct; (b) voting to allow the Company's subsidiary to make the donation to the University of Macau Development Foundation; and (c) redeeming Aruze's stock such that the Company incurs the debt associated with the redemption. The Federal Plaintiffs seek unspecified compensatory damages, restitution in the form of disgorgement, reformation of corporate governance procedures, an injunction against all future payments related to the donation/pledge, and all fees (attorneys, accountants, and experts) and costs. The directors responded to the consolidated complaint by filing a motion to dismiss on September 14, 2012. On February 1, 2013, the federal court dismissed the complaint for failure to plead adequately the futility of a pre-suit demand on the Board. The dismissal was without prejudice to the Federal Plaintiffs' ability to file a motion within 30 days seeking leave to file an amended complaint. On April 9, 2013, the Federal Plaintiffs filed their amended complaint. The Company and the directors filed their motion to dismiss the amended complaint on May 23, 2013. On March 13, 2014, the federal court granted the motion to dismiss and entered judgment in favor of the Company and directors and against the Federal Plaintiffs without prejudice. On April 10, 2014, the Federal Plaintiffs filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit. The Federal Plaintiffs' opening brief was filed on September 19, 2014. The Company filed a response on December 18, 2014 and the Federal Plaintiffs filed a reply brief on January 30, 2015.

The two state court actions brought by the following plaintiffs also have been consolidated: (1) IBEW Local 98 Pension Fund and (2) Danny Hinson (collectively, the "State Plaintiffs"). Through a coordination of efforts by all parties, the directors and the Company (a nominal defendant) have been served in all of the actions. The State Plaintiffs filed a consolidated complaint on July 20, 2012 asserting claims for (1) breach of fiduciary duty; (2) abuse of control; (3) gross mismanagement; and (4) unjust enrichment. The claims are against the Company and all Company directors during the applicable period, including Mr. Okada, as well as the Company's Chief Financial Officer who signed financial disclosures filed with the SEC during the applicable periods. The State Plaintiffs claim that the individual defendants failed to disclose to the Company's stockholders the investigation into, and the dispute with director Okada as well as the alleged potential violations of the FCPA related to, the University of Macau Development Foundation donation. The State Plaintiffs seek unspecified monetary damages (compensatory and punitive), disgorgement, reformation of corporate governance procedures, an order directing the Company to internally investigate the donation, as well as attorneys' fees and costs. On October 13, 2012, the court entered the parties'

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stipulation providing for a stay of the state derivative action for 90 days, subject to the parties' obligation to monitor the progress of the pending litigation, discussed above, between Wynn Resorts (among others) and Mr. Okada (among others). Per the stipulation, the Company and the individual defendants were not required to respond to the consolidated complaint while the stay remained in effect. Following the expiration of the stay, the State Plaintiffs advised the Company and the individual defendants that they intended to resume the action by filing an amended complaint, which they did, on April 26, 2013. The Company and directors filed their motion to dismiss on June 10, 2013. However, on July 31, 2013, the parties agreed to a stipulation that was submitted to, and approved by the court. The stipulation contemplates a stay of the consolidated state court derivative action of equal duration as the Stay entered by the court in the Redemption Action. On June 18, 2014, the court entered a new stipulation between the parties that provides for further stay of the state derivative action and directs the parties, within 45 days of the conclusion of the latter of the Redemption Action or the federal derivative action, to discuss how the state derivative action should proceed and to file a joint report with the court.

The individual defendants are vigorously defending against the claims pleaded against them in the state derivative action. Management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of this action or the range of reasonably possible loss, if any.

Massachusetts Gaming License Related Actions

On September 17, 2014, the Massachusetts Gaming Commission ("MGC") designated Wynn MA, LLC ("Wynn MA"), an indirect wholly owned subsidiary of the Company, the award winner of the Greater Boston (Region A) gaming license. On November 7, 2014, the gaming license became effective.

Revere Action: On October 16, 2014, the City of Revere, the host community to the unsuccessful bidder for the same license, and the International Brotherhood of Electrical Workers, Local 103, filed a complaint against the MGC and each of the five gaming commissioners in Suffolk Superior Court in Boston, Massachusetts (the "Revere Action"). The complaint challenges the MGC's decision and alleges that the MGC failed to follow statutory requirements outlined in the Gaming Act. The complaint (1) seeks to appeal the administrative decision, (2) asserts that certiorari provides a remedy to correct errors in proceedings by an agency such as the MGC, (3) challenges the constitutionality of that section of the gaming law which bars judicial review of the MGC's decision to deny an applicant a gaming license, and (4) alleges violations of the open meeting law requirements. The court allowed Mohegan Sun, the other applicant for the Greater Boston (Region A) gaming license, to intervene in the Revere Action, and on February 23, 2015, Mohegan Sun filed its complaint. The Mohegan complaint challenges the license award to Wynn MA, seeks judicial review of the MGC's decision, and seeks to vacate the MGC's license award to Wynn MA. On July 1, 2015, the MGC filed motions to dismiss Mohegan Sun's and the City of Revere's complaints. Oral argument on these motions was heard on September 22, 2015.

Somerville Action: On December 4, 2014, the City of Somerville filed a complaint similar to the one in the Revere Action against the MGC and each of the five gaming commissioners in Suffolk Superior Court. The City of Somerville filed a motion to stay its case pending the results of the Massachusetts Department of Environmental Protection's review of Wynn MA's proposed project and the required mitigation actions. The motion to stay was not opposed by the MGC and on July 9, 2015, the court granted the City of Somerville's motion to stay.

Boston Action: On January 5, 2015, the City of Boston filed a complaint against the MGC and each of the five gaming commissioners in Suffolk Superior Court for certiorari and declaratory relief in connection with the MGC's award of the license to Wynn MA. The complaint seeks to contest the MGC's decision that Boston is a surrounding community, rather than a host community to the Wynn resort in Massachusetts. On May 20, 2015, the City of Boston filed an amended complaint requesting the court to nullify and vacate all decisions made by the MGC leading to and resulting in MGC's license award to Wynn MA; to declare invalid the MGC's regulations regarding the arbitration of surrounding community agreements; and to issue a declaration disqualifying all gaming commissioners from further participating in the gaming licensing process for Region A. The MGC filed a motion to dismiss Boston's amended complaint. On July 9, 2015, the court denied the MGC's motion to dismiss the amended complaint, but established a briefing schedule for the MGC to file a motion to dismiss on the pending lawsuit. Oral argument was heard on September 22, 2015.

Wynn MA is not named in the above complaints. The MGC has retained private legal representation at its own nontaxpayer-funded expense.

On July 6, 2015, twenty-four (24) individuals (taxable inhabitants) and more than ten (10) voters of the Commonwealth of Massachusetts filed a complaint in Suffolk Superior Court against the Massachusetts Bay Transportation Authority ("MBTA"),

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the Massachusetts Department of Transportation, and Wynn MA seeking a declaration that the proposed conveyance of a parcel of land in Everett, Massachusetts from the MBTA to Wynn MA violates state law. MBTA and Wynn MA filed a motion to dismiss and oral argument was heard on September 4, 2015. On October 19, 2015, the court granted the motion and dismissed the complaint.

On August 28, 2015, the Secretary of Energy and Environmental Affairs issued a certificate determining that Wynn MA's Second Supplemental Final Environmental Impact Report ("Report") submitted with respect to the project "adequately and properly complied with the Massachusetts environmental and implementing regulations. On September 29, 2015, following the issuance of this certificate, the City of Boston filed a complaint against Wynn MA in Suffolk Superior Court seeking declaratory judgment that the certificate issued to Wynn MA is invalid due to an alleged failure to comply with certain provisions of the state environmental regulations and seeking to restrain Wynn MA from causing damage to the environment. In addition, on September 29, 2015, the City of Somerville filed a complaint against Wynn MA and the MGC in Suffolk Superior Court alleging that Wynn MA's Report failed to comply with certain provisions of the state environmental regulations and seeking declaratory relief with respect to the effect of the issuance of Wynn MA's gaming license.

The Company will vigorously defend Wynn MA against the claims. Management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of this action or the range of reasonably possible loss, if any.

Note 15 - Income Taxes

For the three months ended September 30, 2015 and 2014, the Company recorded a tax benefit of \$3.9 million and a tax expense of \$4.9 million, respectively. For the nine months ended September 30, 2015 and 2014, the Company recorded a tax expense of \$12.6 million and \$8.3 million, respectively. The Company's income tax benefit and expense for the three and nine months ended September 30, 2015 and 2014 is primarily related to changes in the domestic valuation allowance for U.S. foreign tax credits ("FTCs").

Since June 30, 2010, the Company no longer considers its portion of the tax earnings and profits of Wynn Macau, Limited to be permanently invested. The Company recorded deferred U.S. income taxes of \$1.7 million with respect to amounts not considered permanently invested. The Company has not provided deferred U.S. income taxes or foreign withholding taxes on temporary differences as these amounts are permanently reinvested. For the nine months ended September 30, 2015 and 2014, the Company recognized income tax benefits related to excess tax deductions associated with stock compensation costs of \$0.7 million and \$6.6 million, respectively.

The Company assesses the recoverability of its deferred tax asset for FTCs and the appropriateness for a valuation allowance on a quarterly basis. The Company considers factors such as its three year cumulative pre-tax book income, the reversal of taxable timing differences, and expectations regarding the occurrence of U.S. source income versus foreign source income within the FTCs carryforward period. Historically, the Company has recorded a partial valuation allowance on FTCs. If, based on future results and reviews of these factors, the Company was to conclude that the deferred tax asset is not recoverable and an additional valuation allowance is necessary, there could be a significant impact on its effective tax rate.

Wynn Macau SA has received a 5-year exemption from Macau's Complementary Tax on casino gaming profits through December 31, 2015. In October 2015, Wynn Macau SA received an additional 5-year exemption, effective January 1, 2016, from Macau's Complementary Tax on casino gaming profits through December 31, 2020. During the three months ended September 30, 2015 and 2014, the Company was exempted from the payment of \$8.7 million and \$25.8 million in such taxes. For the nine months ended September 30, 2015 and 2014, the Company was exempted from the payment of such taxes totaling \$32.6 million and \$80.4 million, respectively. The Company's non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau Special Gaming tax and other levies together totaling 39% in accordance with its concession agreement.

In 2011, Wynn Macau SA entered into an agreement with the Macau Special Administrative Region that provides for an annual payment of MOP 15.5 million (approximately \$1.9 million) to the Macau Special Administrative Region as complementary tax due by shareholders on dividend distributions. This agreement on dividends is effective through December 31, 2015. In June 2015, Wynn Macau SA applied for an extension of the agreement for an additional five years effective through December 31, 2020.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
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In December 2014, the Company received notification that for the 2015 tax year it had been accepted for the Compliance Maintenance phase of the Internal Revenue Service ("IRS") Compliance Assurance Program ("CAP"), which accelerates IRS examination of key transactions with the goal of resolving any issues before the taxpayer files its return. In the Compliance Maintenance phase, the IRS, at its discretion, may reduce the level of review of the taxpayer's tax positions based on the complexity and number of issues, and the taxpayer's history of compliance, cooperation and transparency in the CAP.

In June 2015, the Financial Services Bureau commenced an examination of the 2012 Macau income tax return of Wynn Macau SA. Since the examination is in its initial stages, the Company is unable to determine if it will conclude within the next 12 months. The Company believes that its liability for uncertain tax positions is adequate with respect to these years.

Note 16 - Segment Information

The Company reviews the results of operations for each of its operating segments. Wynn Macau and Encore at Wynn Macau are managed as a single integrated resort and have been aggregated as one reportable segment ("Macau Operations"). Wynn Las Vegas and Encore at Wynn Las Vegas are managed as a single integrated resort and have been aggregated as one reportable segment ("Las Vegas Operations"). The Company identifies each resort as a reportable segment considering operations within each resort have similar economic characteristics, type of customers, types of services and products, the regulatory environment of the operations and the Company's organizational and management reporting structure. The Company also reviews construction and development activities for each of its projects under development, in addition to its reportable segments.

The Company's projects under development are Wynn Palace and the Wynn resort in Massachusetts. In the following tables, the assets of the Wynn resort in Massachusetts are included in Corporate and Other. Other Macau primarily represents cash and investment securities held at the Company's Macau holding company. The following tables present the Company's segment information (in thousands):

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Net revenues				
Macau Operations	\$ 585,116	\$ 942,255	\$ 1,907,425	\$ 3,035,588
Las Vegas Operations	411,169	427,755	1,221,556	1,260,098
Total	\$ 996,285	\$ 1,370,010	\$ 3,128,981	\$ 4,295,686
Adjusted Property EBITDA (1)				
Macau Operations	\$ 162,822	\$ 325,529	\$ 548,555	\$ 1,016,858
Las Vegas Operations	117,069	133,250	349,783	403,962
Total	279,891	458,779	898,338	1,420,820
Other operating costs and expenses				
Pre-opening costs	19,467	6,718	52,433	14,792
Depreciation and amortization	80,649	79,027	245,428	234,037
Property charges and other	987	1,640	3,963	13,674
Corporate expenses and other	16,806	27,883	59,286	83,682
Stock-based compensation	9,210	10,369	30,206	22,714
Equity in income (loss) from unconsolidated affiliates	(2)	567	68	1,173
Total other operating costs and expenses	127,117	126,204	391,384	370,072
Operating income	152,774	332,575	506,954	1,050,748
Non-operating income and expenses				
Interest income	1,465	5,814	4,655	16,072
Interest expense, net of amounts capitalized	(74,079)	(79,048)	(227,298)	(236,069)
Increase (decrease) in swap fair value	(1,287)	2,360	(7,010)	(1,451)
Decrease in Redemption Note fair value	13,720	—	13,720	—
Loss on extinguishment of debt	(5,971)	(3,573)	(126,004)	(7,356)
Equity in income (loss) from unconsolidated affiliates	(2)	567	68	1,173
Other	459	(801)	1,790	(405)
Total other non-operating costs and expenses	(65,695)	(74,681)	(340,079)	(228,036)
Income before income taxes	87,079	257,894	166,875	822,712
Benefit (provision) for income taxes	3,906	(4,888)	(12,589)	(8,261)
Net income	\$ 90,985	\$ 253,006	\$ 154,286	\$ 814,451

(1) "Adjusted Property EBITDA" is net income before interest, taxes, depreciation and amortization, pre-opening costs, property charges and other, management and license fees, corporate expenses and other, intercompany golf course and water rights leases, stock-based compensation, loss on extinguishment of debt, change in interest rate swap fair value, change in Redemption Note fair value and other non-operating income and expenses, and includes equity in income (loss) from unconsolidated affiliates. Adjusted Property EBITDA is presented exclusively as a supplemental disclosure because management believes that it is widely used to measure the performance, and as a basis for valuation, of gaming companies. Management uses Adjusted Property EBITDA as a measure of the operating performance of its segments and to compare the operating performance of its properties with those of its competitors. The Company also presents Adjusted Property EBITDA because it is used by some investors as a way to measure a company's ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplement to financial measures in accordance with U.S. GAAP. In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including Wynn Resorts, Limited, have historically excluded from their EBITDA calculations pre-opening expenses, property charges, corporate expenses and stock-based compensation that do not relate to the management of specific casino properties. However, Adjusted Property EBITDA should not be considered as an alternative to operating income as an indicator of the Company's performance, as an alternative to cash

WYNN RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (continued)
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flows from operating activities as a measure of liquidity, or as an alternative to any other measure determined in accordance with GAAP. Unlike measures of net income, Adjusted Property EBITDA does not include depreciation or interest expense and therefore does not reflect current or future capital expenditures or the cost of capital. The Company has significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments, taxes and other non-recurring charges, which are not reflected in Adjusted Property EBITDA. Also, Wynn Resorts' calculation of Adjusted Property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

	September 30, 2015	December 31, 2014
Assets		
Macau		
Macau Operations	\$ 1,729,450	\$ 1,520,098
Wynn Palace	3,043,273	1,854,521
Other Macau	123,348	974,170
Total Macau	4,896,071	4,348,789
Las Vegas Operations	3,140,176	3,472,931
Corporate and other	1,944,938	1,241,141
	<u>\$ 9,981,185</u>	<u>\$ 9,062,861</u>

Note 17 - Subsequent Event

On October 15, 2015, the Company announced a cash dividend of \$0.50 per share, payable on November 24, 2015 to stockholders of record as of November 12, 2015.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and related notes included elsewhere in this Form 10-Q and our consolidated financial statements appearing in our annual report on Form 10-K for the year ended December 31, 2014. Unless the context otherwise requires, all references herein to the "Company," "we," "us" or "our," or similar terms, refer to Wynn Resorts, Limited, a Nevada corporation, and its consolidated subsidiaries. This discussion and analysis contains forward-looking statements. Please refer to the section below entitled "Special Note Regarding Forward-Looking Statements."

Overview

We are a developer, owner and operator of destination casino resorts (integrated resorts). In the Macau Special Administrative Region of the People's Republic of China ("Macau"), we own 72% of Wynn Macau, Limited and operate Wynn Macau and Encore at Wynn Macau. We refer to the integrated Wynn Macau and Encore at Wynn Macau resort as Wynn Macau | Encore or as our Macau Operations. In Las Vegas, Nevada, we own 100% of and operate Wynn Las Vegas and Encore at Wynn Las Vegas, which we refer to as Wynn Las Vegas | Encore or our Las Vegas Operations. We are developing Wynn Palace, an integrated casino resort in the Cotai area of Macau. In addition, we are developing an integrated casino resort in Everett, Massachusetts.

Macau Operations

We operate Wynn Macau | Encore under a 20-year casino concession agreement granted by the Macau government in June 2002. We lease from the Macau government approximately 16 acres of land in downtown Macau's inner harbor where Wynn Macau | Encore is located.

Wynn Macau | Encore features the following as of October 15, 2015:

- Approximately 284,000 square feet of casino space offering 24-hour gaming and a full range of games with 451 table games and 688 slot machines, private gaming salons, sky casinos and a poker pit;
- Two luxury hotel towers with a total of 1,008 spacious guest rooms and suites;
- Casual and fine dining in eight restaurants;
- Approximately 57,000 square feet of high-end, brand-name retail shopping, including stores and boutiques by Bvlgari, Cartier, Chanel, Dior, Dunhill, Ermenegildo Zegna, Ferrari, Giorgio Armani, Graff, Gucci, Hermes, Hugo Boss, Jaeger-LeCoultre, Loro Piana, Louis Vuitton, Miu Miu, Piaget, Prada, Richard Mille, Roger Dubuis, Rolex, Tiffany, Vacheron Constantin, Van Cleef & Arpels, Versace, Vertu, and others;
- Approximately 31,000 square feet of space for lounges and meeting facilities;
- Recreation and leisure facilities, including two health clubs, spas, a salon and a pool; and
- Rotunda show featuring a Chinese zodiac-inspired ceiling along with gold "prosperity tree" and "dragon of fortune" attractions.

In response to our evaluation of our Macau Operations and the reactions of our guests, we have made and expect to continue to make enhancements and refinements to Wynn Macau | Encore. In February 2015, we completed the renovation of approximately 27,000 square feet of our casino space at Wynn Macau for new VIP gaming rooms.

Las Vegas Operations

Wynn Las Vegas | Encore is located at the intersection of the Las Vegas Strip and Sands Avenue, and occupies approximately 215 acres of land fronting the Las Vegas Strip. In addition, we own approximately 18 acres across Sands Avenue, a portion of which is utilized for employee parking and an office building, and approximately five acres adjacent to the golf course on which an office building is located.

Wynn Las Vegas | Encore features the following as of October 15, 2015:

- Approximately 186,000 square feet of casino space, offering 24-hour gaming and a full range of games with 232 table games and 1,861 slot machines, private gaming salons, a sky casino, a poker room, and a race and sports book;

- Two luxury hotel towers with a total of 4,748 spacious guest rooms, suites and villas;
- 34 food and beverage outlets featuring signature chefs;
- Approximately 99,000 square feet of high-end, brand-name retail shopping, including stores and boutiques by Alexander McQueen, Brioni, Cartier, Chanel, Chloé, Chopard, Dior, Givenchy, Graff, Hermes, IWC Schaffhausen, Jaeger-LeCoultre, Loro Piana, Louis Vuitton, Manolo Blahnik, Moncler, Nicholas Kirkwood, Oscar de la Renta, Piaget, Prada, Rolex, Vertu and others;
- Approximately 290,000 square feet of meeting and convention space;
- Three nightclubs and a beach club;
- Specially designed theater presenting "Le Rêve-The Dream," a water-based theatrical production and a theater presenting "Steve Wynn's ShowStoppers," a Broadway-style entertainment production;
- Recreation and leisure facilities, including an 18-hole golf course, swimming pools, private cabanas and two full service spas and salons; and
- Wedding chapel.

In response to our evaluation of our Las Vegas Operations and the reactions of our guests, we have made and expect to continue to remodel and make enhancements and refinements to Wynn Las Vegas | Encore.

In June 2015, we began the remodel of guest rooms in our Encore hotel tower. We expect these room renovations to be completed by the end of 2015 and believe there will not be a significant impact to our operations and results during the renovation period.

In October 2015, the Ferrari and Maserati automobile dealership inside Wynn Las Vegas was permanently closed. We are in the process of determining the use of the 10,000 square feet of space, which was occupied by the dealership.

Future Development

We are currently constructing Wynn Palace, an integrated resort containing a 1,700-room hotel, a performance lake, meeting space, a casino, a spa, retail offerings and food and beverage outlets in the Cotai area of Macau. We are a party to a \$2.7 billion guaranteed maximum price ("GMP") contract for the project's construction. The total project budget, including construction costs, capitalized interest, pre-opening expenses, land costs and financing fees, is approximately \$4.1 billion. As of September 30, 2015, we have invested approximately \$3.1 billion in the project. We expect to open Wynn Palace on Cotai in the first half of 2016.

In November 2014, the Company was awarded a gaming license to develop and construct an integrated resort in Everett, Massachusetts, outside of Boston. The resort will be located on a 33 acre site along the Mystic River. The resort will contain a hotel, a waterfront boardwalk, meeting space, a casino, a spa, retail offerings and food and beverage outlets. We have begun site preparation and pre-construction activities.

We continually seek out new opportunities for additional gaming or related businesses, in the United States, and worldwide.

Key Operating Measures

Certain key operating measures specific to the gaming industry are included in our discussion of our operational performance for the periods for which Condensed Consolidated Statements of Income are presented. Below are definitions of these key operating measures discussed:

- Table drop for our Macau Operations is the amount of cash that is deposited in a gaming table's drop box plus cash chips purchased at the casino cage.
- Table drop for our Las Vegas Operations is the amount of cash and net markers issued that are deposited in a gaming table's drop box.
- Turnover is the sum of all losing rolling chip wagers within our Macau Operations' VIP program.
- Table games win is the amount of table drop or turnover that is retained and recorded as casino revenue.
- Rolling chips are identifiable chips that are used to track turnover for purposes of calculating incentives.
- Slot win is the amount of handle (representing the total amount wagered) that is retained by us and is recorded as casino revenue.

- Average daily rate ("ADR") is calculated by dividing total room revenues, including the retail value of promotional allowances (less service charges, if any), by total rooms occupied including complimentary rooms.
- Revenue per available room ("REVPAR") is calculated by dividing total room revenues, including the retail value of promotional allowances (less service charges, if any), by total rooms available.
- Occupancy is calculated by dividing total occupied rooms, including complimentary rooms, by the total rooms available.

Below is a discussion of the methodologies used to calculate win percentage at our resorts.

In our VIP casino in Macau, customers primarily purchase non-negotiable chips, commonly referred to as rolling chips, from the casino cage and there is no deposit into a gaming table drop box from chips purchased from the cage. Non-negotiable chips can only be used to make wagers. Winning wagers are paid in cash chips. The loss of the non-negotiable chips in the VIP casino is recorded as turnover and provides the basis for calculating VIP casino win percentage. It is customary in Macau to measure VIP casino play using this rolling chip method. We expect our win as a percentage of turnover in this segment to be within the range of 2.7% to 3.0%.

In our mass market casino in Macau, customers may purchase cash chips at either the gaming tables or at the casino cage. Beginning in the second quarter of 2015, the sum of these purchases is the base of measurement we will use for calculating win percentage in our mass market casino in accordance with standard Macau industry practice. All prior period amounts have been adjusted to conform to this new measurement.

The measurements in our VIP casino and the mass market casino are not comparable as the mass market casino tracks the initial purchase of chips at the gaming table and casino cage while the measurement method in our VIP casino tracks the sum of all losing wagers. Accordingly, the base measurement in the VIP casino is much larger than the base measurement in the mass market casino. As a result, the expected win percentage with the same amount of gaming win is significantly smaller in the VIP casino when compared to the mass market casino.

In Las Vegas, customers purchase chips at the gaming tables. The cash and net markers used to purchase chips are deposited in the gaming table's drop box. This is the base of measurement that we use for calculating win percentage in Las Vegas. Each type of table game has its own theoretical win percentage. Our expected table games win percentage in Las Vegas is 21% to 24%.

Results of Operations

Summary third quarter 2015 results

(dollars in thousands, except per share data)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2015	2014	Percent Change	2015	2014	Percent Change
Net revenues	\$ 996,285	\$ 1,370,010	(27.3)	\$ 3,128,981	\$ 4,295,686	(27.2)
Net income attributable to Wynn Resorts, Limited	\$ 73,766	\$ 191,406	(61.5)	\$ 85,625	\$ 622,208	(86.2)
Diluted net income per share	\$ 0.73	\$ 1.88	(61.3)	\$ 0.84	\$ 6.10	(86.2)
Adjusted Property EBITDA	\$ 279,891	\$ 458,779	(39.0)	\$ 898,338	\$ 1,420,820	(36.8)

During the three months ended September 30, 2015, our net income attributable to Wynn Resorts, Limited was \$73.8 million, a decrease of 61.5% over the same period of 2014, resulting in diluted net income per share of \$0.73. The reduction in net income attributable to Wynn Resorts, Limited was driven by a decrease in casino revenues from both our Macau Operations and Las Vegas Operations. Adjusted Property EBITDA decreased year-over-year by 39.0%, from \$458.8 million for the three months ended September 30, 2014 to \$279.9 million for the same period of 2015. Our results reflect continued weak performance from our Macau Operations, with reduction in VIP turnover of 51.3% for the three months ended September 30, 2015, compared to the same period in 2014. The VIP turnover reduction is a result of the current market conditions in Macau as well as regional economic factors on games promoters and our premium customers.

During the nine months ended September 30, 2015, our net income attributable to Wynn Resorts, Limited was \$85.6 million, a decrease of 86.2% over the same period of 2014, resulting in diluted net income per share of \$0.84. Adjusted Property EBITDA decreased year-over-year by 36.8%, from \$1,420.8 million for the nine months ended September 30, 2014 to \$898.3 million for the same period of 2015. Our results for the nine months ended September 30, 2015 were primarily driven

by a decrease in casino revenues from our Macau Operations and \$124.0 million in losses from the extinguishment of debt related to the purchase of first mortgage notes due 2020 pursuant to a cash tender offer and subsequent redemption of untendered notes.

Financial results for the three months ended September 30, 2015 compared to the three months ended September 30, 2014.

Net Revenues

The following table presents net revenues from our Macau and Las Vegas Operations (dollars in thousands):

	Three Months Ended September 30,		Percent Change
	2015	2014	
Net revenues			
Macau Operations	\$ 585,116	\$ 942,255	(37.9)
Las Vegas Operations	411,169	427,755	(3.9)
	\$ 996,285	\$ 1,370,010	(27.3)

Net revenues decreased 27.3%, or \$373.7 million, to \$996.3 million for the three months ended September 30, 2015, from \$1,370.0 million for the same period in 2014. The decline is primarily due to a \$345.3 million decrease in casino revenues from our Macau Operations.

Non-casino revenues consist of operating revenues from rooms, food and beverage, entertainment, retail and other, less promotional allowances. The following table presents net revenues from our casino and non-casino revenues (dollars in thousands):

	Three Months Ended September 30,		Percent Change
	2015	2014	
Net revenues			
Casino revenues	\$ 700,014	\$ 1,071,829	(34.7)
Non-casino revenues	296,271	298,181	(0.6)
	\$ 996,285	\$ 1,370,010	(27.3)

Casino revenues were 70.3% of total net revenues for the three months ended September 30, 2015, compared to 78.2% for the same period of 2014, while non-casino revenues were 29.7% of total net revenues, compared to 21.8% for the same period of 2014.

Casino Revenues

Casino revenues decreased 34.7%, or \$371.8 million, to \$700.0 million for the three months ended September 30, 2015, from \$1,071.8 million in the same period of 2014. The decline is primarily due to our Macau Operations, which experienced a year-over-year decrease in casino revenues of 38.7% from \$893.2 million to \$547.9 million. Our VIP gaming operations drove the Macau Operations casino revenue reduction, with \$12.2 billion in VIP turnover for the three months ended September 30, 2015, compared to \$25.1 billion for the same period of 2014. In addition, our mass market gaming operations contributed to the decline in casino revenues from our Macau Operations with a 13.7% decrease in table drop combined with a reduction in table games win percentage of 4.0 percentage points.

The table below sets forth our casino revenues and associated key operating measures for our Macau and Las Vegas Operations (dollars in thousands, except for win per unit per day).

	Three Months Ended September 30,		Increase/ (Decrease)	Percent Change
	2015	2014		
Macau Operations:				
Total casino revenues	\$ 547,865	\$ 893,206	\$ (345,341)	(38.7)
Average number of table games	454	451	3	0.7
VIP				
Average number of table games	228	251	(23)	(9.2)
VIP turnover	\$ 12,218,445	\$ 25,064,646	\$ (12,846,201)	(51.3)
Table games win	\$ 387,082	\$ 697,761	\$ (310,679)	(44.5)
VIP win as a % of turnover	3.17%	2.78%	0.39	
Table games win per unit per day	\$ 18,422	\$ 30,235	\$ (11,813)	(39.1)
Mass market				
Average number of table games	225	200	25	12.5
Table drop	\$ 1,196,940	\$ 1,386,905	\$ (189,965)	(13.7)
Table games win	\$ 234,697	\$ 327,217	\$ (92,520)	(28.3)
Table games win %	19.6%	23.6%	(4.0)	
Table games win per unit per day	\$ 11,319	\$ 17,759	\$ (6,440)	(36.3)
Las Vegas Operations:				
Average number of slot machines	738	588	150	25.5
Slot machine handle	\$ 824,646	\$ 1,436,074	\$ (611,428)	(42.6)
Slot machine win	\$ 41,876	\$ 73,483	\$ (31,607)	(43.0)
Slot machine win per unit per day	\$ 617	\$ 1,358	\$ (741)	(54.6)
Las Vegas Operations:				
Total casino revenues	\$ 152,149	\$ 178,623	\$ (26,474)	(14.8)
Average number of table games	230	235	(5)	(2.1)
Table drop	\$ 491,616	\$ 640,941	\$ (149,325)	(23.3)
Table games win	\$ 116,655	\$ 164,932	\$ (48,277)	(29.3)
Table games win %	23.7%	25.7%	(2.0)	
Table games win per unit per day	\$ 5,505	\$ 7,619	\$ (2,114)	(27.7)
Las Vegas Operations:				
Average number of slot machines	1,861	1,864	(3)	(0.2)
Slot machine handle	\$ 764,263	\$ 788,131	\$ (23,868)	(3.0)
Slot machine win	\$ 54,614	\$ 47,446	\$ 7,168	15.1
Slot machine win per unit per day	\$ 319	\$ 277	\$ 42	15.2

Non-casino revenues

Non-casino revenues decreased 0.6%, or \$1.9 million, to \$296.3 million for the three months ended September 30, 2015, from \$298.2 million for the same period of 2014.

Room revenues decreased 1.7%, or \$2.3 million, to \$133.5 million for the three months ended September 30, 2015, from \$135.7 million for the same period of 2014 mainly due to our Macau Operations, which experienced a 3.1% decrease in ADR and an occupancy decrease of 2.6 percentage points from 98.5% to 95.9%.

The table below sets forth our room revenues and associated key operating measures for our Macau and Las Vegas Operations.

	Three Months Ended September 30,		Percent Change (a)
	2015	2014	
Macau Operations:			
Total room revenues (dollars in thousands)	\$ 30,674	\$ 33,190	(7.6)
Occupancy	95.9%	98.5%	(2.6)
ADR	\$ 317	\$ 327	(3.1)
REVPAR	\$ 304	\$ 322	(5.6)
Las Vegas Operations:			
Total room revenues (dollars in thousands)	\$ 102,786	\$ 102,544	0.2
Occupancy	88.3%	89.3%	(1.0)
ADR	\$ 275	\$ 267	3.0
REVPAR	\$ 243	\$ 238	2.1

(a) Except occupancy, which is presented as a percentage point change.

Food and beverage revenues were relatively flat at \$160.3 million for the three months ended September 30, 2015, compared to \$160.5 million, for the same period of 2014. We experienced a decline of \$6.3 million in food and beverage revenues from our Macau Operations, mainly from restaurants, offset by an increase of \$6.1 million in food and beverage revenues from our Las Vegas Operations, which was driven by an increase in revenues at nightclubs and an increase in revenues from catering and banquets.

Entertainment, retail and other decreased 13.8%, or \$13.9 million, to \$87.0 million for the three months ended September 30, 2015, from \$100.9 million for the same period of 2014. The decrease is primarily due to a decline in revenue from retail shops at our Macau Operations.

Promotional allowances decreased 14.7%, or \$14.5 million, to \$84.5 million for the three months ended September 30, 2015, from \$99.0 million for the same period of 2014. As a percentage of total casino revenues, promotional allowances were 12.1% for the three months ended September 30, 2015, compared to 9.2% for the same period of 2014, as the decline in total complimentarys was less than the decline in total casino revenues.

Operating costs and expenses

Operating costs and expenses decreased 18.7%, or \$193.9 million, to \$843.5 million for the three months ended September 30, 2015, from \$1,037.4 million for the same period of 2014, mainly from a decrease in casino expenses.

Casino expenses decreased 31.2%, or \$202.3 million, to \$445.2 million for the three months ended September 30, 2015, from \$647.5 million for the same period of 2014, primarily due to lower gaming taxes with a 39.0% gross win tax incurred at our Macau Operations. The decline in gaming taxes was commensurate with the 38.7% decrease in casino revenues at our Macau Operations.

Room expenses decreased 4.9%, or \$1.9 million, to \$37.3 million for the three months ended September 30, 2015, from \$39.2 million for the same period of 2014. The decrease was primarily due to a reduction in linen and other room related expenses from our Las Vegas Operations.

Food and beverage expenses increased 10.9%, or \$9.9 million, to \$101.2 million for the three months ended September 30, 2015, from \$91.2 million for the same period of 2014 due to an increase of \$8.0 million from our Las Vegas Operations and \$1.9 million from our Macau Operations. The increase from our Las Vegas Operations is primarily a result of higher costs in the current period for entertainment at our nightclubs.

General and administrative expenses decreased 8.0%, or \$10.2 million, to \$116.6 million for the three months ended September 30, 2015, from \$126.8 million in the same period of 2014, primarily attributable to a reduction in corporate related expenses and a reduction in bonus expense associated with annual performance awards.

Provision for doubtful accounts decreased \$1.8 million to \$2.9 million for the three months ended September 30, 2015, compared to \$4.7 million for the same period of 2014. The change in the provision was primarily due to the impact of historical collection patterns and current collection trends, as well as specific review of customer accounts, on our estimated allowance for the respective periods.

Pre-opening costs were \$19.5 million for the three months ended September 30, 2015, compared to \$6.7 million for the same period of 2014 and were associated with the design and planning for our development projects. During the three months ended September 30, 2015, we incurred \$13.7 million in development of Wynn Palace and \$5.8 million in development of the Wynn resort in Massachusetts. Pre-opening costs in the three months ended September 30, 2014 related to Wynn Palace.

Depreciation and amortization increased 2.1%, or \$1.6 million, to \$80.6 million for the three months ended September 30, 2015, from \$79.0 million for the same period of 2014. The increase is primarily due to additional depreciation associated with building improvements at our Macau Operations, including our new VIP gaming rooms. The increase was partially offset by a \$1.8 million reduction in depreciation due to a change in the estimated useful lives of certain assets in Macau. Effective September 1, 2015, we changed our estimate of remaining useful lives of buildings and improvements for Wynn Macau to more accurately reflect the estimated periods during which these assets are expected to remain in service. For further information on the change in estimate, see Item 1—"Notes to Condensed Consolidated Financial Statements", Note 7 "Property and Equipment, net."

Interest expense, net of amounts capitalized

The following table summarizes information related to interest expense (dollars in thousands):

	Three Months Ended September 30,		Percent Change
	2015	2014	
Interest expense			
Interest cost, including amortization of deferred financing costs and original issue discount and premium	\$ 86,705	\$ 88,900	(2.5)
Capitalized interest	(12,626)	(9,852)	28.2
	<u>\$ 74,079</u>	<u>\$ 79,048</u>	(6.3)

Capitalized interest increased \$2.8 million to \$12.6 million for the three months ended September 30, 2015, due to the ongoing borrowings and construction costs related to our development projects. Our interest cost decreased \$2.2 million to \$86.7 million for the three months ended September 30, 2015 due to financing activities in 2015 which lowered our weighted average interest rate. In February 2015, we issued \$1.8 billion of 5 1/2% senior notes due 2025 and used the proceeds for the purchase of \$305.8 million of 7 7/8% first mortgage notes due 2020 and \$1,146.5 million of 7 3/4% first mortgage notes due 2020 pursuant to a cash tender offer. In May 2015, we redeemed the remaining \$71.1 million principal amount of the untendered 7 7/8% first mortgage notes due 2020 and in August 2015 redeemed the remaining \$80.1 million principal amount of the untendered 7 3/4% first mortgage notes due 2020.

Other non-operating income and expenses

During the three months ended September 30, 2015, we recognized a gain of \$13.7 million from the change in fair value of the Redemption Note. No change was recognized in the same period of 2014. For further information on the fair value of the Redemption Note, see Item 1—"Notes to Condensed Consolidated Financial Statements", Note 2 "Summary of Significant Accounting Policies."

During the three months ended September 30, 2015, we recognized \$6.0 million in loss on extinguishment of debt, compared to \$3.6 million for the same period of 2014. In connection with the August 2015 redemption of the untendered 7 3/4% first mortgage notes due 2020, we incurred a loss of \$3.9 million associated with the premium paid and write off of unamortized deferred financing costs. In addition, we incurred a loss of \$2.1 million related to the write-off of unamortized deferred financing costs associated with the amendment of our Wynn Macau credit facilities. During the three months ended

September 30, 2014, the loss was for the premium paid on first mortgage notes due 2020 through open market transactions and the write-off of related unamortized deferred financing costs and original issue discount.

We incurred a loss of \$1.3 million and a gain of \$2.4 million for the three months ended September 30, 2015 and 2014, respectively, from the change in the fair value of our interest rate swaps. For further information on our interest rate swaps, see Item 3 — "Quantitative and Qualitative Disclosures about Market Risk."

Interest income was \$1.5 million for the three months ended September 30, 2015, compared to \$5.8 million for the three months ended September 30, 2014. During 2015 and 2014, our short-term investment strategy has been to preserve capital while retaining sufficient liquidity. The majority of our investment securities were in time deposits, fixed deposits and money market accounts with a maturity of three months or less.

Income Taxes

For the three months ended September 30, 2015 and 2014, we recorded a tax benefit of \$3.9 million and a tax expense of \$4.9 million, respectively. Our income tax benefit in the current quarter is primarily related to a decrease in the domestic valuation allowance for U.S. foreign tax credits ("FTCs") that are expected to provide a U.S. tax benefit in future years. Our income tax expense in the prior year quarter is primarily related to an increase in the domestic valuation allowance for FTCs that are not expected to provide a U.S. tax benefit in future years.

Since June 30, 2010, we have no longer considered our portion of the tax earnings and profits of Wynn Macau, Limited to be permanently invested. We recorded deferred U.S. income taxes of \$1.7 million with respect to amounts not considered permanently invested. We have not provided deferred U.S. income taxes or foreign withholding taxes on temporary differences as these amounts are permanently reinvested. For the three months ended September 30, 2015 and 2014, we recognized income tax benefits related to excess tax deductions associated with stock compensation costs of \$0.3 million and \$0.1 million, respectively.

Wynn Resorts (Macau) S.A. ("Wynn Macau SA") has received a 5-year exemption from Macau's Complementary Tax on casino gaming profits through December 31, 2015. In October 2015, Wynn Macau SA received an additional 5-year exemption, effective January 1, 2016, from Macau's Complementary Tax on casino gaming profits through December 31, 2020. During the three months ended September 30, 2015 and 2014, we were exempt from the payment of \$8.7 million and \$25.8 million in such taxes respectively. Our non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau Special Gaming tax and other levies together totaling 39% in accordance with our concession agreement.

In 2011, Wynn Macau SA entered into an agreement with the Macau Special Administrative Region that provides for an annual payment of MOP 15.5 million (approximately \$1.9 million) to the Macau Special Administrative Region as complementary tax due by shareholders on dividend distributions. This agreement on dividends is effective through December 31, 2015. In June 2015, Wynn Macau SA applied for an extension of the agreement for an additional five years effective through December 31, 2020.

In December 2014, we received notification that for the 2015 tax year we had been accepted for the Compliance Maintenance phase of the Internal Revenue Service ("IRS") Compliance Assurance Program ("CAP"). The CAP accelerates IRS examination of key transactions with the goal of resolving any issues before the taxpayer files its return. In the Compliance Maintenance phase, the IRS, at its discretion, may reduce the level of review of the taxpayer's tax positions based on the complexity and number of issues, and the taxpayer's history of compliance, cooperation and transparency in the CAP.

In June 2015, the Financial Services Bureau commenced an examination of the 2012 Macau income tax return of Wynn Macau SA. Since the examination is in its initial stages, we are unable to determine if it will conclude within the next 12 months. We believe that our liability for uncertain tax positions is adequate with respect to these years.

Net income attributable to noncontrolling interest

Net income attributable to noncontrolling interest was \$17.2 million for the three months ended September 30, 2015, compared to \$61.6 million for the three months ended September 30, 2014. These amounts represent the noncontrolling interest's share of net income from Wynn Macau, Limited.

Financial results for the nine months ended September 30, 2015 compared to the nine months ended September 30, 2014.*Net Revenues*

The following table presents net revenues from our Macau and Las Vegas Operations (dollars in thousands):

	<u>Nine Months Ended September 30,</u>		Percent Change
	<u>2015</u>	<u>2014</u>	
Net revenues			
Macau Operations	\$ 1,907,425	\$ 3,035,588	(37.2)
Las Vegas Operations	1,221,556	1,260,098	(3.1)
	<u>\$ 3,128,981</u>	<u>\$ 4,295,686</u>	(27.2)

Net revenues decreased 27.2%, or \$1,166.7 million, to \$3,129.0 million for the nine months ended September 30, 2015, from \$4,295.7 million for the same period in 2014. The decline is primarily due to a \$1,081.4 million decrease in casino revenues from our Macau Operations.

Non-casino revenues consist of operating revenues from rooms, food and beverage, entertainment, retail and other, less promotional allowances. The following table presents net revenues from our casino and non-casino revenues (dollars in thousands):

	<u>Nine Months Ended September 30,</u>		Percent Change
	<u>2015</u>	<u>2014</u>	
Net revenues			
Casino revenues	\$ 2,240,321	\$ 3,389,557	(33.9)
Non-casino revenues	888,660	906,129	(1.9)
	<u>\$ 3,128,981</u>	<u>\$ 4,295,686</u>	(27.2)

Casino revenues were 71.6% of total net revenues for the nine months ended September 30, 2015, compared to 78.9% for the same period of 2014, while non-casino revenues were 28.4% of total net revenues, compared to 21.1% for the same period of 2014.

Casino Revenues

Casino revenues decreased 33.9%, or \$1,149.2 million, to \$2,240.3 million for the nine months ended September 30, 2015, from \$3,389.6 million in the same period of 2014. The decline is primarily due to our Macau Operations, which experienced a year-over-year decrease in casino revenues of 37.6% from \$2,873.1 million to \$1,791.7 million. Our VIP gaming operations drove the Macau Operations casino revenue reduction, with \$44.9 billion in VIP turnover for the nine months ended September 30, 2015, compared to \$87.4 billion for the same period of 2014. In addition, our mass market gaming operations contributed to the decline in casino revenues from our Macau Operations with a 12.3% decrease in table drop combined with a reduction in table games win percentage of 2.7 percentage points.

The table below sets forth our casino revenues and associated key operating measures for our Macau and Las Vegas Operations (dollars in thousands, except for win per unit per day).

	Nine Months Ended September 30,		Increase/ (Decrease)	Percent Change
	2015	2014		
Macau Operations:				
Total casino revenues	\$ 1,791,704	\$ 2,873,121	\$ (1,081,417)	(37.6)
Average number of table games	463	466	(3)	(0.6)
VIP				
Average number of table games	243	264	(21)	(8.0)
VIP turnover	\$ 44,883,114	\$ 87,424,152	\$ (42,541,038)	(48.7)
Table games win	\$ 1,320,650	\$ 2,472,149	\$ (1,151,499)	(46.6)
VIP win as a % of turnover	2.94%	2.83%	0.11	
Table games win per unit per day	\$ 19,953	\$ 34,263	\$ (14,310)	(41.8)
Mass market				
Average number of table games	221	202	19	9.4
Table drop	\$ 3,672,269	\$ 4,186,688	\$ (514,419)	(12.3)
Table games win	\$ 722,877	\$ 938,976	\$ (216,099)	(23.0)
Table games win %	19.7%	22.4%	(2.7)	
Table games win per unit per day	\$ 11,988	\$ 17,070	\$ (5,082)	(29.8)
Slot machines				
Average number of slot machines	698	684	14	2.0
Slot machine handle	\$ 2,891,818	\$ 4,292,617	\$ (1,400,799)	(32.6)
Slot machine win	\$ 140,791	\$ 208,903	\$ (68,112)	(32.6)
Slot machine win per unit per day	\$ 739	\$ 1,120	\$ (381)	(34.0)
Las Vegas Operations:				
Total casino revenues	\$ 448,617	\$ 516,436	\$ (67,819)	(13.1)
Average number of table games	234	233	1	0.4
Table drop	\$ 1,574,537	\$ 1,917,424	\$ (342,887)	(17.9)
Table games win	\$ 351,647	\$ 470,720	\$ (119,073)	(25.3)
Table games win %	22.3%	24.5%	(2.2)	
Table games win per unit per day	\$ 5,502	\$ 7,396	\$ (1,894)	(25.6)
Slot machines				
Average number of slot machines	1,861	1,855	6	0.3
Slot machine handle	\$ 2,238,594	\$ 2,238,798	\$ (204)	—
Slot machine win	\$ 154,041	\$ 139,078	\$ 14,963	10.8
Slot machine win per unit per day	\$ 303	\$ 275	\$ 28	10.2

Non-casino revenues

Non-casino revenues decreased 1.9%, or \$17.5 million, to \$888.7 million for the nine months ended September 30, 2015, from \$906.1 million for the same period of 2014, driven by a reduction from our Macau Operations primarily offset by an increase from our Las Vegas Operations.

Room revenues decreased 2.0%, or \$8.1 million, to \$405.4 million for the nine months ended September 30, 2015, from \$413.6 million in the same period of 2014. Our Macau Operations accounted for \$5.9 million of the decrease, while our Las Vegas Operations accounted for \$2.3 million of the decrease.

The table below sets forth our room revenues and associated key operating measures for our Macau and Las Vegas Operations.

	Nine Months Ended September 30,		Percent Change (a)
	2015	2014	
Macau Operations:			
Total room revenues (dollars in thousands)	\$ 94,167	\$ 100,038	(5.9)
Occupancy	96.6%	98.3%	(1.7)
ADR	\$ 323	\$ 333	(3.0)
REVPAR	\$ 312	\$ 327	(4.6)
Las Vegas Operations:			
Total room revenues (dollars in thousands)	\$ 311,260	\$ 313,527	(0.7)
Occupancy	86.6%	88.5%	(1.9)
ADR	\$ 282	\$ 275	2.5
REVPAR	\$ 244	\$ 243	0.4

(a) Except occupancy, which is presented as a percentage point change.

Food and beverage revenues were relatively flat with \$477.3 million for the nine months ended September 30, 2015, compared to \$476.7 million for the same period of 2014. We experienced an increase in revenues from our Las Vegas Operations of \$18.5 million, primarily from our nightclubs, offset by a decrease in revenues from our Macau Operations of \$17.9 million, mainly from our restaurants.

Entertainment, retail and other decreased 13.6%, or \$41.6 million, to \$264.8 million for the nine months ended September 30, 2015, from \$306.4 million for the same period of 2014. The decrease is primarily due to a decline in revenue from retail shops at our Macau Operations.

Promotional allowances decreased 10.9%, or \$31.6 million, to \$258.9 million for the nine months ended September 30, 2015, from \$290.5 million for the same period of 2014. As a percentage of total casino revenues, promotional allowances were 11.6% for the nine months ended September 30, 2015, compared to 8.6% for the same period of 2014, as the decline in total complimentary was less than the decline in total casino revenues.

Operating costs and expenses

Operating costs and expenses decreased 19.2%, or \$622.9 million, to \$2,622.0 million for the nine months ended September 30, 2015, from \$3,244.9 million for the same period of 2014, mainly from a decrease in casino expenses.

Casino expenses decreased 32.0%, or \$676.7 million, to \$1,435.8 million for the nine months ended September 30, 2015, from \$2,112.4 million for the same period of 2014, primarily due to lower gaming taxes with a 39.0% gross win tax incurred at our Macau Operations. The decline in gaming taxes was commensurate with the 37.6% decrease in casino revenues at our Macau Operations.

Room expenses were relatively flat for the nine months ended September 30, 2015 compared to the same period of 2014.

Food and beverage expenses increased 8.1%, or \$21.7 million, to \$288.5 million for the nine months ended September 30, 2015, from \$266.9 million for the same period of 2014, due to an increase of \$19.6 million from our Las Vegas Operations and \$2.1 million from our Macau Operations. The increase from our Las Vegas Operations is primarily a result of higher costs in the current period for entertainment at our nightclubs.

Entertainment, retail and other expenses decreased 5.2%, or \$6.5 million to \$118.6 million for the nine months ended September 30, 2015, from \$125.0 million in the same period of 2014. The decrease is primarily attributable to the reduction in merchandise cost at our Macau Operations associated with the decline in retail shop revenues, partially offset by an increase from our Las Vegas Operations due to costs associated with Steve Wynn's ShowStoppers, which opened in December 2014.

General and administrative expenses decreased 3.8%, or \$14.1 million, to \$352.5 million for the nine months ended September 30, 2015, from \$366.6 million in the same period of 2014, primarily attributable to decrease in corporate related expenses.

Provision for doubtful accounts increased \$14.0 million from a benefit of \$0.7 million for nine months ended September 30, 2014 to a provision of \$13.3 million for the same period of 2015. The change in the provision was primarily due to the impact of historical collection patterns and current collection trends, as well as specific review of customer accounts, on our estimated allowance for the respective periods.

Pre-opening costs were \$52.4 million for the nine months ended September 30, 2015, compared to \$14.8 million for the same period of 2014 and were associated with the design and planning for our development projects. During the nine months ended September 30, 2015, we incurred \$34.2 million in development of Wynn Palace and \$18.2 million in development of the Wynn resort in Massachusetts. Pre-opening costs in the nine months ended September 30, 2014 related to Wynn Palace.

Depreciation and amortization increased 4.9%, or \$11.4 million, to \$245.4 million for the nine months ended September 30, 2015, from \$234.0 million for the same period of 2014. The increase is primarily due to additional depreciation associated with building improvements at our Macau Operations, including our new VIP gaming rooms. The increase was partially offset by a \$1.8 million reduction in depreciation due to a change in the estimated useful lives of certain assets in Macau. As discussed above, we changed our estimate of remaining useful lives of buildings and improvements for Wynn Macau effective September 1, 2015.

Interest expense, net of amounts capitalized

The following table summarizes information related to interest expense (dollars in thousands):

	<u>Nine Months Ended September 30,</u>		Percent Change
	<u>2015</u>	<u>2014</u>	
Interest expense			
Interest cost, including amortization of deferred financing costs and original issue discount and premium	\$ 262,536	\$ 259,228	1.3
Capitalized interest	(35,238)	(23,159)	52.2
	<u>\$ 227,298</u>	<u>\$ 236,069</u>	(3.7)

Capitalized interest increased \$12.1 million to \$35.2 million for the nine months ended September 30, 2015, due to the ongoing borrowings and construction costs related to our development projects. Our interest cost increased \$3.3 million to \$262.5 million for the nine months ended September 30, 2015 due to an increase in our long term debt. In February 2015, we issued \$1.8 billion of 5 1/2% senior notes due 2025 and used the proceeds for the purchase of \$305.8 million of 7 7/8% first mortgage notes due 2020 and \$1,146.5 million of 7 3/4% first mortgage notes due 2020 pursuant to a cash tender offer. In May 2015, we redeemed \$71.1 million of the untendered 7 7/8% first mortgage notes due 2020 and in August 2015 redeemed \$80.1 million of the untendered 7 3/4% first mortgage notes due 2020. In March 2014, we issued \$750 million of 5 1/4% senior notes due 2021. As a result of these financing activities, our weighted average interest rate was lower for the nine months ended September 30, 2015 compared to the same period of 2014.

Other non-operating income and expenses

During the nine months ended September 30, 2015, we recognized a gain of \$13.7 million from the change in fair value of the Redemption Note. No change was recognized in the same period of 2014. For further information on the fair value of the Redemption Note, see Item 1—"Notes to Condensed Consolidated Financial Statements", Note 2 "Summary of Significant Accounting Policies."

During the nine months ended September 30, 2015, we recognized \$126.0 million in loss on extinguishment of debt, compared to \$7.4 million for the same period of 2014. During 2015, in connection with the cash tender offer and subsequent redemption of untendered 7 7/8% first mortgage notes due 2020 and 7 3/4% first mortgage notes due 2020, we incurred a loss of \$124.0 million associated with the premium paid and the write-off of unamortized deferred financing costs and original issue discount. In addition, we incurred a loss of \$2.1 million related to the write-off of unamortized deferred financing costs associated with the amendment of our Wynn Macau credit facilities. During the nine months ended September 30, 2014, the

loss was for the premium paid on first mortgage notes due 2020 through open market transactions and the write-off of related unamortized deferred financing costs and original issue discount.

We incurred a loss of \$7.0 million and \$1.5 million for the nine months ended September 30, 2015 and 2014, respectively, from the change in the fair value of our interest rate swaps. For further information on our interest rate swaps, see Item 3 — "Quantitative and Qualitative Disclosures about Market Risk."

Interest income was \$4.7 million for the nine months ended September 30, 2015, compared to \$16.1 million for the same period in 2014. During 2015 and 2014, our short-term investment strategy has been to preserve capital while retaining sufficient liquidity. The majority of our investment securities were in time deposits, fixed deposits and money market accounts with a maturity of three months or less.

Income Taxes

For the nine months ended September 30, 2015 and 2014, we recorded a tax expense of \$12.6 million and \$8.3 million, respectively. Our income tax expense is primarily related to an increase in the domestic valuation allowance for U.S. FTCs that are not expected to provide a U.S. tax benefit in future years.

Since June 30, 2010, we have no longer considered our portion of the tax earnings and profits of Wynn Macau, Limited to be permanently invested. We recorded deferred U.S. income taxes of \$1.7 million with respect to amounts not considered permanently invested. We have not provided deferred U.S. income taxes or foreign withholding taxes on temporary differences as these amounts are permanently reinvested. For the nine months ended September 30, 2015 and 2014, we recognized income tax benefits related to excess tax deductions associated with stock compensation costs of \$0.7 million and \$6.6 million, respectively.

Wynn Macau SA has received a 5-year exemption from Macau's Complementary Tax on casino gaming profits through December 31, 2015. In October 2015, Wynn Macau SA received an additional 5-year exemption, effective January 1, 2016, from Macau's Complementary Tax on casino gaming profits through December 31, 2020. During the nine months ended September 30, 2015 and 2014, we were exempt from the payment of \$32.6 million and \$80.4 million in such taxes respectively. Our non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau Special Gaming tax and other levies together totaling 39% in accordance with our concession agreement.

In 2011, Wynn Macau SA entered into an agreement with the Macau Special Administrative Region that provides for an annual payment of MOP 15.5 million (approximately \$1.9 million) to the Macau Special Administrative Region as complementary tax due by shareholders on dividend distributions. This agreement on dividends is effective through December 31, 2015. In June 2015, Wynn Macau SA applied for an extension of the agreement for an additional five years effective through December 31, 2020.

In December 2014, we received notification that for the 2015 tax year we had been accepted for the Compliance Maintenance phase of the IRS CAP. The CAP accelerates IRS examination of key transactions with the goal of resolving any issues before the taxpayer files its return. In the Compliance Maintenance phase, the IRS, at its discretion, may reduce the level of review of the taxpayer's tax positions based on the complexity and number of issues, and the taxpayer's history of compliance, cooperation and transparency in the CAP.

In June 2015, the Financial Services Bureau commenced an examination of the 2012 Macau income tax return of Wynn Macau SA. Since the examination is in its initial stages, we are unable to determine if it will conclude within the next 12 months. We believe that our liability for uncertain tax positions is adequate with respect to these years.

Net income attributable to noncontrolling interest

Net income attributable to noncontrolling interest was \$68.7 million for the nine months ended September 30, 2015, compared to \$192.2 million for the nine months ended September 30, 2014. These amounts represent the noncontrolling interest's share of net income from Wynn Macau, Limited.

Adjusted Property EBITDA

We use Adjusted Property EBITDA to manage the operating results of our segments. Adjusted Property EBITDA is net income before interest, taxes, depreciation and amortization, pre-opening costs, property charges and other, management and license fees, corporate expenses and other, intercompany golf course and water rights leases, stock-based compensation, loss on extinguishment of debt, change in interest rate swap fair value, change in Redemption Note fair value and other non-operating income and expenses, and includes equity in income (loss) from unconsolidated affiliates. Adjusted Property EBITDA is presented exclusively as a supplemental disclosure because we believe that it is widely used to measure the performance, and as a basis for valuation, of gaming companies. We use Adjusted Property EBITDA as a measure of the operating performance of our segments and to compare the operating performance of our properties with those of our competitors. We also present Adjusted Property EBITDA because it is used by some investors as a way to measure a company's ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplement to financial measures in accordance with U.S. generally accepted accounting principles ("GAAP"). In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including us, have historically excluded from their EBITDA calculations pre-opening expenses, property charges, corporate expenses and stock-based compensation that do not relate to the management of specific casino properties. However, Adjusted Property EBITDA should not be considered as an alternative to operating income as an indicator of our performance, as an alternative to cash flows from operating activities as a measure of liquidity, or as an alternative to any other measure determined in accordance with GAAP. Unlike measures of net income, Adjusted Property EBITDA does not include depreciation or interest expense and therefore does not reflect current or future capital expenditures or the cost of capital. We have significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments, taxes and other non-recurring charges, which are not reflected in Adjusted Property EBITDA. Also, our calculation of Adjusted Property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

The following table summarizes Adjusted Property EBITDA (in thousands) for our Macau and Las Vegas Operations as reviewed by management and summarized in Item 1—"Notes to Condensed Consolidated Financial Statements", Note 16 "Segment Information." That footnote also presents a reconciliation of Adjusted Property EBITDA to net income.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Macau Operations	\$ 162,822	\$ 325,529	\$ 548,555	\$ 1,016,858
Las Vegas Operations	117,069	133,250	349,783	403,962
	<u>\$ 279,891</u>	<u>\$ 458,779</u>	<u>\$ 898,338</u>	<u>\$ 1,420,820</u>

Adjusted Property EBITDA at our Macau Operations decreased year-over-year by 50.0% and 46.1% for the three and nine months ended September 30, 2015, respectively, primarily due to the decline in casino revenues.

Adjusted Property EBITDA at our Las Vegas Operations decreased year-over-year by 12.1% and 13.4% for the three and nine months ended September 30, 2015, respectively, primarily due to the decline in casino revenues.

Refer to the discussion above regarding the specific details of our results of operations.

Liquidity and Capital Resources

Operating Activities

Our operating cash flows primarily consist of our operating income generated by our Macau and Las Vegas Operations (excluding depreciation and other non-cash charges), interest paid and earned, and changes in working capital accounts such as receivables, inventories, prepaid expenses, and payables. Our table games play both in Macau and Las Vegas is a mix of cash play and credit play, while our slot machine play is conducted primarily on a cash basis. A significant portion of our table games revenue is attributable to the play of a limited number of premium international customers that gamble on credit. The ability to collect these gaming receivables may impact our operating cash flow for the period. Our rooms, food and beverage, and entertainment, retail, and other revenue is conducted primarily on a cash basis or as a trade receivable. Accordingly, operating cash flows will be impacted by changes in operating income and accounts receivables.

Net cash provided by operations for the nine months ended September 30, 2015 was \$345.5 million, compared to \$974.1 million for the nine months ended September 30, 2014. The reduction was primarily due to lower operating income that was driven by stronger operating results in the prior year and from the change in ordinary working capital accounts.

Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2015 was \$1,425.9 million, compared to \$565.5 million for the same period in 2014. Capital expenditures, net of construction payables and retention, were \$1,331.7 million and \$707.1 million for the nine months ended September 30, 2015 and 2014, respectively, primarily associated with Wynn Palace construction. Net cash used in investing activities for the nine months ended September 30, 2014 was partially offset by proceeds of \$199.9 million provided from restricted cash that we applied to repayment of certain Wynn Palace related construction and development costs.

Financing Activities

Net cash provided by financing activities for the nine months ended September 30, 2015 was \$798.1 million, compared to \$48.9 million for the nine months ended September 30, 2014. During the nine months ended September 30, 2015, we amended our Wynn Macau credit facilities and received proceeds of \$2.3 billion from our fully funded senior secured term loan facility. These proceeds were used to repay \$953.3 million in outstanding borrowings under the senior secured term loan facility dated July 30, 2012 and \$815.8 million in outstanding borrowings under the senior secured revolving credit facility dated July 30, 2012. We also issued \$1.8 billion of 5 1/2% senior notes due 2025 and used the proceeds for the purchase of \$1.6 billion of our first mortgage notes due in 2020. Net cash provided by financing activities for the nine months September 30, 2014 were primarily attributable to proceeds of \$825.5 million from the issuance of senior notes, partially offset by the payment of dividends of \$690.4 million and open market purchases of \$68.4 million in principal of first mortgage notes.

Capital Resources

As of September 30, 2015, we had approximately \$1,900.2 million of cash and cash equivalents and \$247.9 million of available-for-sale investments in domestic debt securities and commercial paper. Cash and cash equivalents include cash on hand, cash in bank and fixed deposits, investments in money market funds, domestic and foreign bank time deposits and commercial paper, all with maturities of less than 90 days. Our cash is available for operations, debt service and retirement, development activities, general corporate purposes and enhancements to our resorts. Of these amounts, Wynn Macau, Limited (of which we own 72%) and its subsidiaries held \$765.4 million in cash. If our portion of this cash was repatriated to the U.S. on September 30, 2015, it would not be subject to U.S. tax in the year of repatriation. Wynn Resorts, Limited (including its subsidiaries other than Wynn Las Vegas and Wynn Macau), which is not a guarantor of the debt of its subsidiaries, held \$1,084.0 million and \$247.9 million of cash and available-for-sale investments, respectively. Wynn Las Vegas, LLC held cash balances of \$50.8 million.

We expect that our future cash needs will relate primarily to the funding of our development projects, debt service and retirement, general corporate purposes and enhancements to our operating resorts. We intend to primarily fund our development projects with operating cash flow and the available borrowing capacity under our bank credit facilities.

On September 30, 2015, we amended our Wynn Macau credit facilities ("Amended Wynn Macau Credit Facilities") to, among other things, increase borrowing capacity and extend maturity dates. Borrowings under the Amended Wynn Macau Credit Facilities consist of both United States dollar and Hong Kong dollar tranches and will be used to refinance Wynn Macau SA's existing indebtedness, to fund the construction and development of Wynn Palace and for general corporate purposes. The Amended Wynn Macau Credit Facilities include an approximately \$2.3 billion equivalent fully funded senior secured term loan facility and an approximately \$750 million equivalent senior secured revolving credit facility. As of September 30, 2015, the Company had \$750 million of available borrowing capacity under the senior secured revolving credit facility.

The Company's Wynn America credit facilities include a \$375 million senior secured revolving credit facility and an \$875 million delay draw senior secured term loan facility entered into by Wynn America, LLC in November 2014 (together, the "Wynn America Credit Facilities"). Borrowings under the Wynn America Credit Facilities will be used to fund the design, development, construction and pre-opening expenses of the Wynn resort in Massachusetts and for other general corporate purposes. As of September 30, 2015, there were no amounts drawn under the Wynn America Credit Facilities; however, there were outstanding letters of credit totaling \$10.0 million reducing the available borrowing capacity to \$1.24 billion.

We expect to meet our current debt maturities and planned capital expenditure requirements with future anticipated cash flow from operations, availability under our bank credit facilities and our existing cash balances.

Off Balance Sheet Arrangements

We have not entered into any transactions with special purpose entities nor do we engage in any derivatives except for previously discussed interest rate swaps. We do not have any retained or contingent interest in assets transferred to an unconsolidated entity. At September 30, 2015, we had outstanding letters of credit totaling \$10.0 million.

Contractual Obligations and Commitments

There have been no material changes outside the ordinary course of our business during the nine months ended September 30, 2015 to our contractual obligations or off balance sheet arrangements as disclosed in our Annual Report on Form 10-K for the year ended December 31, 2014, except as discussed above under "Financing Activities."

Other Factors Affecting Liquidity

Wynn Resorts is a holding company and, as a result, our ability to pay dividends is highly dependent on our ability to obtain funds and our subsidiaries' ability to provide funds to us. Wynn Las Vegas, LLC, Wynn America, LLC and Wynn Macau SA debt instruments contain customary negative covenants and financial covenants, including, but not limited to, covenants that restrict our ability to pay dividends or distributions to any direct or indirect subsidiaries.

Wynn Las Vegas, LLC intends to fund its operations and capital requirements from cash on hand and operating cash flow. We cannot assure you however, that our Las Vegas Operations will generate sufficient cash flow from operations or the availability of additional indebtedness will be sufficient to enable us to service and repay Wynn Las Vegas, LLC's indebtedness and to fund its other liquidity needs. Similarly, we expect that our Macau Operations will fund Wynn Macau SA and Wynn Macau, Limited's debt service obligations with existing cash, operating cash flow and availability under the Wynn Macau Credit Facilities. However, we cannot assure you that operating cash flows will be sufficient to do so. We may refinance all or a portion of our indebtedness on or before maturity. We cannot assure you that we will be able to refinance any of the indebtedness on acceptable terms or at all.

Legal proceedings in which we are involved also may impact our liquidity. No assurance can be provided as to the outcome of such proceedings. In addition, litigation inherently involves significant costs. For information regarding legal proceedings, see Item 1—"Notes to Condensed Consolidated Financial Statements", Note 14 "Commitments and Contingencies."

New business developments or other unforeseen events may occur, resulting in the need to raise additional funds. We continue to explore opportunities to develop additional gaming or related businesses in domestic and international markets. There can be no assurances regarding the business prospects with respect to any other opportunity. Any new development would require us to obtain additional financing. We may decide to conduct any such development through Wynn Resorts or through subsidiaries separate from the Las Vegas or Macau-related entities.

Critical Accounting Policies and Estimates

A description of our critical accounting policies is included in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2014. There have been no significant changes in our critical policies and estimates since year end, except as discussed below.

We review remaining estimated useful lives of our property and equipment on an ongoing basis. In our review of estimated useful lives of buildings and improvements for Wynn Macau, we consider factors such as liberalization of the gaming industry in Macau, market expansion and actions taken by the Macau government regarding concession renewals. This review indicated that our estimated useful lives of buildings and improvements extend beyond the current expiration of the gaming concession in June 2022 and land concession in August 2029. As a result effective September 1, 2015, we have changed our estimate of remaining useful lives of Wynn Macau assets to better reflect the estimated periods during which these assets are expected to remain in service.

Recently Issued Accounting Standards

See related disclosure at Item 1—"Notes to Condensed Consolidated Financial Statements", Note 2 "Summary of Significant Accounting Policies."

Special Note Regarding Forward-Looking Statements

We make forward-looking statements in this Quarterly Report on Form 10-Q based upon the beliefs and assumptions of our management and on information currently available to us. Forward-looking statements include, but are not limited to, information about our business strategy, development activities, competition and possible or assumed future results of operations, throughout this report and are often preceded by, followed by or include the words "may," "will," "should," "would," "could," "believe," "expect," "anticipate," "estimate," "intend," "plan," "continue" or the negative of these terms or similar expressions.

Forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from those we express in these forward-looking statements, including the risks and uncertainties in Item 1A — "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2014 and other factors we describe from time to time in our periodic filings with the Securities and Exchange Commission ("SEC"), such as:

- our dependence on Stephen A. Wynn;
- restrictions or conditions on visitation by citizens of mainland China to Macau;
- general global political and economic conditions, particularly in China, which may impact levels of travel, leisure and consumer spending;
- factors affecting the development and success of new gaming and resort properties (including limited labor resources in Macau and government labor and gaming policies, unexpected cost increases, environmental regulation and our ability to secure federal, state and local permits and approvals necessary for our construction projects);
- potential violations of law by Mr. Kazuo Okada, a former shareholder of ours;
- changes in the valuation of the promissory note we issued in connection with the redemption of Mr. Okada's shares;
- pending or future legal proceedings, regulatory or enforcement actions or probity investigations;
- any violations by us of the anti-money laundering laws or Foreign Corrupt Practices Act;
- competition in the casino/hotel and resort industries and actions taken by our competitors, including new development and construction activities of competitors;
- our dependence on a limited number of resorts and locations for all of our cash flow;
- our relationships with Macau games promoters;
- our ability to maintain our customer relationships and collect and enforce gaming receivables;
- extensive regulation of our business (including the Chinese government's ongoing anti-corruption campaign) and the cost of compliance or failure to comply with applicable laws and regulations;
- our ability to maintain our gaming licenses and concessions;
- changes in gaming laws or regulations (including stricter smoking regulations in Macau);
- changes in federal, foreign, or state tax laws or the administration of such laws;
- cybersecurity risk including misappropriation of customer information or other breaches of information security;
- our current and future insurance coverage levels;
- conditions precedent to funding under our credit facilities;
- continued compliance with all provisions in our debt agreements;
- leverage and debt service (including sensitivity to fluctuations in interest rates);
- the impact on the travel and leisure industry from factors such as an outbreak of an infectious disease, extreme weather patterns or natural disasters, military conflicts and any future security alerts and/or terrorist attacks;
- our subsidiaries' ability to pay us dividends and distributions;
- our ability to protect our intellectual property rights;
- doing business in foreign locations such as Macau;
- legalization of gaming in certain jurisdictions; and
- changes in exchange rates.

Further information on potential factors that could affect our financial condition, results of operations and business are included in this report and our other filings with the SEC. You should not place undue reliance on any forward-looking statements, which are based only on information available to us at the time this statement is made. We undertake no obligation to update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates and commodity prices.

Interest Rate Risks

One of our primary exposures to market risk is interest rate risk associated with our debt facilities that bear interest based on floating rates. We attempt to manage interest rate risk by managing the mix of long-term fixed rate borrowings and variable-rate borrowings, and using hedging activities. We cannot assure you that these risk management strategies will have the desired effect, and interest rate fluctuations could have a negative impact on our results of operations. We do not use derivative financial instruments, other financial instruments or derivative commodity instruments for trading or speculative purposes.

Interest Rate Swap Information

We have entered into floating-for-fixed interest rate swap arrangements relating to certain of our floating-rate debt facilities. We measure the fair value of our interest rate swaps on a recurring basis. Changes in the fair values of our interest rate swaps for each reporting period recorded are, and will continue to be, recognized as an increase (decrease) in swap fair value in our Condensed Consolidated Statements of Income, as the swaps do not qualify for hedge accounting.

We currently have three interest rate swap agreements intended to hedge a portion of the underlying interest rate risk on borrowings under our Wynn Macau Credit Facilities. Under two of the swap agreements, we pay a fixed interest rate (excluding the applicable interest margin) of 0.73% on notional amounts corresponding to borrowings of HK\$3.95 billion (approximately \$509.4 million) incurred under the Wynn Macau Senior Term Loan Facility in exchange for receipts on the same amount at a variable interest rate based on the applicable HIBOR at the time of payment. These interest rate swaps fix the all-in interest rate on such amounts at 2.48% to 3.23%. These interest rate swap agreements mature in July 2017.

Under the third swap agreement, we pay a fixed interest rate (excluding the applicable interest margin) of 0.68% on notional amounts corresponding to borrowings of \$243.8 million incurred under the Wynn Macau Senior Term Loan Facility in exchange for receipts on the same amount at a variable-rate based on the applicable LIBOR at the time of payment. This interest rate swap fixes the all-in interest rate on such amounts at 2.43% to 3.18%. This interest rate swap agreement matures in July 2017.

As of September 30, 2015 and December 31, 2014, the interest rate swaps were recorded as a liability of \$1.1 million in other long term liabilities and as an asset of \$5.9 million in deposits and other assets, respectively.

Interest Rate Sensitivity

As of September 30, 2015, approximately 82% of our long-term debt was based on fixed rates, including the notional amounts related to interest rate swaps. Based on our borrowings as of September 30, 2015, an assumed 100 basis point change in the variable rates would cause our annual interest cost to change by \$15.5 million.

Foreign Currency Risks

The currency delineated 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.

If the Hong Kong dollar and the Macau pataca are not linked to the U.S. dollar in the future, severe fluctuations in the exchange rate for these currencies may result. We also cannot assure you that the current rate of exchange fixed by the applicable monetary authorities for these currencies will remain at the same level.

Because many of Wynn Macau's payment and expenditure obligations 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 revenues 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. Also, if any of our Macau-related entities incur U.S. dollar-denominated debt, fluctuations in the exchange rates of the Macau pataca or the Hong Kong dollar, in relation to the U.S. dollar, could have adverse effects on Wynn Macau's results of operations, financial condition, and ability to service its debt. To date, we have not engaged in hedging activities intended to protect against foreign currency risk. The amount of our cash balances that are denominated in foreign currencies, primarily the Hong Kong dollar, can change significantly, representing approximately 24% of our September 30, 2015 cash balances. Based on our balances at September 30, 2015, an assumed 1% change in the dollar/Hong Kong dollar exchange rate would cause a foreign currency transaction gain/loss of approximately \$22.7 million.

Item 4. Controls and Procedures

(a) *Disclosure Controls and Procedures.* The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures were effective, at the reasonable assurance level, in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and were effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

(b) *Internal Control Over Financial Reporting.* There were no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter to which this report relates that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings

We are occasionally party to lawsuits. As with all litigation, no assurance can be provided as to the outcome of such matters and we note that litigation inherently involves significant costs. For information regarding the Company's legal proceedings see Item 1—"Notes to Condensed Consolidated Financial Statements", Note 14 "Commitments and Contingencies" of Part I in this Quarterly Report on Form 10-Q.

In July 2014, Wynn Resorts (Macau) S.A. ("Wynn Macau SA"), an indirect subsidiary of Wynn Macau, Limited, was contacted by the Macau Commission Against Corruption of Macau ("CCAC") requesting certain information related to its land in the Cotai area of Macau. Wynn Macau SA is cooperating with CCAC's request.

Item 1A. Risk Factors

A description of our risk factors can be found in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2014. There were no material changes to those risk factors during the nine months ended September 30, 2015.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Issuer Purchases of Equity Securities

During the third quarter of 2015, we had no repurchases of our common stock.

Item 5. Other Information

Amendment of Wynn America Credit Facilities

On November 5, 2015, Wynn America, certain subsidiaries of Wynn America, Deutsche Bank AG New York Branch, as administrative agent and collateral agent, and certain “Consenting Lenders” (as defined in the amendment) amended the Wynn America Credit Facilities to extend the available borrowing period from November 20, 2015 to March 30, 2016 and June 30, 2016 for up to \$100.3 million and \$704.7 million, respectively, of the delay draw senior secured term facility. The available borrowing period for \$70.0 million of the delay draw senior secured term facility was not extended. Wynn America paid customary fees and expenses in connection with the amendment. The foregoing description of the amendment is qualified in its entirety by the full text of the amendment filed as Exhibit 10.4 hereto and incorporated by reference.

Amendment of the Company’s Bylaws

On November 2, 2015, the Company amended and restated its bylaws (“Bylaws”) to provide that the chairman of any meeting of stockholders may adjourn or recess such meeting for any or no reason and to address other procedural aspects regarding the conduct of business at meetings of stockholders. In addition, the Bylaws were amended to provide that the lead independent director has the authority to call a special meeting of the Board of Directors. The foregoing description of the Bylaws is qualified in its entirety by the full text of the Bylaws filed as Exhibit 3.2 hereto and incorporated by reference.

Item 6. Exhibits

- (a) Exhibits

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
3.1	Third Amended and Restated Articles of Incorporation of the Registrant. (Incorporated by reference from the Quarterly Report on Form 10-Q filed by the Registrant on May 8, 2015.)
*3.2	Eighth Amended and Restated Bylaws of the Registrant.
*10.1	Common Terms Agreement Fifth Amendment Agreement, dated September 30, 2015, between, among others, Wynn Resorts (Macau) S.A. as the Company, Certain Financial Institutions as Term Facility Lenders, Revolving Credit Facility Lenders, Additional Lenders and Hedging Counterparties, Standard Chartered Bank (Hong Kong) Limited and the Royal Bank of Scotland Plc, Singapore Branch, as Outgoing Global Coordinating Lead Arrangers and Bank of China Limited, Macau Branch, as Term Facility Agent, Revolving Credit Facility Agent, Additional Facility Agent, Intercreditor Agent and Security Agent.
*10.2	Term Facility Agreement Fourth Amendment Agreement, dated September 30, 2015, among Wynn Resorts (Macau), S.A. and Bank of China Limited Macau Branch as Term Facility Agent and Term Facility Lender.
*10.3	Revolving Credit Facility Agreement Amendment Agreement, dated September 30, 2015, among Wynn Resorts (Macau), S.A. and Bank of China Limited Macau Branch as Revolving Credit Facility Agent and Revolving Credit Facility Lender.
*10.4	First Amendment to Credit Agreement, dated as of November 5, 2015, by and among Wynn America, LLC, as borrower, the Guarantors listed therein, Deutsche Bank AG New York Branch, as administrative agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn America, LLC's Credit Agreement, dated as of November 20, 2014.
*31.1	Certification of Chief Executive Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).
*31.2	Certification of Chief Financial Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).
*32	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350.
*101	The following financial information from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed with the SEC on November 6, 2015 formatted in Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Balance Sheets at September 30, 2015 and December 31, 2014, (ii) the Condensed Consolidated Statements of Income for the three and nine months ended September 30, 2015 and 2014, (iii) the Condensed Consolidated Statements of Comprehensive Income for the three and nine months ended September 30, 2015 and 2014, (iv) the Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2015 and 2014, (v) the Condensed Consolidated Statement of Stockholders' Equity (Deficit) at September 30, 2015 and (vi) Notes to Condensed Consolidated Financial Statements.

Wynn Resorts, Limited agrees to furnish to the U.S. Securities and Exchange Commission, upon request, a copy of each agreement with respect to long-term debt not filed herewith in reliance upon the exemption from filing applicable to any series of debt which does not exceed 10% of the total consolidated assets of the company.

* Filed herewith.

SIGNATURE

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

Dated: November 6, 2015

By: /s/ Stephen Cootey

Stephen Cootey

Chief Financial Officer and Treasurer

(Principal Financial and Accounting Officer)

**WYNN RESORTS, LIMITED A NEVADA CORPORATION
EIGHTH AMENDED AND RESTATED BYLAWS EFFECTIVE AS OF
NOVEMBER 2, 2015**

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EIGHTH AMENDED AND RESTATED
BYLAWS WYNN RESORTS, LIMITED
a Nevada corporation

ARTICLE I
OFFICES

Section 1.1 Principal Office. The principal office and place of business of Wynn Resorts, Limited (the “**Corporation**”) shall be at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109 or at such other location as established from time to time by resolution of the board of directors of the Corporation (the “**Board of Directors**”).

Section 1.2 Other Offices. Other offices and places of business either within or without the State of Nevada may be established from time to time by resolution of the Board of Directors or as the business of the Corporation may require. The street address of the Corporation’s registered agent is the registered office of the Corporation in Nevada.

ARTICLE II
STOCKHOLDERS

Section 2.1 Annual Meeting. The annual meeting of the stockholders of the Corporation shall be held on such date and at such time as may be designated from time to time by the Board of Directors. At the annual meeting, directors shall be elected and any other business may be transacted as may be properly brought before the meeting pursuant to these Seventh Amended and Restated Bylaws (as amended from time to time, these “**Bylaws**”). Except as otherwise restricted by the articles of incorporation of the Corporation (as amended from time to time, the “**Articles of Incorporation**”) or applicable law, the Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders.

Section 2.2 Special Meetings.

(a) Subject to any rights of stockholders set forth in the Articles of Incorporation, special meetings of the stockholders may be called only by the chairman of the board or the chief executive officer or, if there be no chairman of the board and no chief executive officer, by the president, and shall be called by the secretary upon the written request of at least a majority of the Board of Directors. Such request shall state the purpose or purposes of the meeting. Stockholders shall have no right to request or call a special meeting. Except as otherwise restricted by the Articles of Incorporation or applicable law, the Board of Directors may postpone, reschedule or cancel any special meeting of stockholders.

(b) No business shall be acted upon at a special meeting of stockholders except as set forth in the notice of the meeting.

Section 2.3 Place of Meetings. Any meeting of the stockholders of the Corporation may be held at the Corporation’s registered office in the State of Nevada or at such other place in or out of the State of Nevada and the United States as may be designated in the notice of meeting. A waiver of notice signed by all stockholders entitled to vote thereat may designate any place for the holding of such meeting. The Board of Directors may, in its sole discretion, determine that any meeting of the stockholders shall be held by means of electronic communications or other available technology in accordance with Section 2.14.

Section 2.4 Notice of Meetings; Waiver of Notice.

(a) The chief executive officer, if any, the president, any vice president, the secretary, an assistant secretary or any other individual designated by the Board of Directors shall sign and deliver or cause to be delivered to the stockholders written notice of any stockholders' meeting not less than ten (10) days, but not more than sixty (60) days, before the date of such meeting. The notice shall state the place, date and time of the meeting, the means of electronic communication, if any, by which the stockholders or the proxies thereof shall be deemed to be present and vote and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice shall be delivered in accordance with, and shall contain or be accompanied by such additional information as may be required by, the Nevada Revised Statutes (as amended from time to time, the "NRS"), including, without limitation, NRS 78.379, 92A.120 or 92A.410.

(b) In the case of an annual meeting, subject to Section 2.13, any proper business may be presented for action, except that (i) if a proposed plan of merger, conversion or exchange is submitted to a vote, the notice of the meeting must state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger, conversion or exchange and must contain or be accompanied by a copy or summary of the plan; and (ii) if a proposed action creating dissenter's rights is to be submitted to a vote, the notice of the meeting must state that the stockholders are or may be entitled to assert dissenter's rights under NRS 92A.300 to 92A.500, inclusive, and be accompanied by a copy of those sections.

(c) A copy of the notice shall be personally delivered or mailed postage prepaid to each stockholder of record at the address appearing on the records of the Corporation. Upon mailing, service of the notice is complete, and the time of the notice begins to run from the date upon which the notice is deposited in the mail. If the address of any stockholder does not appear upon the records of the Corporation or is incomplete, it will be sufficient to address any notice to such stockholder at the registered office of the Corporation. Notwithstanding the foregoing and in addition thereto, any notice to stockholders given by the Corporation pursuant to Chapters 78 or 92A of the NRS, the Articles of Incorporation or these Bylaws may be given pursuant to the forms of electronic transmission listed herein, if such forms of transmission are consented to in writing by the stockholder receiving such electronically transmitted notice and such consent is filed by the secretary in the corporate records. Notice shall be deemed given (i) by facsimile when directed to a number consented to by the stockholder to receive notice, (ii) by e-mail when directed to an e-mail address consented to by the stockholder to receive notice, (iii) by posting on an electronic network together with a separate notice to the stockholder of the specific posting on the later of the specific posting or the giving of the separate notice or (iv) by any other electronic transmission as consented to by and when directed to the stockholder. The stockholder consent necessary to permit electronic transmission to such stockholder shall be deemed revoked and of no force and effect if (A) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with the stockholder's consent and (B) the inability to deliver by electronic transmission becomes known to the secretary, assistant secretary, transfer agent or other agent of the Corporation responsible for the giving of notice.

(d) The written certificate of an individual signing a notice of meeting, setting forth the substance of the notice or having a copy thereof attached thereto, the date the notice was mailed or personally delivered to the stockholders and the addresses to which the notice was mailed, shall be prima facie evidence of the manner and fact of giving such notice and, in the absence of fraud, an affidavit of the individual signing a notice of a meeting that the notice thereof has been given by a form of electronic transmission shall be prima facie evidence of the facts stated in the affidavit.

(e) Any stockholder may waive notice of any meeting by a signed writing or by transmission of an electronic record, either before or after the meeting. Such waiver of notice shall be deemed the equivalent of the giving of such notice.

Section 2.5 Determination of Stockholders of Record.

(a) For the purpose of determining the stockholders entitled to (i) notice of and to vote at any meeting of stockholders or any adjournment thereof, (ii) receive payment of any distribution or the allotment of any rights, or (iii) exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting, if applicable.

(b) If no record date is fixed, the record date for determining stockholders: (i) entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (ii) for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at any meeting of stockholders shall apply to any postponement of any meeting of stockholders to a date not more than sixty (60) days after the record date or to any adjournment of the meeting; provided that the Board of Directors may fix a new record date for the adjourned meeting and must fix a new record date if the meeting is adjourned to a date more than 60 days later than the date set for the original meeting.

Section 2.6 Quorum; Adjourned Meetings.

(a) Unless the Articles of Incorporation provide for a different proportion, stockholders holding at least a majority of the voting power of the Corporation's capital stock, represented in person or by proxy (regardless of whether the proxy has authority to vote on all matters), are necessary to constitute a quorum for the transaction of business at any meeting. If, on any issue, voting by classes or series is required by the laws of the State of Nevada, the Articles of Incorporation or these Bylaws, at least a majority of the voting power, represented in person or by proxy (regardless of whether the proxy has authority to vote on all matters), within each such class or series is necessary to constitute a quorum of each such class or series.

(b) If a quorum is not represented, a majority of the voting power represented or the individual acting as chairman of the meeting may adjourn the meeting from time to time until a quorum shall be represented. The individual acting as chairman of the meeting may, for any or no reason, from time to time, adjourn or recess any meeting of stockholders. At any such adjourned meeting at which a quorum shall be represented, any business may be transacted which might otherwise have been transacted at the adjourned meeting as originally called. When a stockholders' meeting is adjourned to another time or place hereunder, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. However, if a new record date is fixed for the adjourned meeting, notice of the adjourned meeting must be given to each stockholder of record as of the new record date. The stockholders present at a duly convened meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the departure of enough stockholders to leave less than a quorum of the voting power.

Section 2.7 Voting.

(a) Unless otherwise provided in the NRS, the Articles of Incorporation, or any resolution providing for the issuance of preferred stock adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of the Articles of Incorporation, each stockholder of record, or such stockholder's duly authorized proxy, shall be entitled to one (1) vote for each share of voting stock standing registered in such stockholder's name at the close of business on the record date.

(b) Except as otherwise provided in these Bylaws, all votes with respect to shares (including pledged shares) standing in the name of an individual at the close of business on the record date shall be cast only by that individual or such individual's duly authorized proxy. With respect to shares held by a representative of the estate of a deceased stockholder, or a guardian, conservator, custodian or trustee, even though the shares do not stand in the name of such holder, votes may be cast by such holder upon proof of such representative capacity. In the case of shares under the control of a receiver, the receiver may vote such shares even though the shares do not stand of record in the name of the receiver but only if and to the extent that the order of a court of competent jurisdiction which appoints the receiver contains the authority to vote such shares. If shares stand of record in the name of a minor, votes may be cast by the duly appointed guardian of the estate of such minor only if such guardian has provided the Corporation with written proof of such appointment.

(c) With respect to shares standing of record in the name of another corporation, partnership, limited liability company or other legal entity on the record date, votes may be cast: (i) in the case of a corporation, by such individual as the bylaws of such other corporation prescribe, by such individual as may be appointed by resolution of the Board of Directors of such other corporation or by such individual (including, without limitation, the officer making the authorization) authorized in writing to do so by the chairman of the board, if any, the chief executive officer, if any, the president or any vice president of such corporation; and (ii) in the case of a partnership, limited liability company or other legal entity, by an individual representing such stockholder upon presentation to the Corporation of satisfactory evidence of his or her authority to do so.

(d) Notwithstanding anything to the contrary contained herein and except for the Corporation's shares held in a fiduciary capacity, the Corporation shall not vote, directly or indirectly, shares of its own stock owned or held by it, and such shares shall not be counted in determining the total number of outstanding shares entitled to vote.

(e) Any holder of shares entitled to vote on any matter may cast a portion of the votes in favor of such matter and refrain from casting the remaining votes or cast the same against the proposal, except in the case of elections of directors. If such holder entitled to vote does vote any of such stockholder's shares affirmatively and fails to specify the number of affirmative votes, it will be conclusively presumed that the holder is casting affirmative votes with respect to all shares held.

(f) With respect to shares standing of record in the name of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, spouses as community property, tenants by the entirety, voting trustees or otherwise and shares held by two or more persons (including proxy holders) having the same fiduciary relationship in respect to the same shares, votes may be cast in the following manner:

(i) If only one person votes, the vote of such person binds all.

(ii) If more than one person casts votes, the act of the majority so voting binds all.

(iii) If more than one person casts votes, but the vote is evenly split on a particular matter, the votes shall be deemed cast proportionately, as split.

(g) If a quorum is present, unless the Articles of Incorporation, these Bylaws, the NRS, or other applicable law provide for a different proportion, action by the stockholders entitled to vote on a matter, other than the election of directors, is approved by and is the act of the stockholders if the number of votes cast in favor of the action exceeds the number of votes cast in opposition to the action, unless voting by classes or series is required for any action of the stockholders by the laws of the State of Nevada, the Articles of Incorporation or these Bylaws, in which case the number of votes cast in favor of the action by the voting power of each such class or series must exceed the number of votes cast in opposition to the action by the voting power of each such class or series.

(h) If a quorum is present, directors shall be elected by a plurality of the votes cast.

Section 2.8 Proxies. At any meeting of stockholders, any holder of shares entitled to vote may designate, in a manner permitted by the laws of the State of Nevada, another person or persons to act as a proxy or proxies. If a stockholder designates two or more persons to act as proxies, then a majority of those persons present at a meeting has and may exercise all of the powers conferred by the stockholder or, if only one is present, then that one has and may exercise all of the powers conferred by the stockholder, unless the stockholder's designation of proxy provides otherwise. Every proxy shall continue in full force and effect until its expiration or revocation in a manner permitted by the laws of the State of Nevada.

Section 2.9 No Action Without A Meeting. No action shall be taken by the stockholders except at an annual or special meeting of stockholders called and noticed in the manner required by these Bylaws. The stockholders may not in any circumstance take action by written consent.

Section 2.10 Organization.

(a) Meetings of stockholders shall be presided over by the chairman of the board, or, in the absence of the chairman, by the vice chairman of the board, if any, or if there be no vice chairman or in the absence of the vice chairman, by the chief executive officer, if any, or if there be no chief executive officer or in the absence of the chief executive officer, by the president, or, in the absence of the president, or, in the absence of any of the foregoing persons, by a chairman designated by the Board of Directors, or by a chairman chosen at the meeting by the stockholders entitled to cast a majority of the votes which all stockholders present in person or by proxy are entitled to cast. The individual acting as chairman of the meeting may delegate any or all of his or her authority and responsibilities as such to any director or officer of the Corporation present in person at the meeting. The secretary, or in the absence of the secretary an assistant secretary, shall act as secretary of the meeting, but in the absence of the secretary and any assistant secretary the chairman of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, (i) the establishment of procedures for the maintenance of order and safety, (ii) limitation on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies and such other persons as the chairman of the meeting shall permit, (iii) limitation on the time allotted for consideration of each agenda item and for questions or comments by meeting participants, (iv) restrictions on entry to such meeting after the time prescribed for the commencement thereof and (v) the opening and

closing of the voting polls. The Board of Directors, in its discretion, or the chairman of the meeting, in his or her discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(b) The chairman of the meeting may appoint one or more inspectors of elections. The inspector or inspectors may (i) ascertain the number of shares outstanding and the voting power of each; (ii) determine the number of shares represented at a meeting and the validity of proxies or ballots; (iii) count all votes and ballots; (iv) determine any challenges made to any determination made by the inspector(s); and (v) certify the determination of the number of shares represented at the meeting and the count of all votes and ballots.

(c) Only such persons who are nominated in accordance with the procedures set forth in Section 2.12 shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in Section 2.12. If any proposed nomination or business was not made or proposed in compliance with Section 2.12 (including proper notice under Section 2.13 and including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in compliance with such stockholder's representation pursuant to clause (a)(iv)(D) of Section 2.13), then the Board of Directors or the chairman of the meeting shall have the power to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. If the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.10, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the making of such nomination or proposal at such meeting by such stockholder stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

Section 2.11 Consent to Meetings. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called, noticed or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice, to the extent such notice is required, if such objection is expressly made at the time any such matters are presented at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of stockholders need be specified in any written waiver of notice or consent, except as otherwise provided in these Bylaws.

Section 2.12 Director Nominations and Business Conducted at Meetings of Stockholders. Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (i) by or at the direction of the Board of Directors or the chairman of the board or (ii) by any stockholder of the Corporation who is entitled to vote on such matter at the meeting, who complied with the notice procedures set forth in Section 2.13 of these Bylaws and who was a stockholder of record at the time such notice is delivered to the secretary of the Corporation. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors or the chairman of the board or (ii) by any stockholder of the Corporation who is entitled to vote on such matter at the meeting, who complied with the

notice procedures set forth in Section 2.13 of these Bylaws and who was a stockholder of record at the time such notice is delivered to the secretary of the Corporation.

Section 2.13 Advance Notice of Director Nominations and Stockholder Proposals by Stockholders.

(a) For nominations or other business to be properly brought before an annual meeting by a stockholder and for nominations to be properly brought before a special meeting by a stockholder in each case pursuant to Section 2.12, the stockholder of record must have given timely notice thereof in writing to the secretary of the Corporation, and, in the case of business other than nominations, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement (as defined below) of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The notice must be provided by a stockholder of record and must set forth:

(i) as to each person whom the stockholder proposes to nominate for election or re-election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected;

(ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made;

(iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the business is proposed: (A) the name and address of such stockholder, as they appear on the Corporation's books, and the name and address of such beneficial owner, (B) the class and number of shares of stock of the Corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class and number of shares of stock of the Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting, and (C) a representation that the stockholder intends to appear in person or by proxy at the meeting to propose such nomination or business;

(iv) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing

member or control person of such entity (any such person, a “control person”): (A) the class and number of shares of stock of the Corporation which are beneficially owned (as defined below) by such stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class and number of shares of stock of the Corporation beneficially owned by such stockholder or beneficial owner and by any control person as of the record date for the meeting, (B) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder or beneficial owner or control person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder, beneficial owner or control person) and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting, (C) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder or beneficial owner and by any control person or any other person acting in concert with any of the foregoing, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class of the Corporation's stock, or maintain, increase or decrease the voting power of the stockholder or beneficial owner with respect to shares of stock of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting, (D) a representation whether the stockholder or the beneficial owner, if any, and any control person will engage in a solicitation with respect to the nomination or business and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding stock required to approve or adopt the business to be proposed (in person or by proxy) by the stockholder; and

(v) a certification that the stockholder giving the notice and the beneficial owner(s), if any, on whose behalf the nomination is made or the business is proposed, has or have complied with all applicable federal, state and other legal requirements in connection with such stockholder's and/or each such beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or such stockholder's and/or each such beneficial owner's acts or omissions as a stockholder of the Corporation, including, without limitation, in connection with such nomination or proposal.

(b) The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation, including information relevant to a determination whether such proposed nominee can be considered an independent director.

(c) For purposes of Section 2.13(a), a “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(iv)(A) of this Section 2.13, shares shall be treated as “beneficially owned” by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (i) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (ii) the right to vote such shares, alone or in concert

with others and/or (iii) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares. This Section 2.13 shall not apply to notice of a proposal to be made by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(d) If the stockholder does not provide the information required under clause (a)(iii)(B) and clauses (a)(iv)(A)-(C) of this Section 2.13 to the Corporation within the time frames specified herein, or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. The Board of Directors or the chairman of the meeting shall have the power to determine whether notice of a nomination or of any business proposed to be brought before the meeting was properly made in accordance with the procedures set forth in this Section 2.13. Notwithstanding the foregoing provisions hereof, a stockholder shall also comply with all applicable requirements of the Act, and the rules and regulations thereunder with respect to the matters set forth herein.

Section 2.14 Meetings Through Electronic Communications. Stockholders may participate in a meeting of the stockholders by any means of electronic communications, videoconferencing, teleconferencing or other available technology permitted under the NRS (including, without limitation, a telephone conference or similar method of communication by which all individuals participating in the meeting can hear each other) and utilized by the Corporation. If any such means are utilized, the Corporation shall, to the extent required under the NRS, implement reasonable measures to (a) verify the identity of each person participating through such means as a stockholder and (b) provide the stockholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting in a substantially concurrent manner with such proceedings. Participation in a meeting pursuant to this Section 2.14 constitutes presence in person at the meeting.

ARTICLE III DIRECTORS

Section 3.1 General Powers; Performance of Duties. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, except as otherwise provided in Chapter 78 of the NRS or the Articles of Incorporation.

Section 3.2 Number, Tenure, and Qualifications.

(a) The Board of Directors shall consist of at least one (1) individual and not more than thirteen (13) individuals, with the number of directors within the foregoing fixed minimum and maximum established and changed from time to time solely by resolution adopted by the Board of Directors without amendment to these Bylaws or the Articles of Incorporation. Each director shall hold office until his or her successor shall be elected or appointed and qualified or until his or her earlier death, retirement, disqualification, resignation or removal. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his or her term of office. No provision of this Section 3.2 shall restrict the right of the Board of Directors to fill vacancies or the right of the stockholders to remove directors, each as provided in these Bylaws.

(b) Intentionally deleted.

Section 3.3 Chairman of the Board. The Board of Directors shall elect a chairman of the board from the members of the Board of Directors, who shall preside at all meetings of the Board of Directors and stockholders at which he or she shall be present and shall have and may exercise such powers as may, from time to time, be assigned to him or her by the Board of Directors, these Bylaws or as provided by law.

Section 3.4 Vice Chairman of the Board. The Board of Directors may elect a vice chairman of the board from the members of the Board of Directors who shall preside at all meetings of the Board of Directors and stockholders at which he or she shall be present and the chairman is not present and shall have and may exercise such powers as may, from time to time, be assigned to him or her by the Board of Directors, these Bylaws or as provided by law.

Section 3.5 Classification and Elections. The directors shall be classified, with respect to the time for which they shall hold their respective offices, by dividing them into three classes, to be known as "Class I," "Class II" and "Class III." Each director shall hold office for a three-year term or until the next annual meeting of stockholders at which his or her successor is elected and qualified. At each annual meeting of stockholders, successors to the directors of the class whose term of office expires at such annual meeting shall be elected to hold office until the third succeeding annual meeting of stockholders, so that the term of office of only one class of directors shall expire at each annual meeting. The number of directors in each class, which shall be such that as near as possible to one-third and at least one-fourth (or such other fraction as required by the NRS) in number are elected at each annual meeting, shall be established from time to time by resolution of the Board of Directors and shall be increased or decreased by resolution of the Board of Directors, as may be appropriate whenever the total number of directors is increased or decreased.

Section 3.6 Removal and Resignation of Directors. Subject to any rights of the holders of preferred stock, if any, and except as otherwise provided in the NRS, any director may be removed from office with or without cause by the affirmative vote of the holders of not less than two-thirds (2/3) of the voting power of the issued and outstanding stock of the Corporation entitled to vote generally in the election of directors (voting as a single class) excluding stock entitled to vote only upon the happening of a fact or event unless such fact or event shall have occurred. In addition, the Board of Directors of the Corporation, by majority vote, may declare vacant the office of a director who has been (a) declared incompetent by an order of a court of competent jurisdiction, or (b) convicted of a felony or (c) found to be unsuitable to serve as a director of the Corporation by a Gaming Authority in any jurisdiction in which the Corporation or any of its Affiliates holds a gaming license. Any director may resign effective upon giving written notice, unless the notice specifies a later time for effectiveness of such resignation, to the chairman of the board, if any, the president or the secretary, or in the absence of all of them, any other officer of the Corporation.

Section 3.7 Vacancies; Newly Created Directorships. Subject to any rights of the holders of preferred stock, if any, any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office, or other cause, and newly created directorships resulting from any increase in the authorized number of directors, may be filled by a majority vote of the directors then in office or by a sole remaining director, in either case though less than a quorum, and the director(s) so chosen shall hold office for a term expiring at the next annual meeting of stockholders and when their successors are elected or appointed, at which the term of the class to which he or she has been elected expires, or until his or her earlier resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent directors.

Section 3.8 Annual and Regular Meetings. Within two (2) business days before or after the annual meeting of the stockholders or any special meeting of the stockholders at which directors are elected (and within two (2) business days after such meeting if any individual first becomes a director by way of such election), the Board of Directors, including directors newly elected, if any, shall hold its annual meeting without call or notice other than this Section 3.8, to transact such business as the Board of Directors deems necessary or appropriate. The Board of Directors may provide by resolution the place, date, and hour for holding regular meetings between annual meetings, and if the Board of Directors so provides with respect to a regular meeting, notice of such regular meeting shall not be required.

Section 3.9 Special Meetings. Subject to any rights of the holders of preferred stock, if any, and except as otherwise required by law, special meetings of the Board of Directors may be called only by the chairman of the board, if any, or if there be no chairman of the board, by the chief executive officer, if any, or by the president or the secretary, and shall be called by the chairman of the board, if any, the chief executive officer, if any, the president, or the secretary upon the request of the lead independent director, if any, or at least a majority of the Board of Directors. If the chairman of the board, or if there be no chairman of the board, each of the chief executive officer, the president, and the secretary, fails for any reason to call such special meeting, a special meeting may be called by a notice signed by the lead independent director (if any) or at least a majority of the Board of Directors.

Section 3.10 Place of Meetings. Any regular or special meeting of the Board of Directors may be held at such place as the Board of Directors, or in the absence of such designation, as the notice calling such meeting, may designate. A waiver of notice signed by the directors may designate any place for the holding of such meeting.

Section 3.11 Notice of Meetings. Except as otherwise provided in Section 3.8, there shall be delivered to each director at the address appearing for him or her on the records of the Corporation, at least twenty-four (24) hours before the time of such meeting, a copy of a written notice of any meeting (i) by delivery of such notice personally, (ii) by mailing such notice postage prepaid, (iii) by facsimile, (iv) by overnight courier, or (v) by electronic transmission or electronic writing, including, without limitation, e-mail. If mailed to an address inside the United States, the notice shall be deemed delivered two (2) business days following the date the same is deposited in the United States mail, postage prepaid. If mailed to an address outside the United States, the notice shall be deemed delivered four (4) business days following the date the same is deposited in the United States mail, postage prepaid. If sent via overnight courier, the notice shall be deemed delivered the business day following the delivery of such notice to the courier. If sent via facsimile, the notice shall be deemed delivered upon sender's receipt of confirmation of the successful transmission. If sent by electronic transmission (including, without limitation, e-mail), the notice shall be deemed delivered when directed to the e-mail address of the director appearing on the records of the Corporation and otherwise pursuant to the applicable provisions of NRS Chapter 75. If the address of any director is incomplete or does not appear upon the records of the Corporation it will be sufficient to address any notice to such director at the registered office of the Corporation. Any director may waive notice of any meeting, and the attendance of a director at a meeting and oral consent entered on the minutes of such meeting shall constitute waiver of notice of the meeting unless such director objects, prior to the transaction of any business, that the meeting was not lawfully called, noticed or convened. Attendance for the express purpose of objecting to the transaction of business thereat because the meeting was not properly called or convened shall not constitute presence or a waiver of notice for purposes hereof.

Section 3.12 Quorum; Adjourned Meetings.

(a) A majority of the directors in office, at a meeting duly assembled, is necessary to constitute a quorum for the transaction of business.

(b) At any meeting of the Board of Directors where a quorum is not present, a majority of those present may adjourn, from time to time, until a quorum is present, and no notice of such adjournment shall be required. At any adjourned meeting where a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

Section 3.13 Manner of Acting. Except as provided in Section 3.14, the affirmative vote of a majority of the directors present at a meeting at which a quorum is present is the act of the Board of Directors.

Section 3.14 Super-majority Approval. Notwithstanding anything to the contrary contained in these Bylaws or the Articles of Incorporation, the following actions may be taken by the Corporation only upon the approval of two-thirds of the directors present at a meeting at which a quorum is present:

- (a) any voluntary dissolution or liquidation of the Corporation.
- (b) the sale of all or substantially all of the assets of the Corporation.
- (c) the filing of a voluntary petition of bankruptcy by the Corporation.

Section 3.15 Meetings Through Electronic Communications. Members of the Board of Directors or of any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or such committee by any means of electronic communications, videoconferencing, teleconferencing or other available technology permitted under the NRS (including, without limitation, a telephone conference or similar method of communication by which all individuals participating in the meeting can hear each other) and utilized by the Corporation. If any such means are utilized, the Corporation shall, to the extent required under the NRS, implement reasonable measures to (a) verify the identity of each person participating through such means as a director or member of the committee, as the case may be, and (b) provide the directors or members of the committee a reasonable opportunity to participate in the meeting and to vote on matters submitted to the directors or members of the committee, including an opportunity to communicate, and to read or hear the proceedings of the meeting in a substantially concurrent manner with such proceedings. Participation in a meeting pursuant to this Section 3.15 constitutes presence in person at the meeting.

Section 3.16 Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors or of a committee thereof may be taken without a meeting if, before or after the action, a written consent thereto is signed by all of the members of the Board of Directors or the committee. The written consent may be signed manually or electronically (or by any other means then permitted under the NRS), and may be so signed in counterparts, including, without limitation, facsimile or email counterparts, and shall be filed with the minutes of the proceedings of the Board of Directors or committee.

Section 3.17 Powers and Duties.

(a) Except as otherwise restricted by Chapter 78 of the NRS or the Articles of Incorporation, the Board of Directors has full control over the business and affairs of the Corporation. The Board of Directors may delegate any of its authority to manage, control or conduct the business of the Corporation to any standing or special committee, or to any officer or agent, and to appoint any persons to

be agents of the Corporation with such powers, including the power to subdelegate, and upon such terms as it deems fit.

(b) The Board of Directors, in its discretion, or the chairman presiding at a meeting of stockholders, in his or her discretion, may submit any contract or act for approval or ratification at any annual meeting of the stockholders or any special meeting properly called and noticed for the purpose of considering any such contract or act, provided a quorum is present.

(c) The Board of Directors may, by resolution passed by a majority of the Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Subject to applicable law and to the extent provided in the resolution of the Board of Directors, any such committee shall have and may exercise all the powers of the Board of Directors in the management of the business and affairs of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. The committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

Section 3.18 Compensation. The Board of Directors, without regard to personal interest, may establish the compensation of directors for services in any capacity. If the Board of Directors establishes the compensation of directors pursuant to this Section 3.18, such compensation is presumed to be fair to the Corporation unless proven unfair by a preponderance of the evidence.

Section 3.19 Organization. Meetings of the Board of Directors shall be presided over by the chairman of the board, or in the absence of the chairman of the board by the vice chairman, if any, or in his or her absence by a chairman chosen at the meeting. The secretary, or in the absence, of the secretary an assistant secretary, shall act as secretary of the meeting, but in the absence of the secretary and any assistant secretary, the chairman of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairman of the meeting.

ARTICLE IV OFFICERS

Section 4.1 Election. The Board of Directors shall elect or appoint a president, a secretary and a treasurer or the equivalents of such officers. Such officers shall serve until their respective successors are elected and appointed and shall qualify or until their earlier resignation or removal. The Board of Directors may from time to time, by resolution, elect or appoint such other officers and agents as it may deem advisable, who shall hold office at the pleasure of the Board of Directors, and shall have such powers and duties and be paid such compensation as may be directed by the Board of Directors. Any individual may hold two or more offices.

Section 4.2 Removal; Resignation. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors with or without cause. Any officer may resign at any time upon written notice to the Corporation. Any such removal or resignation shall be subject to the rights, if any, of the respective parties under any contract between the Corporation and such officer or agent.

Section 4.3 Vacancies. Any vacancy in any office because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term of such office.

Section 4.4 Chief Executive Officer. The Board of Directors may elect a chief executive officer who, subject to the supervision and control of the Board of Directors, shall have the ultimate responsibility for the management and control of the business and affairs of the Corporation, and perform such other duties and have such other powers which are delegated to him or her by the Board of Directors, these Bylaws or as provided by law.

Section 4.5 President. The president, subject to the supervision and control of the Board of Directors, shall in general actively supervise and control the business and affairs of the Corporation. The president shall keep the Board of Directors fully informed as the Board of Directors may request and shall consult the Board of Directors concerning the business of the Corporation. The president shall perform such other duties and have such other powers which are delegated and assigned to him or her by the Board of Directors, the chief executive officer, if any, these Bylaws or as provided by law. The president shall be the chief executive officer of the Corporation unless the Board of Directors shall elect or appoint different individuals to hold such positions.

Section 4.6 Vice Presidents. The Board of Directors may elect one or more vice presidents. In the absence or disability of the president, or at the president's request, the vice president or vice presidents, in order of their rank as fixed by the Board of Directors, and if not ranked, the vice presidents in the order designated by the Board of Directors, or in the absence of such designation, in the order designated by the president, shall perform all of the duties of the president, and when so acting, shall have all the powers of, and be subject to all the restrictions on the president. Each vice president shall perform such other duties and have such other powers which are delegated and assigned to him or her by the Board of Directors, the president, these Bylaws or as provided by law.

Section 4.7 Secretary. The secretary shall attend all meetings of the stockholders, the Board of Directors and any committees thereof, and shall keep, or cause to be kept, the minutes of proceedings thereof in books provided for that purpose. He or she shall keep, or cause to be kept, a register of the stockholders of the Corporation and shall be responsible for the giving of notice of meetings of the stockholders, the Board of Directors and any committees, and shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law. The secretary shall be custodian of the corporate seal, if any, the records of the Corporation, the stock certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors or any appropriate committee may direct. The secretary shall perform all other duties commonly incident to his or her office and shall perform such other duties which are assigned to him or her by the Board of Directors, the chief executive officer, if any, the president, these Bylaws or as provided by law.

Section 4.8 Assistant Secretaries. An assistant secretary shall, at the request of the secretary, or in the absence or disability of the secretary, perform all the duties of the secretary. He or she shall perform such other duties as are assigned to him or her by the Board of Directors, the chief executive officer, if any, the president, these Bylaws or as provided by law.

Section 4.9 Treasurer. The treasurer, subject to the order of the Board of Directors, shall have the care and custody of, and be responsible for, all of the money, funds, securities, receipts and valuable papers, documents and instruments of the Corporation, and all books and records relating thereto. The treasurer shall keep, or cause to be kept, full and accurate books of accounts of the Corporation's transactions, which shall be the property of the Corporation, and shall render financial reports and statements of condition

of the Corporation when so requested by the Board of Directors, the chairman of the board, if any, the chief executive officer, if any, or the president. The treasurer shall perform all other duties commonly incident to his or her office and such other duties as may, from time to time, be assigned to him or her by the Board of Directors, the chief executive officer, if any, the president, these Bylaws or as provided by law. The treasurer shall, if required by the Board of Directors, give bond to the Corporation in such sum and with such security as shall be approved by the Board of Directors for the faithful performance of all the duties of the treasurer and for restoration to the Corporation, in the event of the treasurer's death, resignation, retirement or removal from office, of all books, records, papers, vouchers, money and other property in the treasurer's custody or control and belonging to the Corporation. The expense of such bond shall be borne by the Corporation. If a chief financial officer of the Corporation has not been appointed, the treasurer may be deemed the chief financial officer of the Corporation.

Section 4.10 Assistant Treasurers. An assistant treasurer shall, at the request of the treasurer, or in the absence or disability of the treasurer, perform all the duties of the treasurer. He or she shall perform such other duties which are assigned to him or her by the Board of Directors, the chief executive officer, if any, the president, the treasurer, these Bylaws or as provided by law. The Board of Directors may require an assistant treasurer to give a bond to the Corporation in such sum and with such security as it may approve, for the faithful performance of the duties of the assistant treasurer, and for restoration to the Corporation, in the event of the assistant treasurer's death, resignation, retirement or removal from office, of all books, records, papers, vouchers, money and other property in the assistant treasurer's custody or control and belonging to the Corporation. The expense of such bond shall be borne by the Corporation.

Section 4.11 Execution of Negotiable Instruments, Deeds and Contracts. All (i) checks, drafts, notes, bonds, bills of exchange, and orders for the payment of money of the Corporation, (ii) deeds, mortgages, proxies, powers of attorney and other written contracts, documents, instruments and agreements to which the Corporation shall be a party and (iii) assignments or endorsements of stock certificates, registered bonds or other securities owned by the Corporation shall be signed in the name of the Corporation by such officers or other persons as the Board of Directors may from time to time designate. The Board of Directors may authorize the use of the facsimile signatures of any such persons. Any officer of the Corporation shall be authorized to attend, act and vote, or designate another officer or an agent of the Corporation to attend, act and vote, at any meeting of the owners of any entity in which the Corporation may own an interest or to take action by written consent in lieu thereof. Such officer or agent, at any such meeting or by such written action, shall possess and may exercise on behalf of the Corporation any and all rights and powers incident to the ownership of such interest.

ARTICLE V CAPITAL STOCK

Section 5.1 Issuance. Shares of the Corporation's authorized capital stock shall, subject to any provisions or limitations of the laws of the State of Nevada, the Articles of Incorporation or any contracts or agreements to which the Corporation may be a party, be issued in such manner, at such times, upon such conditions and for such consideration as shall be prescribed by the Board of Directors.

Section 5.2 Stock Certificates and Uncertificated Shares.

(a) Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by (i) the chief executive officer, if any, the president, or a vice president, and (ii) the secretary, an assistant secretary, the treasurer or the chief financial officer, if any, of the Corporation (or any other two officers or agents so authorized by the Board of Directors), certifying the number of shares

of stock owned by him, her or it in the Corporation; provided that the Board of Directors may authorize the issuance of uncertificated shares of some or all of any or all classes or series of the Corporation's stock. Any such issuance of uncertificated shares shall have no effect on existing certificates for shares until such certificates are surrendered to the Corporation, or on the respective rights and obligations of the stockholders. Whenever any such certificate is countersigned or otherwise authenticated by a transfer agent or a transfer clerk and by a registrar (other than the Corporation), then a facsimile of the signatures of any corporate officers or agents, the transfer agent, transfer clerk or the registrar of the Corporation may be printed or lithographed upon the certificate in lieu of the actual signatures. In the event that any officer or officers who have signed, or whose facsimile signatures have been used on any certificate or certificates for stock cease to be an officer or officers because of death, resignation or other reason, before the certificate or certificates for stock have been delivered by the Corporation, the certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed the certificate or certificates, or whose facsimile signature or signatures have been used thereon, had not ceased to be an officer or officers of the Corporation.

(b) Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written statement certifying the number and class (and the designation of the series, if any) of the shares owned by such stockholder in the Corporation and any restrictions on the transfer or registration of such shares imposed by the Articles of Incorporation, these Bylaws, any agreement among stockholders or any agreement between the stockholders and the Corporation, and, at least annually thereafter, the Corporation shall provide to such stockholders of record holding uncertificated shares, a written statement confirming the information contained in such written statement previously sent. Except as otherwise expressly provided by the NRS, the rights and obligations of the stockholders of the Corporation shall be identical whether or not their shares of stock are represented by certificates.

(c) Each certificate representing shares shall state the following upon the face thereof: the name of the state of the Corporation's organization; the name of the person to whom issued; the number and class of shares and the designation of the series, if any, which such certificate represents; the par value of each share, if any, represented by such certificate or a statement that the shares are without par value. Certificates of stock shall be in such form consistent with law as shall be prescribed by the Board of Directors. No certificate shall be issued until the shares represented thereby are fully paid. In addition to the foregoing, all certificates evidencing shares of the Corporation's stock or other securities issued by the Corporation shall contain such legend or legends as may from time to time be required by the NRS and/or the regulations of the Nevada Gaming Commission then in effect, or such other federal, state or local laws or regulations then in effect.

Section 5.3 Surrendered; Lost or Destroyed Certificates. All certificates surrendered to the Corporation, except those representing shares of treasury stock, shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been canceled, except that in case of a lost, stolen, destroyed or mutilated certificate, a new one may be issued therefor. However, any stockholder applying for the issuance of a stock certificate in lieu of one alleged to have been lost, stolen, destroyed or mutilated shall, prior to the issuance of a replacement, provide the Corporation with his, her or its affidavit of the facts surrounding the loss, theft, destruction or mutilation and, if required by the Board of Directors, an indemnity bond in an amount not less than twice the current market value of the stock, and upon such terms as the treasurer or the Board of Directors shall require which shall indemnify the Corporation against any loss, damage, cost or inconvenience arising as a consequence of the issuance of a replacement certificate.

Section 5.4 Replacement Certificate. When the Articles of Incorporation are amended in any way affecting the statements contained in the certificates for outstanding shares of capital stock of the Corporation or it becomes desirable for any reason, in the discretion of the Board of Directors, including, without limitation, the merger of the Corporation with another Corporation or the conversion or reorganization of the Corporation, to cancel any outstanding certificate for shares and issue a new certificate therefor conforming to the rights of the holder, the Board of Directors may order any holders of outstanding certificates for shares to surrender and exchange the same for new certificates within a reasonable time to be fixed by the Board of Directors. The order may provide that a holder of any certificate(s) ordered to be surrendered shall not be entitled to vote, receive distributions or exercise any other rights of stockholders of record until the holder has complied with the order, but the order operates to suspend such rights only after notice and until compliance.

Section 5.5 Transfer of Shares. No transfer of stock shall be valid as against the Corporation except on surrender and cancellation of any certificate(s) therefor accompanied by an assignment or transfer by the registered owner made either in person or under assignment. Whenever any transfer shall be expressly made for collateral security and not absolutely, the collateral nature of the transfer shall be reflected in the entry of transfer in the records of the Corporation.

Section 5.6 Transfer Agent; Registrars. The Board of Directors may appoint one or more transfer agents, transfer clerks and registrars of transfer and may require all certificates for shares of stock to bear the signature of such transfer agents, transfer clerks and/or registrars of transfer.

Section 5.7 Miscellaneous. The Board of Directors shall have the power and authority to make such rules and regulations not inconsistent herewith as it may deem expedient concerning the issue, transfer, and registration of certificates for shares of the Corporation's stock.

Section 5.8 Inapplicability of Controlling Interest Statutes. Notwithstanding any other provision in these Bylaws to the contrary, and in accordance with the provisions of NRS 78.378, the provisions of NRS 78.378 to 78.3793, inclusive (or any successor statutes thereto), relating to acquisitions of controlling interests in the Corporation do not apply to any and all acquisitions of shares of the Corporation's common stock, par value \$.01 per share, effected by Stephen A. Wynn or any of his affiliates.

ARTICLE VI DISTRIBUTIONS

Distributions may be declared, subject to the provisions of the laws of the State of Nevada and the Articles of Incorporation, by the Board of Directors and may be paid in money, shares of corporate stock, property or any other medium not prohibited under applicable law. The Board of Directors may fix in advance a record date, in accordance with and as provided in Section 2.5, prior to the distribution for the purpose of determining stockholders entitled to receive any distribution.

ARTICLE VII RECORDS AND REPORTS; CORPORATE SEAL; FISCAL YEAR

Section 7.1 Records. All original records of the Corporation, shall be kept at the principal office of the Corporation by or under the direction of the secretary or at such other place or by such other person as may be prescribed by these Bylaws or the Board of Directors.

Section 7.2 Corporate Seal. The Board of Directors may, by resolution, authorize a seal, and the seal may be used by causing it, or a facsimile, to be impressed or affixed or reproduced or otherwise.

Except when otherwise specifically provided herein, any officer of the Corporation shall have the authority to affix the seal to any document requiring it.

Section 7.3 Fiscal Year-End. The fiscal year-end of the Corporation shall be such date as may be fixed from time to time by resolution of the Board of Directors.

ARTICLE VIII
INDEMNIFICATION

Section 8.1 Indemnification and Insurance.

(a) Indemnification of Directors and Officers.

(i) For purposes of this Article, (A) “**Indemnitee**” shall mean each director or officer who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding (as hereinafter defined), by reason of the fact that he or she is or was a director, officer, employee or agent (including, without limitation, as a trustee, fiduciary, administrator or manager) of the Corporation or member, manager or managing member of a predecessor limited liability company or affiliate of such limited liability company or is or was serving in any capacity at the request of the Corporation as a director, officer, employee or agent (including, without limitation, as a trustee, fiduciary administrator, partner, member or manager) of, or in any other capacity for, another corporation or any partnership, joint venture, limited liability company, trust, or other enterprise; and (B) “**Proceeding**” shall mean any threatened, pending, or completed action, suit or proceeding (including, without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative, or investigative.

(ii) Each Indemnitee shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the laws of the State of Nevada, against all expense, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding; provided that such Indemnitee either is not liable pursuant to NRS 78.138 or acted in good faith and in a manner such Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any Proceeding that is criminal in nature, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, does not, of itself, create a presumption that the Indemnitee is liable pursuant to NRS 78.138 or did not act in good faith and in a manner in which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, or that, with respect to any criminal proceeding he or she had reasonable cause to believe that his or her conduct was unlawful. The Corporation shall not indemnify an Indemnitee for any claim, issue or matter as to which the Indemnitee has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Corporation or for any amounts paid in settlement to the Corporation, unless and only to the extent that the court in which the Proceeding was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such amounts as the court deems proper. Except as so ordered by a court and for advancement of expenses pursuant to this Section, indemnification may not be made to or on behalf of an Indemnitee if a final adjudication establishes that his or her acts or omissions involved intentional misconduct, fraud or a knowing violation of law and was material to the cause of action. Notwithstanding anything to the contrary contained in these Bylaws, no director or officer may be indemnified for expenses incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, that such

director or officer incurred in his or her capacity as a stockholder, including, but not limited to, in connection with such person being deemed an Unsuitable Person (as defined in Article VII of the Articles of Incorporation).

(iii) Indemnification pursuant to this Section shall continue as to an Indemnitee who has ceased to be a director or officer of the Corporation or member, manager or managing member of a predecessor limited liability company or affiliate of such limited liability company or a director, officer, employee, agent, partner, member, manager or fiduciary of, or to serve in any other capacity for, another corporation or any partnership, joint venture, limited liability company, trust, or other enterprise and shall inure to the benefit of his or her heirs, executors and administrators.

(iv) The expenses of Indemnitees must be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as such expenses are incurred and in advance of the final disposition of the Proceeding, upon receipt of an undertaking by or on behalf of such Indemnitee to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation. To the extent that an Indemnitee is successful on the merits or otherwise in defense of any Proceeding, or in the defense of any claim, issue or matter therein, the Corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred in by him or her in connection with the defense.

(b) Indemnification of Employees and Other Persons. The Corporation may, by action of its Board of Directors and to the extent provided in such action, indemnify employees and other persons as though they were Indemnitees.

(c) Non-Exclusivity of Rights. The rights to indemnification provided in this Article shall not be exclusive of any other rights that any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation or these Bylaws, agreement, vote of stockholders or directors, or otherwise.

(d) Insurance. The Corporation may purchase and maintain insurance or make other financial arrangements on behalf of any Indemnitee for any liability asserted against him or her and liability and expenses incurred by him or her in his or her capacity as a director, officer, employee, member, managing member or agent, or arising out of his or her status as such, whether or not the Corporation has the authority to indemnify him or her against such liability and expenses.

(e) Other Financial Arrangements. The other financial arrangements which may be made by the Corporation may include the following (i) the creation of a trust fund; (ii) the establishment of a program of self-insurance; (iii) the securing of its obligation of indemnification by granting a security interest or other lien on any assets of the Corporation; and (iv) the establishment of a letter of credit, guarantee or surety. No financial arrangement made pursuant to this subsection may provide protection for a person adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for intentional misconduct, fraud, or a knowing violation of law, except with respect to advancement of expenses or indemnification ordered by a court.

(f) Other Matters Relating to Insurance or Financial Arrangements. Any insurance or other financial arrangement made on behalf of a person pursuant to this Section 8.1 may be provided by the Corporation or any other person approved by the Board of Directors, even if all or part of the other person's stock or other securities is owned by the Corporation. In the absence of fraud, (i) the decision of the Board of Directors as to the propriety of the terms and conditions of any insurance or other financial arrangement

made pursuant to this Section 8.1 and the choice of the person to provide the insurance or other financial arrangement is conclusive; and (ii) the insurance or other financial arrangement is not void or voidable and does not subject any director approving it to personal liability for his action; even if a director approving the insurance or other financial arrangement is a beneficiary of the insurance or other financial arrangement.

Section 8.2 Amendment. The provisions of this Article VIII relating to indemnification shall constitute a contract between the Corporation and each of its directors and officers which may be modified as to any director or officer only with that person's consent or as specifically provided in this Section 8.2. Notwithstanding any other provision of these Bylaws relating to their amendment generally, any repeal or amendment of this Article VIII which is adverse to any director or officer shall apply to such director or officer only on a prospective basis, and shall not limit the rights of an Indemnitee to indemnification with respect to any action or failure to act occurring prior to the time of such repeal or amendment. Notwithstanding any other provision of these Bylaws (including, without limitation, Article X), no repeal or amendment of these Bylaws shall affect any or all of this Article VIII so as to limit or reduce the indemnification in any manner unless adopted by (i) the unanimous vote of the directors of the Corporation then serving, or (ii) by the stockholders as set forth in Article X; provided that no such amendment shall have a retroactive effect inconsistent with the preceding sentence.

ARTICLE IX
CHANGES IN NEVADA LAW

References in these Bylaws to the laws of the State of Nevada or the NRS or to any provision thereof shall be to such law as it existed on the date these Bylaws were adopted or as such law thereafter may be changed; provided that (i) in the case of any change which expands the liability of directors or officers or limits the indemnification rights or the rights to advancement of expenses which the Corporation may provide in Article VIII, the rights to limited liability, to indemnification and to the advancement of expenses provided in the Articles of Incorporation and/or these Bylaws shall continue as theretofore to the extent permitted by law; and (ii) if such change permits the Corporation, without the requirement of any further action by stockholders or directors, to limit further the liability of directors or limit the liability of officers or to provide broader indemnification rights or rights to the advancement of expenses than the Corporation was permitted to provide prior to such change, then liability thereupon shall be so limited and the rights to indemnification and the advancement of expenses shall be so broadened to the extent permitted by law.

ARTICLE X
AMENDMENT OR REPEAL

Section 10.1 Amendment of Bylaws.

(a) Board of Directors. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to amend or repeal these Bylaws or to adopt new bylaws.

(b) Stockholders. Notwithstanding Section 10.1(a), these Bylaws may be amended or repealed in any respect, and new bylaws may be adopted, in each case by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the outstanding voting power of the Corporation, voting together as a single class.

ARTICLE XI
FORUM FOR ADJUDICATION OF DISPUTES

To the fullest extent permitted by law, and unless the Corporation consents in writing to the selection of an alternative forum, the Eighth Judicial District Court of Clark County, Nevada, shall be the sole and exclusive forum for (a) any derivative action or proceeding brought in the name or right of the Corporation or on its behalf, (b) any action asserting a claim for breach of any fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) any action arising or asserting a claim arising pursuant to any provision of NRS Chapters 78 or 92A or any provision of the Articles of Incorporation or these Bylaws or (d) any action asserting a claim governed by the internal affairs doctrine, including, without limitation, any action to interpret, apply, enforce or determine the validity of the Articles of Incorporation or these Bylaws. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

* * * *

CERTIFICATION

The undersigned, as the duly elected Secretary of Wynn Resorts, Limited, a Nevada corporation (the “**Corporation**”), does hereby certify that the Board of Directors of the Corporation adopted the foregoing Eighth Amended and Restated Bylaws as of November 2, 2015.

/s/ Kim Sinatra

Kim Sinatra, Secretary

DATED September 30, 2015

WYNN RESORTS (MACAU) S.A.
the Company

CERTAIN FINANCIAL INSTITUTIONS
as Term Facility Lenders, Revolving Credit Facility Lenders, Additional Lenders and Hedging Counterparties

THE FINANCIAL INSTITUTIONS NAMED HEREIN
as Outgoing Global Coordinating Lead Arrangers

THE FINANCIAL INSTITUTIONS NAMED HEREIN
as Mandated Lead Arrangers and Bookrunners, Mandated Lead Arrangers, Lead Arrangers and Arrangers

BANK OF CHINA LIMITED, MACAU BRANCH
as Term Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Revolving Credit Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Additional Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Intercreditor Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Security Agent and POA Agent

BANCO NACIONAL ULTRAMARINO, S.A.
as Second Ranking Finance Party

COMMON TERMS AGREEMENT
FIFTH AMENDMENT AGREEMENT

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THIS AGREEMENT is dated September 30, 2015 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the "**Company**");
- (1) **THE FINANCIAL INSTITUTION** named on the signing pages as the Term Facility Lender;
- (2) **THE FINANCIAL INSTITUTION** named on the signing pages as the Revolving Credit Facility Lender;
- (3) **THE FINANCIAL INSTITUTION** named on the signing pages as the Additional Lender;
- (4) **THE FINANCIAL INSTITUTIONS** named on the signing pages as the Hedging Counterparties;
- (5) **THE FINANCIAL INSTITUTIONS** named on the signing pages as, and in their capacities as, the outgoing Global Coordinating Lead Arrangers (the "**Outgoing Global Coordinating Lead Arrangers**");
- (6) **THE FINANCIAL INSTITUTIONS** named on the signing pages as, and in their capacities as, the Mandated Lead Arrangers and Bookrunners (the "**Mandated Lead Arrangers and Bookrunners**");
- (7) **THE FINANCIAL INSTITUTIONS** named on the signing pages as, and in their capacities as, the Mandated Lead Arrangers (the "**Mandated Lead Arrangers**");
- (8) **THE FINANCIAL INSTITUTIONS** named on the signing pages as, and in their capacities as, the Lead Arrangers (the "**Lead Arrangers**");
- (9) **THE FINANCIAL INSTITUTIONS** named on the signing pages as, and in their capacities as, the Arrangers (the "**Arrangers**");
- (10) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the Term Facility Agent (the "**Term Facility Agent**");
- (11) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the Revolving Credit Facility Agent (the "**Revolving Credit Facility Agent**");
- (12) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the Additional Facility Agent (the "**Additional Facility Agent**");
- (13) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the Intercreditor Agent (the "**Intercreditor Agent**");
- (14) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the Security Agent (the "**Security Agent**");
- (15) **BANCO NACIONAL ULTRAMARINO, S.A.** as Second Ranking Finance Party (the "**Second Ranking Finance Party**"); and

(16) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as the POA Agent (the "**POA Agent**").

RECITALS:

- (A) The parties hereto have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents.
- (B) It has been agreed to further amend the Common Terms Agreement as set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and incorporation of defined terms

(i) In this Agreement:

"Amended Common Terms Agreement" means the Original Common Terms Agreement, as amended by this Agreement, the terms of which are set out in Schedule 2 (*Amended Common Terms Agreement*);

"Amendment to Company Floating Charge" means the Amendment to Floating Charge dated on or about the date hereof between the Company and the Security Agent;

"Amendment to Company Mortgage" means the Amendment to Mortgage dated on or about the date hereof between the Company and the Security Agent;

"Amendment to Palo Floating Charge" means the Amendment to Floating Charge dated on or about the date hereof between Palo and the Security Agent;

"Amendment to Palo Mortgage" means the Amendment to Palo Mortgage dated on or about the date hereof between Palo and the Security Agent;

"Amendment to Pledge over Gaming Equipment and Utensils" means the Amendment to Pledge over Gaming Equipment and Utensils dated on or about the date hereof between the Company and the Security Agent;

"Completion Memorandum" means the completion memorandum relating to the matters contemplated in this Agreement, in the Agreed Form;

"Completion Request" means a request in the Agreed Form for Advances denominated in HKD and USD under the Term Facility to be made on the Fifth Amendment Effective Date;

"Confirmation of Company Share Pledge" means the Confirmation of Company Share Pledge dated on or about the date hereof between Wynn HK, Wynn International, the Company and the Security Agent;

"Confirmation of Palo Share Pledge" means the Confirmation of Palo Share Pledge dated on or about the date hereof between Wynn HK, Wynn International, the Company, Palo and the Security Agent;

"Confirmation of Executive Director Share Pledge" means, if the Relevant Executive Director is Ms Linda Chen prior to the Fifth Amendment Effective Date, the Confirmation of Executive Director Share Pledge dated on or about the date hereof between Ms Linda Chen, the Company and the Security Agent;

"Deed of Appointment and Priority Fourth Deed of Amendment" means the Deed of Appointment and Priority Fourth Deed of Amendment dated on or about the date hereof between, among others, the Original First Ranking Lenders, the

Hedging Counterparties, the Second Ranking Finance Party, the Company, the Security Agent, the Intercreditor Agent and the POA Agent;

"English Security Confirmation" means the document so entitled dated on or about the Fifth Amendment Effective Date between the Company and the Security Agent;

"Executive Director Shares" means the 20,010 ordinary class A shares in the Company (of MOP1,000 par value per share) which are represented by shares certificates numbers 5 through 24 and share certificate number 205;

"Executive Director Share Pledge" means the document entitled "Wong Share Pledge" dated on or about 14 September 2004 between the Relevant Executive Director and the Security Agent;

"First Macau Security Confirmation" means the document so entitled dated on or about the Fifth Amendment Effective Date between the Company and the Security Agent;

"Fifth Amendment Effective Date" has the meaning given to such term in Clause 4 (*Amendment*);

"Guarantee Fourth Deed of Amendment and Acknowledgement" means the Guarantee Fourth Deed of Amendment and Acknowledgement dated on or about the date hereof between Wynn Asia 2, Wynn International, Wynn Holdings, Wynn HK, Palo and the Security Agent;

"Holding Company" in relation to a Person, means an entity of which that Person is a Subsidiary;

"Hong Kong Security Confirmation" means the document so entitled dated on or about the Fifth Amendment Effective Date between the Company, Wynn Holdings and the Security Agent;

"Livrança Covering Letter" means the letter from the Company to the Security Agent dated on or about the Fifth Amendment Effective Date in relation to the Livranças, duly acknowledged by Palo;

"Macau Security Confirmations" means the First Macau Security Confirmation, the Second Macau Security Confirmation, the Confirmation of Company Share Pledge, the Confirmation of Palo Share Pledge and (if applicable) the Confirmation of Executive Director Share Pledge;

"Nevada Security Release Agreement" means the release and termination agreement between the Company and the Security Agent dated on or about the Fifth Amendment Effective Date in relation to the US Operating Account Control Agreement;

"New Company Power of Attorney" means the irrevocable power of attorney dated on or about the date hereof granted by the Company in favour of the Security Agent;

"New Palo Power of Attorney" means the irrevocable power of attorney dated on or about the date hereof granted by Palo in favour of the Security Agent;

"Original Common Terms Agreement" means the Common Terms Agreement as amended from time to time prior to the date of this Agreement;

"Palo" means Palo Real Estate Company Limited a company with limited liability incorporated in the Macau SAR with registration number 27319 SO;

"POA Agent" has the meaning given to such term in the Deed of Appointment and Priority;

"Post-Amendment Global Transfer Agreement" means the agreement so entitled dated on or about the date of this Agreement between, among others, the Company and the Intercreditor Agent;

"Pre-Amendment Global Transfer Agreement" means the agreement so entitled dated on or about the date of this Agreement between, among others, the Company and the Intercreditor Agent;

"Relevant Executive Director" means:

- (i) if the Wong Share Substitution has not been completed in accordance with this Agreement on or before the Fifth Amendment Effective Date, Mr. Wong Chi Seng; and
- (i) if the Wong Share Substitution has been completed in accordance with this Agreement on or before the Fifth Amendment Effective Date, Ms. Linda Chen;

"Required Filings" means any filing, notification, recording, stamping and registration required in respect of any of the Senior Finance Documents referred to in paragraph 2 of Schedule 1 (*Conditions Precedent*) at Companies House in England and Wales, the Companies Registry in Hong Kong, the Companies Registration Office in Ireland, the Financial Supervision Commission in the Isle of Man, the Gaming Inspection and Coordination Bureau in Macau and in the register of charges of Wynn Asia 2;

"Revocation Powers of Attorney" means:

- (i) the revocation of the irrevocable power of attorney dated on or about the Fourth Amendment Effective Date granted by Palo in favour of the Security Agent; and

- (ii) the revocation of the irrevocable power of attorney dated on or about the Fourth Amendment Effective Date granted by the Company in favour of the Security Agent;

"Revolving Credit Facility Agreement Amendment Agreement" means the agreement so entitled dated on or about the date of this Agreement between the Company, the Revolving Credit Facility Agent and the Revolving Credit Facility Lenders;

"Second Macau Security Confirmation" means the document so entitled dated on or about the Fifth Amendment Effective Date between Palo and the Security Agent;

"Security Amendment Documents" means:

- (i) the Amendment to Company Floating Charge;
- (ii) the Amendment to Company Mortgage;
- (iii) the Amendment to Palo Floating Charge;
- (iv) the Amendment to Palo Mortgage; and
- (v) the Amendment to Pledge over Gaming Equipment and Utensils;

"Security Confirmation Documents" means:

- (i) each Macau Security Confirmation;
- (ii) the Hong Kong Security Confirmation; and
- (iii) the English Security Confirmation;

"Subordination Deed Fourth Deed of Amendment and Acknowledgement of Security" means the Subordination Deed Fourth Deed of Amendment and Acknowledgement of Security dated on or about the date hereof between, among others, the Company, Wynn Resorts, Wynn Resorts Holdings, LLC, Wynn Asia 2, Wynn International, Wynn Holdings, Wynn HK, Worldwide Wynn, LLC, Wynn Design & Development, LLC, Wynn International Marketing, Ltd., WML Finance I Limited, Palo and the Security Agent;

"Term Facility Agreement Fourth Amendment Agreement" means the agreement so entitled dated on or about the date of this Agreement between the Company, the Term Facility Agent and the Term Facility Lenders;

"Tranche A Facility" has the meaning given to it in the Term Facility Agreement (as amended by the Term Facility Agreement Fourth Amendment Agreement, and as further amended from time to time);

"**Tranche B Facility**" has the meaning given to it in the Term Facility Agreement (as amended by the Term Facility Agreement Fourth Amendment Agreement, and as further amended from time to time);

"**Tranche C Facility**" has the meaning given to it in the Term Facility Agreement (as amended by the Term Facility Agreement Fourth Amendment Agreement, and as further amended from time to time);

"**US Operating Account**" means an account denominated in US dollars opened in Nevada and designated "USD Operating Account" prior to the date of this Agreement;

"**US Operating Account Control Agreement**" means the bank account control agreement so entitled dated 14 September 2005 between the Company, the Security Agent and Bank of America, N.A.;

"**Wong Share Substitution**" means the substitution of Ms. Linda Chen for Mr. Wong Chi Seng as the holder and pledgor of the Executive Director Shares.

- (j) Unless a contrary indication appears, a term defined in or by reference in Schedule 2 (*Amended Common Terms Agreement*) or, if not defined in or by reference in such Schedule, the Deed of Appointment and Priority, has the same meaning in this Agreement and in the Amended Common Terms Agreement.
- (k) The principles of construction and rules of interpretation set out in Schedule 2 (*Amended Common Terms Agreement*) shall have effect as if set out in this Agreement.

1.2 **Clauses**

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Agreement.

1.3 **Designation**

In accordance with the Common Terms Agreement, each of the Company and the Intercreditor Agent designates:

- (i) the Term Facility Agreement Fourth Amendment Agreement as a Senior Finance Document;
- (j) the Revolving Credit Facility Agreement Amendment Agreement as a Senior Finance Document;
- (k) this Agreement as a Senior Finance Document;
- (l) the Subordination Deed Fourth Deed of Amendment and Acknowledgement of Security as a Security Document;
- (m) the Guarantee Fourth Deed of Amendment and Acknowledgement as a Security Document;

- (n) the Deed of Appointment and Priority Fourth Deed of Amendment as a Security Document;
- (o) the New Company Power of Attorney as a Security Document;
- (p) the New Palo Power of Attorney as a Security Document;
- (q) each of the Security Confirmation Documents as a Security Document;
- (r) each of the Security Amendment Documents as a Security Document; and
- (s) the Livrança Covering Letter as a Security Document.

2. **RESIGNATION OF ADDITIONAL FACILITY AGENT**

2.1 **Resignation**

Bank of China Limited, Macau Branch hereby resigns as Additional Facility Agent with effect on and from the Fifth Amendment Effective Date (but subject to Clause 6 (*Order of Events on the Fifth Amendment Effective Date*)).

2.2 **Notice Period**

The parties hereto agree that the resignation referred to in Clause 2.1 (*Resignation*) shall be effective notwithstanding the notice period specified in sub-clause 23.12.1 of clause 23.12 (*Resignation*) of the Original Common Terms Agreement or any other provision of the Senior Finance Documents.

3. **GLOBAL COORDINATING LEAD ARRANGERS**

With effect on and from the Fifth Amendment Effective Date (subject to Clause 6 (*Order of Events on the Fifth Amendment Effective Date*)), each Outgoing Global Coordinating Lead Arranger, in its capacity as an original Global Coordinating Lead Arranger (under and as defined in the Original Common Terms Agreement), shall be discharged from any further obligations towards the other parties to the Original Common Terms Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to the Fifth Amendment Effective Date) and, as from that date, each Mandated Lead Arranger and Bookrunner, Mandated Lead Arranger, Lead Arranger and Arranger shall assume the same obligations, and become entitled to the same rights, as if it had been an original Global Coordinating Lead Arranger (under and as defined in the Original Common Terms Agreement) and party to the Original Common Terms Agreement.

4. **AMENDMENT**

With effect from the date upon which the Intercreditor Agent confirms to the Lenders and the Company that it has received (or the Intercreditor Agent has waived receipt of, as the case may be) each of the documents or evidence listed in Schedule 1 (*Conditions Precedent*) in a form and substance satisfactory to the Intercreditor Agent, (such date being the "**Fifth Amendment Effective Date**"), the Original Common Terms Agreement

shall be amended so that it shall be read and construed for all purposes as set out in Schedule 2 (*Amended Common Terms Agreement*).

5. FACILITY ADVANCES

5.1 Completion Request

Subject to the occurrence of the Fifth Amendment Effective Date and receipt by the Intercreditor Agent and the Term Facility Agent of the Completion Request, the requirements specified in clause 3.1 (*Drawdown conditions*) of the Amended Common Terms Agreement (and clause 11.1 (*Advances*) of the Term Facility Agreement) shall, with effect from the Fifth Amendment Effective Date, be deemed to have been satisfied in respect of the Advances requested in the Completion Request as if such requests comprised Advance Requests and had been delivered (and notified) in accordance with the provisions thereof and each of the other provisions of clause 3 (*Drawdown of Advances*) of the Amended Common Terms Agreement and the other Senior Finance Documents shall apply accordingly. Each Advance under the Term Facility, in each case which is outstanding on the Fifth Amendment Effective Date, shall have an initial Interest Period set out opposite that Advance in the Completion Memorandum.

5.2 Repayment of Facilities

The Term Facility Agent, the Revolving Credit Facility Agent and the Additional Facility Agent are each hereby directed by the Company (with the agreement and acknowledgement of the parties hereto) to pay:

- (i) an amount of each Advance requested in the Completion Request equal to all amounts then outstanding and denominated in USD and HKD, as the case may be, under the Additional Lender Facility directly to the Additional Facility Lender, to be applied in repayment in full of the Additional Lender Facility, whereupon the Additional Lender Facility shall be permanently cancelled and the Available Facility (as defined in the Additional Lender Facility Agreement) in respect thereof shall be zero;
- (j) an amount of each Advance requested in the Completion Request equal to all amounts then outstanding and denominated in USD and HKD, as the case may be, under the Revolving Credit Facility directly to the Revolving Credit Facility Lender, to be applied in repayment in full of the Revolving Credit Facility; and
- (k) such amount of each such Advance remaining after the application referred to in paragraph (a) above, as the Company directs in the Completion Request.

5.3 [Not used]

5.4 Additional Lender

Upon the repayment in full of the Additional Lender Facility in accordance with paragraph (a) of Clause 5.2 (*Repayment of Facilities*) each of the Additional Lender and the Additional Facility Agent shall cease to be a Lender and Facility Agent (respectively) for the purpose of the Amended Common Terms Agreement and the other Senior Finance

Documents and, in the case of the Additional Lender, shall be released from the indemnity set out in clause 15.3 (*Indemnity to the Additional Facility Agent*) of the Additional Lender Facility Agreement (as defined in the Original Common Terms Agreement) (other than to the extent of any claims arising thereunder prior to the Fifth Amendment Effective Date).

5.5 **Waiver of notice and pro-rata payments requirements**

- (a) The parties hereto waive (a) the notice requirement specified in sub-clause 8.2.1 of clause 8.2 (*Voluntary Prepayment of the Term Loan Facilities*) of the Original Common Terms Agreement and (b) the requirement in sub-clause 8.2.2 of clause 8.2 (*Voluntary Prepayment of the Term Loan Facilities*) of the Original Common Terms Agreement for payments or prepayments to be made *pro rata* as between the Advances outstanding under the Term Loan Facilities, in each case, in respect of the repayment in full of the Additional Lender Facility referred to in Clause 5.2 (*Repayment of Additional Lender Facility*).
- (b) The parties hereto agree that, in connection with the actions, events and other steps that are set out in the Pre-Amendment Global Transfer Agreement, the Company may repay each Revolving Credit Facility Advance (as defined in the Revolving Credit Facility Agreement) on a date other than the last day of its Interest Period (in accordance with, and as contemplated by, the Completion Memorandum).

5.6 **Breakfunding and accrued interest**

- (a) The Company shall pay to Bank of China Limited, Macau Branch (for its own account) the amounts (at the times) contemplated by a letter dated on or prior to the date hereof and made between Company and Bank of China Limited, Macau Branch in connection with the roles of Bank of China Limited, Macau Branch under the Pre-Amendment Global Transfer Agreement and the Post-Amendment Global Transfer Agreement (the "**Letter**").
- (b) Notwithstanding clause 26.1 (*Payments under the Senior Finance Documents*) of the Original Common Terms Agreement, payments of accrued interest as contemplated by the Letter shall be made to Bank of China Limited, Macau Branch by the time contemplated in the Completion Memorandum (in the applicable currency or currencies) and not to the Term Facility Agent for the account of the Term Facility Lender or the Revolving Credit Facility Agent for the account of the Revolving Credit Facility Lender, as the case may be.

6. **ORDER OF EVENTS ON THE FIFTH AMENDMENT EFFECTIVE DATE**

The parties hereto agree in respect of the actions, events and other steps that are set out in the Pre-Amendment Global Transfer Agreement, Clauses 2 (*Resignation of Additional Facility Agent*), 3 (*Global Coordinating Lead Arrangers*), 4 (*Amendment*) and 5 (*Facility Advances*) of this Agreement and in the Post-Amendment Global Transfer Agreement which are stated to occur on the Fifth Amendment Effective Date, that such actions, events and other steps shall (where those actions, events and other steps have been carried

out in accordance with the Completion Memorandum) occur on the Fifth Amendment Effective Date in the order set out in the Completion Memorandum.

7. REPRESENTATIONS

7.1 Prior to the Fifth Amendment Effective Date

The representations and warranties set out in schedule 4 of the amended Common Terms Agreement set out as Schedule 2 (*Amended Common Terms Agreement*) are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the date of this Agreement.

7.2 On the Fifth Amendment Effective Date

The representations and warranties set out in schedule 4 of the amended Common Terms Agreement set out as Schedule 2 (*Amended Common Terms Agreement*) are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the Fifth Amendment Effective Date, as if any reference therein to any Senior Finance Document in respect of which any amendment, acknowledgement, confirmation, consolidation, novation, restatement, replacement or supplement is expressed to be made by any of the documents referred to in Clause 1.3 (*Designation*) included, to the extent relevant, such document and the Senior Finance Document as so amended, acknowledged, confirmed, consolidated, novated, restated, replaced or supplemented.

7.3 [Not used]

8. RELEASE OF SECURITY

- (a) The Intercreditor Agent (acting on the instructions of each of the Term Facility Lender and the Revolving Credit Facility Lender) and the Second Ranking Finance Party hereby instruct the Security Agent to release the Security created or purported to be created under the US Operating Account Control Agreement by executing and dating the Nevada Security Release Agreement, such release to be effective on and from the Fifth Amendment Effective Date.
- (b) The Company shall ensure that, at all times on and from the Fifth Amendment Effective Date, the amount standing to the credit of the US Operating Account is no greater than US\$10,000 at any time and shall provide the Intercreditor Agent with evidence reasonably satisfactory to the Intercreditor Agent that the US Operating Account has been closed and all amounts standing to the credit thereof (if any) have been transferred to an Account on or prior to such closure by no later than the date falling 90 days from the Fifth Amendment Effective Date.

9. CONTINUITY AND FURTHER ASSURANCE

9.1 Continuing obligations

The provisions of the Common Terms Agreement shall, save as amended by this Agreement, continue in full force and effect. In particular, nothing in this Agreement

shall affect the rights of the Senior Secured Creditors in respect of the occurrence of any Default which is continuing or which arises on or after the date of this Agreement.

9.2 **Further assurance**

The Company shall, upon the written request of the Intercreditor Agent and the Company's expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

10. **MISCELLANEOUS**

10.1 **Incorporation of terms**

The provisions of Clauses 1.5.1(e), 1.5.2 and 1.5.3 (*Third Party Rights*), Clause 16.2 (*Transaction Expenses*), Clause 16.4 (*Enforcement costs*), Clause 28 (*Non-recourse Liability*), Clause 29.1 (*Communications in Writing*) to 29.5 (*Electronic communication*), Clause 31 (*Partial Invalidity*), Clause 32 (*Remedies and Waivers*) and Clause 38 (*Jurisdiction*) of Schedule 2 (*Amended Common Terms Agreement*) shall be incorporated into this Agreement as if set out in full herein and as if references in those clauses to "Agreement" are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

10.2 **Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

10.3 **[Not used]**

11. **WONG SHARE SUBSTITUTION**

By their execution of this Agreement, the Required Lenders grant their consent to the Wong Share Substitution with effect from the date upon which the Intercreditor Agent confirms to the Required Lenders and the Company that it has received (or the Intercreditor Agent has waived receipt of, as the case may be) each of the following documents or evidence in a form and substance satisfactory to the Intercreditor Agent:

- (a) approval of the Wong Share Substitution by the Government of the Macau SAR (in accordance with Clause 16(1) of the Concession Contract) in the letter from the DICJ to the Company dated 26 August 2015;
- (b) due execution of the following agreements by the parties thereto:
 - (i) a transfer of the Executive Director Shares between Mr. Wong Chi Seng (as transferor), Ms. Linda Chen (as transferee), the Company, the Intercreditor Agent and the Security Agent in substantially the form distributed to the Intercreditor Agent prior to the date of this Agreement;
 - (ii) any other contracts and accessions to existing contracts by Ms. Linda Chen, the Company and any other relevant Obligor as are necessary or desirable in order for Ms. Linda Chen to step into Mr. Wong Chi Seng's

position and role as executive director of the Company and owner of the Executive Director Shares; and

(iii) Ms. Linda Chen duly executing and, (where applicable) the Company providing the Intercreditor Agent with, any acknowledgement, confirmation and/or such other documents as the Intercreditor Agent, acting on the advice of its legal counsel, shall deem appropriate in connection with the pledge of the Executive Director Shares to ensure such shares are pledged after the date of this Agreement in the same manner as such shares are pledged as at the date of this Agreement, such that Ms. Linda Chen will be the "Pledgor" under the Executive Director Share Pledge (as defined in the Amended Common Terms Agreement) and Mr. Wong Chi Seng will no longer be the Pledgor thereunder and be released from any obligations thereunder; and

(c) a legal opinion with respect to the above matters from Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors.

12. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Schedule 1
CONDITIONS PRECEDENT

1. Due establishment, authority and certification

In relation to each Obligor, receipt by the Intercreditor Agent of a certificate signed by a duly authorised signatory of that Person and which:

- (a) either (A) attaches a copy of that Person's Governing Documents or (B) certifies that the copy of that Person's Governing Documents (which was previously delivered to the Intercreditor Agent on or about 14 September 2004 or subsequently) remains correct, complete and in full force and effect as at a date no earlier than the Fifth Amendment Effective Date;
- (b) attaches a copy of a board resolution or such other equivalent corporate authorisation approving the execution, delivery and performance of the Senior Finance Documents referred to in paragraph 2 below to which it is a party, the terms and conditions thereof and the transactions contemplated thereby, authorising a named person or persons to sign such Senior Finance Documents and any document to be delivered by that Person pursuant to such Senior Finance Documents and authorising the signatory of the relevant certificate to sign certificates in connection therewith;
- (c) (in the case of the Company only) certifies that each document listed in this Schedule 1 and delivered by an Obligor is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the Fifth Amendment Effective Date;
- (d) confirms that borrowing, guaranteeing or securing as appropriate, the total commitments of all Lenders in respect of the Term Facility and the Revolving Credit Facility would not cause any borrowing, guarantee, security or similar limit binding on any such Person to be exceeded; and
- (e) certifies that no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.

2. Senior Finance Documents

- (a) Receipt by the Intercreditor Agent of an original of each of the following Senior Finance Documents, in each case duly executed by the parties thereto:
 - (i) the Term Facility Agreement Fourth Amendment Agreement;
 - (ii) the Revolving Credit Facility Agreement Amendment Agreement;
 - (iii) this Agreement;
 - (iv) the Subordination Deed Fourth Deed of Amendment and Acknowledgement of Security;
 - (v) the Guarantee Fourth Deed of Amendment and Acknowledgement;

- (vi) the Deed of Appointment and Priority Fourth Deed of Amendment;
 - (vii) each of the Security Confirmation Documents;
 - (viii) each of the Security Amendment Documents;
 - (ix) the New Company Power of Attorney;
 - (x) the New Palo Power of Attorney;
 - (xi) a Fee Letter between the Term Facility Agent, the Revolving Credit Facility Agent, the Intercreditor Agent, the Security Agent and the Company;
 - (xii) a Fee Letter between the Intercreditor Agent and the Company relating to the payment by the Company of an up-front fee to each Person that, immediately following the consummation of the transactions set out in the Post-Amendment Global Transfer Agreement, shall be a Lender;
 - (xiii) the Livranças and the Livrança Covering Letter (in each case signed by the Company and duly endorsed by Palo); and
 - (xiv) any other document entered into which the Intercreditor Agent and the Company agree prior to the Fifth Amendment Signing Date to designate as a Senior Finance Document.
- (b) Each Senior Finance Document referred to in this paragraph 2 has been duly authorised, executed and delivered by such of the Obligors party thereto and (save in respect of any registration required in respect of the Subordination Deed Fourth Deed of Amendment and Acknowledgement of Security, each of the Security Confirmation Documents and each of the Security Amendment Documents at the Companies House in England and Wales, the Hong Kong Companies Registry, the Conservatória dos Registos Comercial e de Bens Móveis in Macau SAR, the Conservatória do Registo Predial in Macau SAR, the applicable Uniform Commercial Code filing office for local/county, state and federal Uniform Commercial Code filings and the Isle of Man Companies Registry, as applicable, based on the Senior Finance Document subject to the filing) duly filed, notified, recorded, stamped and registered as necessary.
- (c) All conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the Fifth Amendment Effective Date) have been satisfied or waived in accordance with their respective terms and each such Senior Finance Document (save as provided in paragraph (b)) is in full force and effect accordingly.

3. **Legal opinions**

Receipt by the Intercreditor Agent of legal opinions (substantially in the form distributed to the Intercreditor Agent prior to the Fifth Amendment Signing Date) from:

- (a) Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors;
- (b) M&P Legal, Isle of Man legal adviser to the Senior Secured Creditors;
- (c) Walkers, Cayman legal adviser to the Senior Secured Creditors;
- (d) Clifford Chance, Hong Kong SAR legal advisers to the Senior Secured Creditors; and
- (e) Clifford Chance, English legal advisers to the Senior Secured Creditors.

4. **Fees and expenses**

Receipt by the Intercreditor Agent of evidence that:

- (a) all taxes, fees and other costs payable in connection with the execution, delivery, filing, recording, stamping and registering of the documents referred to in this Schedule 1; and
- (b) all fees, costs and expenses due to the Senior Secured Creditors and their advisers under the Senior Finance Documents on or before the Fifth Amendment Effective Date,

have been paid or shall be paid (to the extent that such amounts have been duly invoiced) by no later than the Fifth Amendment Effective Date.

5. [Not used]

6. **Security**

Receipt by the Intercreditor Agent of evidence that each Security Document has been (save as provided in paragraph 2(b) above) duly filed, notified, recorded, stamped and registered as necessary and all other actions necessary in the reasonable opinion of the Intercreditor Agent or the Security Agent to perfect the Security have been carried out.

7. **Process agents**

Confirmation from the process agent of each Obligor that, where such appointment is required under any Senior Finance Document referred to in paragraph 2 above, the process agent has accepted its appointment by such Obligor for the acceptance of legal proceedings.

8. **Other documents and evidence**

- (a) Evidence that all those things specified as being required to be done on or prior to the Fifth Amendment Effective Date in the Completion Memorandum have been done in accordance with the Completion Memorandum.
- (b) Receipt by the Intercreditor Agent and the Term Facility Agent of the Completion Request.

- (c) Receipt by the Intercreditor Agent of a copy of:
 - (i) the Pre-Amendment Global Transfer Agreement; and
 - (ii) the Post-Amendment Global Transfer Agreement,in each case, duly executed by the parties thereto.
- (d) Receipt by the Intercreditor Agent of evidence that:
 - (i) the transfers and acquisitions referred to in the Pre-Amendment Global Transfer Agreement have been completed; and
 - (ii) the transfers and acquisitions referred to in the Post-Amendment Global Transfer Agreement will be completed on the Fifth Amendment Effective Date.
- (e) A copy of any other authorisation or other document, opinion or assurance which the Intercreditor Agent considers to be necessary or desirable (if it has notified the Company accordingly prior to the Fifth Amendment Effective Date) in connection with the entry into and performance of the transactions contemplated by any Senior Finance Document or for the validity and enforceability of any Senior Finance Document.
- (f) The valuation report by Jones Lang LaSalle Limited relating to the land and buildings comprised in the Site and the Cotai Site.
- (g) Receipt by the Intercreditor Agent of a copy of the letter dated 8 September 2015 issued by the Macau SAR government in which the Macau SAR government has:
 - (i) consented to the increase in the Company's financial indebtedness contemplated by the Senior Finance Documents (including, without limitation, as the same may be entered into, amended, consolidated, supplemented, novated or replaced on or about the Fifth Amendment Effective Date); and
 - (ii) confirmed that the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (as amended, consolidated, supplemented, novated or replaced from time to time prior to the Fifth Amendment Effective Date) continue to apply with respect to at least USD2,500,000,000 (or equivalent) of such financial indebtedness.
- (h) Each Revocation Power of Attorney.

SCHEDULE 2
AMENDED COMMON TERMS AGREEMENT

DATED 14 SEPTEMBER 2004

WYNN RESORTS (MACAU) S.A.
the Company

CERTAIN FINANCIAL INSTITUTIONS
as Term Facility Lenders, Revolving Credit Facility Lenders
and Hedging Counterparties

CERTAIN FINANCIAL INSTITUTIONS
as Mandated Lead Arrangers and Bookrunners, Mandated Lead Arrangers, Lead Arrangers and Arrangers

BANK OF CHINA LIMITED, MACAU BRANCH
as Term Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Revolving Credit Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Intercreditor Agent

BANK OF CHINA LIMITED, MACAU BRANCH
as Security Agent

COMMON TERMS AGREEMENT
(As amended by the Common Terms Agreement Amendment Agreement
dated 14 September 2005,
the Common Terms Agreement Second Amendment Agreement
dated 27 June 2007
the Common Terms Agreement Third Amendment Agreement
dated 8 September 2009
the Common Terms Agreement Fourth Amendment Agreement
dated 31 July 2012
and the Common Terms Agreement Fifth Amendment Agreement
dated September 30, 2015)

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THIS AGREEMENT is made on the 14th day of September 2004

BETWEEN:

- (1) **WYNN RESORTS (MACAU) S.A.** (the "**Company**");
- (2) **THE FINANCIAL INSTITUTIONS** defined below as Term Facility Lenders;
- (3) **THE FINANCIAL INSTITUTIONS** defined below as Revolving Credit Facility Lenders;
- (4) **THE FINANCIAL INSTITUTIONS** defined below as Hedging Counterparties;
- (5) **THE FINANCIAL INSTITUTIONS** named on the signing pages to the Common Terms Agreement Fifth Amendment Agreement as, and in their capacities as, the Mandated Lead Arrangers and Bookrunners;
- (6) **THE FINANCIAL INSTITUTIONS** named on the signing pages to the Common Terms Agreement Fifth Amendment Agreement as, and in their capacities as, the Mandated Lead Arrangers;
- (7) **THE FINANCIAL INSTITUTIONS** named on the signing pages to the Common Terms Agreement Fifth Amendment Agreement as, and in their capacities as, the Lead Arrangers;
- (8) **THE FINANCIAL INSTITUTIONS** named on the signing pages to the Common Terms Agreement Fifth Amendment Agreement as, and in their capacities as, the Arrangers;
- (9) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as Term Facility Agent;
- (10) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as Revolving Credit Facility Agent;
- (11) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as Intercreditor Agent; and
- (12) **BANK OF CHINA LIMITED, MACAU BRANCH** in its capacity as Security Agent.

WHEREAS:

- (A) The Senior Secured Creditors have agreed, subject to the terms and conditions contained in the Senior Finance Documents, to make available to the Company certain loan facilities for Wynn Macau, the Cotai Project and for general corporate purposes and/or to enter into other agreements or arrangements associated therewith.
- (B) The parties have agreed to enter into this Agreement to set out certain terms and conditions which are common to all the Facility Agreements and to agree certain terms and conditions upon and subject to which the Senior Secured Creditors shall or may enjoy,

exercise or enforce their rights, discretions and remedies under the Senior Finance Documents.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.2 Definitions

In this Agreement, except as otherwise defined herein or to the extent the context otherwise requires, capitalised terms used shall have the following meanings:

"Acceptable Bank" means:

- (a) a bank notified by the Company to the Security Agent which:
 - (i) is licensed by the Hong Kong Monetary Authority, the Monetary Authority of Macao, the Monetary Authority of Singapore, the Financial Supervisory Commission in Taiwan, the Office of the Superintendent of Financial Institutions in Canada, the Federal Reserve System in the United States of America and/or the Financial Services Agency in Japan; and
 - (ii) has, at all times, general obligations rated at least BBB-, Baa3 or BBB from one or more of S&P, Moody's or Fitch respectively; or
- (b) any of Banco Comercial de Macau, S.A., Banco Nacional Ultramarino, S.A., Bank of China Limited, Macau Branch, Industrial and Commercial Bank of China (Macau) Limited or Tai Fung Bank Limited; or
- (c) any bank which is confirmed by the Security Agent (acting reasonably) as acceptable (including any bank confirmed by the Security Agent or its predecessor as acceptable prior to the Fifth Amendment Effective Date).

"Account" means an account (other than an Excluded Account):

- (a) held by a member of the Restricted Group with an Acceptable Bank in Macau, Hong Kong, the United States or any other jurisdiction on terms reasonably acceptable to the Security Agent; and
- (b) subject to Liens in favour of the Security Agent in form and substance satisfactory to the Security Agent.

"Account Bank" means, in relation to an Account, the bank with which the Account is maintained.

"Account Bank Notices and Acknowledgements" mean the notices and acknowledgements to be delivered to and executed by each Account Bank in respect of each Account in accordance with the Charges over Accounts and this Agreement.

"Additional Facility Agent" means:

- (a) each bank or financial institution appointed as a facility agent for Additional Lenders under an Additional Lender Facility Agreement and which has executed and delivered to the Intercreditor Agent:

- (i) a duly completed Agent's Deed of Accession; and
- (ii) a duly completed Finance Party Accession Undertaking executed by such party, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

each of which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors;
or

- (b) each successor to any such bank or financial institution appointed in accordance with this Agreement.

"Additional Lender Facility" means each term loan facility and each revolving credit facility provided by the Additional Lenders to the Company.

"Additional Lender Facility Agreement" means an agreement between the Additional Lenders, the Additional Facility Agent and the Company for the provision of an Additional Lender Facility.

"Additional Lender Facility Availability Period" means, in relation to the Additional Lender Facility, the period specified in respect thereof in Clause 4.3 (*Additional Lender Facility Availability Period*).

"Additional Lender's Accession Deed" means a deed of accession in substantially the form set out in Schedule 14 (*Form of Additional Lender's Accession Deed*).

"Additional Lenders" means the parties who have agreed to provide the Company with loan facilities permitted by paragraph 2.1(f) of Part B of Schedule 5 (*Covenants*) and who have each executed and delivered to the Intercreditor Agent:

- (a) a duly completed Additional Lender's Accession Deed; and
- (b) a duly completed Finance Party Accession Undertaking executed by such party, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

each of which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors.

"Additional Lending Group" means, with respect to an Additional Lender Facility Agreement, the Additional Lenders party to such Additional Lender Facility Agreement, acting as a lending group in accordance with, and subject to the decision making rules under, such Additional Lender Facility Agreement.

"Advance" means an advance (as from time to time reduced by repayment or prepayment) made or to be made under a Facility.

"Advance Date" means the date on which an Advance is required to be made.

"Advance Request" means, in relation to an Advance under the Term Loan Facilities, a request for an Advance in substantially the form set out in Schedule 3 (*Form of Advance Request*) and, in relation to an Advance under the Revolving Credit Facilities, in substantially the form set out in schedule 2 to the Revolving Credit Facility Agreement or the equivalent schedule to the Additional Lender Facility Agreement setting out the form of advance request, as the case may be.

"Affected Lender Decision" means an amendment or waiver that has the effect of changing or which relates to:

- (a) a reduction in the interest margin applicable to a Lender's participation in an Advance or a reduction in the amount of any payment of principal, interest or fees owing or payable under any Senior Finance Document; or
- (b) (save for any change in the currency of any fees payable under a Senior Finance Document to any Secured Party as expressly permitted pursuant to such Senior Finance Document) a change in the currency of payment of any amount under the Senior Finance Document.

"Affiliate" as applied to any Person, means 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, to (a) vote 10% or more of the shares or other securities having ordinary voting power for the election of the Board 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 (*provided* that the Executive Director shall not, by virtue of fulfilling either of these requirements alone as a result of the Executive Director Shares held by such individual in the Company or as a result of such individual's role as executive director of the Company, be an Affiliate of the Company).

"Affiliate Agreement" means any agreement entered into by any Obligor with an Affiliate of that Obligor involving expenditures by any party thereto or any other flow of funds of not less than USD1,000,000 or its equivalent, but excluding any agreement entered into between the Company and a Subsidiary Obligor.

"Agent" means the Intercreditor Agent or a Facility Agent, as the case may be.

"Agent's Deed of Accession" means a deed of accession in substantially the form of Part A of Schedule 11 (*Transfers and Accession*).

"Agreed Form" means, in relation to any document, the form most recently initialled for the purposes of identification as such by the Company and the Intercreditor Agent with such changes as the Intercreditor Agent may agree with the Company.

"Ancillary Finance Documents" means the Fee Letters.

"**Anti-Bribery Laws**" has the meaning given to that term in paragraph 32 of Part A of Schedule 5 (*Covenants*).

"**Anti-Terrorism Laws**" means the Executive Order, the Bank Secrecy Act (31 U.S.C. §§ 5311 et seq.), the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 et seq.), the USA Patriot Act, the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq.), the Trading with the Enemy Act (50 U.S.C. App. §§ 1 et seq.), any other applicable law or regulation administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or other Governmental Authority, in each case for the purpose of controlling or preventing terrorism and related activities and any law enacted in the United States of America after the Fifth Amendment Effective Date for such purposes.

"**Approved Corporate Administrative Fees**" means, for any Fiscal Year, an amount, when added to any other Corporate Administrative Fees paid by or on behalf of the Company during such Fiscal Year, as does not exceed 50% of the corporate administrative overhead costs incurred by Wynn Resorts during such Fiscal Year in relation to its management of the Wynn Resorts Group.

"**Approved IP Fees**" means the IP Fees as set out in the IP Agreement but without regard to any amendment, variation or supplement that would have the effect of increasing such IP Fees pursuant to the terms of the IP Agreement.

"**Asset Sale**" means any Disposition of Property other than:

- (a) the granting of any Lien permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*);
- (b) any Disposition permitted by paragraph 5 of Part B of Schedule 5 (*Covenants*) (*provided* that, in the case of paragraph 5(a) of Part B of Schedule 5 (*Covenants*), 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 paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*)).

"**Assignment of Rights**" means the assignment so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"**Assignment of Insurances**" means the Assignment of Onshore Insurance Policies dated on or about the date of this Agreement between the Company and the Security Agent.

"**Assignments of Reinsurances**" means each assignment of Reinsurance so entitled between the relevant Direct Insurer and the Security Agent.

"**Auditors**" means Ernst & Young LLP or such other firm of independent accountants of international recognised standing as may be appointed by the Company.

"**Availability Period**" means, as the case may be, the Term Facility Availability Period, the Additional Lender Facility Availability Period or the Revolving Credit Facility Availability Period.

"**Available Commitment**", in relation to each Lender under each Facility Agreement, has the meaning given in that Facility Agreement.

"**Board of Directors**" means:

- (a) with respect to a corporation, the board of directors of the corporation;
- (b) with respect to a limited partnership, the board of directors of the general partner of the partnership; and
- (c) with respect to any other Person (other than a natural person), the board or committee of such Person serving a similar function.

"**Break Costs**" means the amount (if any) by which:

- (a) the additional interest which a Lender should have received for the period from the date of receipt by such Lender of all or any part of its participation in an Advance or Unpaid Sum to the last day of the current Interest Period in respect of that Advance or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market (or, in the case of any principal amount or Unpaid Sum denominated in HK dollars, the Hong Kong interbank market) for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period,

provided that Break Costs shall not include any loss of margin.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in the Macau SAR, Hong Kong SAR and New York and, save for the purposes of Clause 3.1.1 (*Drawdown conditions*), London and Singapore.

"**Capital Expenditure**" means, in relation to any Person, for any period, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a capital lease or a finance 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 applicable GAAP.

"**Capital Lease Obligations**" means, 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 or finance leases under applicable 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 applicable GAAP.

"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.

"Cash Flow Available for Debt Service" or **"CFADS"** means, in relation to any period, EBITDA for such period *plus*, without duplication, the sum of:

- (a) decreases in Working Capital for such period; and
- (b) any other non-cash charges,

and *minus*, without duplication, the sum of:

- (c) increases in Working Capital for such period;
- (d) any other non-cash credits;
- (e) the aggregate amount actually paid by each member of the Restricted Group in cash during such period on account of Capital Expenditure;
- (f) the aggregate amount actually paid by each member of the Restricted Group in cash during such period on account of any accrued charges from any prior period; and
- (g) Tax paid by each member of the Restricted Group during such period,

determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Cash Flow Available for Debt Service and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

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

- (a) 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 any Wynn Obligor to any Person (except as may be permitted by this Agreement or any Security Document and excluding any disposition forming part of a Permitted Cotai Reorganisation);
- (b) the adoption of a plan relating to the liquidation or dissolution of any Wynn Obligor or any successor thereto, but excluding any voluntary liquidation, winding-up, dissolution of, or similar action with respect to, Palo after a Permitted Cotai Reorganisation; or
- (c) a Wynn Event.

"Charge over HK Accounts" means the charge so entitled between the Company and the Security Agent in the Agreed Form.

"Charges over Accounts" means the Pledge over Onshore Accounts, the Charge over HK Accounts, the Palo Pledge over Onshore Accounts and the documents granting the Liens referred to in the definition of "Account" in this Clause 1.1 (*Definitions*).

"Claim Proceeds" means the proceeds of a claim (a **"Recovery Claim"**) against any party to a Major Project Document (or a Cotai Resort Management Agreement) or any of such party's Affiliates (or any employee, officer or adviser) in relation to such Major Project Document (or a Cotai Resort Management Agreement) except for Excluded Claim Proceeds, and after deducting:

- (a) any reasonable expenses which are incurred by any member of the Restricted Group to Persons who are not members of the Restricted Group; and
- (b) any Tax incurred and required to be paid by a member of the Restricted Group (as reasonably determined by the relevant member of the Restricted Group on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in relation to that Recovery Claim.

"Code" means the Internal Revenue Code of 1986 of the United States of America, as amended from time to time.

"Common Terms Agreement Amendment Agreement" means the agreement so entitled dated 14 September 2005 between the Company, Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch, Société Générale Asia Limited, Société Générale Hong Kong Branch and certain other financial institutions.

"Common Terms Agreement Fifth Amendment Agreement" means the agreement so entitled dated 30 September 2015 between the parties thereto.

"Common Terms Agreement Fourth Amendment Agreement" means the agreement so entitled dated 31 July 2012 between the parties thereto.

"Common Terms Agreement Second Amendment Agreement" means the agreement so entitled dated 27 June 2007 between the parties thereto.

"Common Terms Agreement Third Amendment Agreement" means the agreement so entitled dated 8 September 2009 between the parties thereto.

"Commonly Controlled Entity" means an entity, whether or not incorporated, which is under common control with any Obligor 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 Share Pledge**" means the pledge over shares in the Company dated on or about the date of this Agreement between Wynn HK, Wynn International, the Company and the Security Agent.

"**Compensation Proceeds Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Completion Memorandum**" has the meaning given in the Common Terms Agreement Fifth Amendment Agreement.

"**Completion Request**" has the meaning given in the Common Terms Agreement Fifth Amendment Agreement.

"**Compliance Certificate**" means a certificate in substantially the form set out in Schedule 15 (*Form of Compliance Certificate*).

"**Concession Contract**" means the concession contract dated 24 June 2002 between the Macau SAR and the Company for the operation of games of chance and other games in casinos in the Macau SAR.

"**Concession Contract Performance Bond**" means the guarantee to be provided under article 61 of the Concession Contract.

"**Confidentiality Undertaking**" means a confidentiality undertaking in substantially the form set out in Part C of Schedule 11 (*Transfers and Accession*) or any other form agreed between the Company and the Intercreditor Agent.

"**Construction Disbursement Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Contractual Obligation**" means, 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.

"**Contribution**" has the meaning given to such term in paragraph (a) of the definition of "Specified Equity Contributions" in this Clause 1.1 (*Definitions*).

"**Corporate Administrative Fees**" means any fees payable by the Company to Wynn Resorts pursuant to the Corporate Administrative Fees Agreement in respect of any corporate administrative overhead costs incurred by Wynn Resorts in relation to its management of the Wynn Resorts Group.

"**Corporate Administrative Fees Agreement**" means any agreement between the Company and Wynn Resorts regarding, among other things, the payment of the Company's portion of any Corporate Administrative Fees.

"**Corporate Services Provider**" means Wynn Resorts in its capacity as a party to the Corporate Administrative Fees Agreement.

"**Cotai Land Concession Contract**" means the land concession contract agreed to by and between Palo, the Company and the Macau SAR dated 2 May 2012 pursuant to

Dispatch number 16/2012, and includes any novation, assignment, transfer or other Disposition to the Company or replacement thereof in the name of the Company in connection with a Permitted Cotai Reorganisation.

"**Cotai Mortgage**" means the mortgage relating to the Cotai Site dated 15 October 2012 between Palo (or, if Palo's interest in the Cotai Site is transferred to the Company pursuant to a Permitted Cotai Reorganisation, the Company) and the Security Agent.

"**Cotai Opening Date**" means the date upon which all Licenças de Ocupação required pursuant to applicable Legal Requirements in respect of the Cotai Project have been issued by the Macau SAR and the Cotai Project is open for business to the general public.

"**Cotai Power of Attorney**" means the irrevocable power of attorney dated on or about the Fifth Amendment Effective Date granted by Palo (or, if Palo's interest in the Cotai Site is transferred to the Company pursuant to a Permitted Cotai Reorganisation, the Company) in favour of the Security Agent in connection with the Cotai Mortgage.

"**Cotai Project**" means a luxury hotel resort, retail and entertainment complex and casino facilities known as "**Wynn Palace**" being designed, developed and constructed, and to be operated and maintained, on land leased under the Cotai Land Concession Contract (excluding any Excluded Project located on a portion of the Cotai Site).

"**Cotai Resort Management Agreement**" means any agreement entered into by the Company and/or Palo (that does not conflict with the Cotai Land Concession Contract and all other applicable Legal Requirements) with an Excluded Subsidiary or other third party in connection with the use by such Excluded Subsidiary or other third party of a portion of the Cotai Site for the purposes of an Excluded Project.

"**Cotai Site**" means the land described in the Cotai Land Concession Contract.

"**Cotai Site Easements**" means the easements appurtenant, easements in gross, licence agreements and other rights running for the benefit of Palo (or, if Palo's interest in the Cotai Site is transferred to the Company pursuant to a Permitted Cotai Reorganisation, the Company) and/or appurtenant to the Cotai Site.

"**Cotai Site Facilities**" means

- (a) the Cotai Site; and
- (b) the Project Works (whether completed or uncompleted) in respect of the Cotai Project.

"**CP Satisfaction Date**" means the date on which all conditions precedent (as set out in Part A of Schedule 2 (*Conditions Precedent*) as at the Fourth Amendment Effective Date) have been satisfied in accordance with (and as set out in) sub-clause 2.1.2 of Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) as at the Fourth Amendment Effective Date.

"**Current Assets**" means, at any date, all amounts (other than cash) which would, in conformity with applicable GAAP, be set forth opposite the caption "total current

assets" (or any like caption) on a balance sheet of the Restricted Group at such date prepared on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Current Assets and (ii) is in any way derived from or attributable or otherwise connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

"Current Liabilities" means, at any date, all amounts that would, in conformity with applicable GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a balance sheet of the Restricted Group at such date prepared on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of reducing Current Liabilities and (ii) is in any way derived from or attributable or otherwise connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof), but excluding:

- (a) the current portion of any Funded Debt of any member of the Restricted Group; and
- (b) without duplication of paragraph (a) above, all Financial Indebtedness consisting of Revolving Credit Facilities Advances to the extent otherwise included therein.

"Debenture" means the debenture so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"Decision" means the giving of a consent, the making of an agreement or the exercise of any other right, power, discretion or determination in respect of any matter which, under this Agreement or any other Senior Finance Document, requires such consent, agreement or exercise to be given or made by more than one Senior Secured Creditor or by the Required Lenders.

"Decision Date" has the meaning given in Clause 33.1 (*Notices of Required Decisions*).

"Deed of Appointment and Priority" means the deed so entitled dated on or about the date of this Agreement between, among others, the Lenders, the Performance Bond Provider, the Company, the Agents and the Security Agent.

"Default" means an Event of Default or any event or circumstance specified in Schedule 10 (*Events of Default*) hereto which would become (with the expiry of a grace period, the giving of notice, the making of any determination as permitted under the Senior Finance Documents or any combination of any of the foregoing) an Event of Default.

"Defaulting Lender" means any Lender:

- (a) which has rescinded or repudiated a Finance Document; or
- (b) with respect to which an Insolvency Event has occurred and is continuing.

"Derivatives Counterparty" has the meaning given in paragraph 6 of Part B of Schedule 5 (*Covenants*).

"Designated Jurisdiction" means, at any time, any country, region or territory to the extent that such country, region or territory (or portion thereof) itself is the subject of any Sanctions.

"Designated Person" means a Person:

- (a) listed in the annex to, or otherwise subject to the provisions of, the Executive Order;
- (b) named as a "Specially Designated National and Blocked Person" on the most current list published by Office of Foreign Assets Control of the U.S. Department of the Treasury at its official website or any replacement website or other replacement official publication of such list; or
- (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or who or which is the subject of any Sanctions *provided* that such Person is named as a "prohibited person", "prohibited entity" or equivalent or, as the case may be, who or which is named as a Person that is the subject of any Sanctions (in each case) on any list published by any Governmental Authority (including, without limitation, the authorities referred to in the definition of "Sanctions" in this Clause 1.1 (*Definitions*)) pursuant to or otherwise in connection with any Anti-Terrorism Laws or any Sanctions.

"Development Accounts" means each Development Account (as defined in each of the Term Facility Agreement and the Revolving Facility Agreement).

"DICJ Authorisation" means:

- (a) the approval by the Macau SAR government of the financial indebtedness in respect of the Term Facility and the Revolving Credit Facility, as set forth in the submission made by the Company to the Macau SAR government on 24 August 2015;
- (b) the Macau SAR government having confirmed that the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (as amended, consolidated, supplemented, novated or replaced from time to time) continue to apply with respect to such financial indebtedness; and
- (c) if the Company requests an Advance under an Additional Lender Facility:
 - (i) the approval by the Macau SAR government of the financial indebtedness in respect of the Additional Lender Facility, as set forth in the submission made by the Company to the Macau SAR government in connection therewith; and

- (ii) the Macau SAR government having confirmed that the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (as amended, consolidated, supplemented, novated or replaced from time to time) continue to apply with respect to such financial indebtedness.

"Direct Agreements" means each of the following documents:

- (a) the Gaming Concession Consent Agreement;
- (b) the Land Concession Consent Agreement;
- (c) the Account Bank Notices and Acknowledgements; and
- (d) the Insurer Notices and Acknowledgements.

"Direct Insurances" means a contract or policy of insurance of any kind from time to time taken out or effected by or on behalf of or in favour of the Company or any other member of the Restricted Group (whether or not in conjunction with any other Person) with one or more insurers in accordance with the terms of paragraph 10 of Part A of Schedule 5 (*Covenants*).

"Direct Insurer" means the insurer(s) with whom a Direct Insurance is placed from time to time in accordance with paragraph 10 of Part A of Schedule 5 (*Covenants*)

"Disposition" means, with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (whether legal or equitable); and the terms "Dispose", "Disposed" and "Disposed of" shall have correlative meanings.

"Disqualified Stock" means any Capital Stock or other ownership or profit interest of any Obligor that any Obligor 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 thereof for consideration other than Capital Stock (other than Disqualified Stock).

"EBITDA" means, in relation to any period, the Net Income of the Restricted Group for such period *plus*, without duplication and to the extent reflected as a charge in the Company's statement of such Net Income for such period, the sum of:

- (a) income Tax expense (whether or not paid during such period) other than Tax on gross gaming revenue;
- (b) amortization or write-off of debt discount and debt issuance costs and interest, commissions, discounts and other fees and charges associated with Financial Indebtedness (including the Advances);
- (c) depreciation and amortization expense;
- (d) amortization of intangibles (including goodwill);

- (e) an amount equal to the aggregate net non-cash loss on the Disposition of Property during such period (other than sales of inventory in the ordinary course of business);
- (f) any extraordinary expenses or losses;
- (g) any foreign currency translation losses;
- (h) any corporate expenses;
- (i) any expense that is non-recurring in nature;
- (j) stock-based compensation;
- (k) pre-opening and development expenses;
- (l) Approved IP Fees paid in accordance with paragraph 6.1 of Part B of Schedule 5 (*Covenants*); and
- (m) Specified Equity Contributions,

and *minus*, without duplication and to the extent included in the statement of such Net Income for such period, the sum of:

- (n) interest income;
- (o) an amount equal to the aggregate net non-cash gain on the Disposition of Property during such period (other than sales of inventory in the ordinary course of business);
- (p) any extraordinary income or gains;
- (q) any foreign currency translation gains; and
- (r) any upfront premium or similar income or gains derived from, or in connection with the grant of, any Subconcession,

all (including Net Income) as determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing EBITDA and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof) and otherwise in accordance with applicable GAAP.

"ECF Percentage" means, with respect to any period:

- (a) 25% of the Excess Cash Flow if the Leverage Ratio as of the last day of such period is greater than 4.5:1; or
- (b) zero if the Leverage Ratio as of the last day of such period is 4.5:1 or less.

"Effective Date" means the Fifth Amendment Effective Date.

"Eminent Domain Proceeds" means all amounts and proceeds (including monetary instruments) received in respect of any Event of Eminent Domain relating to any member of the Restricted Group or any of its assets, less any costs or expenses incurred by any member of the Restricted Group or its agents in collecting such amounts and proceeds.

"Enforcement Notice" has the meaning given in the Deed of Appointment and Priority.

"Enforcement Proceeds" means all moneys received or recovered by the Security Agent after the Security has become enforceable in accordance with the terms of the Security Documents from the exercise or enforcement of the Security.

"Environment" means land, including any natural or man-made structures; water; and air.

"Environmental Claim" means any formal claim by any Person as a result of or in connection with any material violation of Environmental Law which claim could reasonably be expected to give rise to any remedy or penalty (whether interim or final) or liability for any member of the Restricted Group or any Senior Secured Creditor (in its capacity as such in the transactions contemplated by the Senior Finance Documents).

"Environmental Law" means any law or regulation of the Macau SAR with regard to:

- (a) harm to the health of humans; or
- (b) the pollution or protection of the Environment.

"Environmental Licence" means any material permit, licence, approval, registration, notification, exemption or any other authorisation required under any Environmental Law.

"Equity" means, at any time, the aggregate of the US dollar equivalents of:

- (a) the amounts paid up by the Shareholders by way of subscription for shares in the Company; and
- (b) the amounts advanced to the Company and outstanding at such time by way of Shareholder Loans.

"Equity Issuance" means:

- (a) any allotment or issuance (or the entering into by the Company or any other member of the Restricted Group of any agreement to allot or issue), or any grant to any Person of any right (whether conditional or unconditional) to call for or require the allotment or issuance of, any share or equity interest, or other securities (including without limitation bonds, notes, debentures, stock or similar instrument) which are convertible (whether at the option of the holder(s) thereof, the Company or otherwise) into shares or equity interests in the Company or other member of the Restricted Group, or any depositary receipt(s) in respect of any such share or equity interest; or

- (b) any grant of any option, warrant or other right of acquisition in respect of any such share, equity interest, other security or depositary receipt,

provided that for the avoidance of doubt, "Equity Issuance" shall not include (i) any secondary sales of any shares, equity interests or other securities of the Company or any other member of the Restricted Group by any or all of the holders of such shares, equity interests or other securities or (ii) any allotment or issuance or other grant to the Company or any other member of the Restricted Group of shares, equity interests or other securities in a Subsidiary Obligor.

"Equity Issuance Proceeds" means the amount of the proceeds (if not in cash, the monetary value thereof) of any Equity Issuance after deducting:

- (a) fees and expenses reasonably incurred in connection with such Equity Issuance by the Company or other member of the Restricted Group; and
- (b) any Taxes incurred or required to be paid by the Company or other member of the Restricted Group in connection with such Equity Issuance (as reasonably determined by the Company, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"ERISA" means the Employee Retirement Income Security Act of 1974 of the United States of America, as amended from time to time.

"Event of Default" means any event or circumstance set out in Schedule 10 (*Events of Default*).

"Event of Eminent Domain" means, with respect to any Property:

- (a) 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 Governmental Authority having jurisdiction; or
- (b) any settlement in lieu of paragraph (a) above.

"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 paragraph (b) above.

"Excess Cash Flow" means, in relation to any period, CFADS for such period *plus*, without duplication the US dollar equivalents of:

(a) to the extent included in Net Income for such period, interest income received during such period,

minus, without duplication, the US dollar equivalents of:

- (b) the aggregate amount of Financing Costs paid by the Company or any other member of the Restricted Group in cash during such period;
- (c) the aggregate amount of all prepayments of Advances under the Revolving Credit Facilities during such period to the extent accompanying permanent voluntary reductions of the commitments thereunder and all voluntary prepayments of Term Loan Facility Advances during such period;
- (d) the aggregate amount of all scheduled principal payments of the Company under the Facility Agreements made during such period (other than in respect of any Revolving Credit Facility to the extent there is not an equivalent permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the Company would not be able to reborrow all or any of the amount so prepaid); and
- (e) the aggregate of all other scheduled payments of any Financial Indebtedness permitted to be incurred by a member of the Restricted Group pursuant to paragraphs 2.1(e) and 2.1(f) of Part B of Schedule 5 (*Covenants*) falling due and any voluntary prepayments thereof made during such period (other than in respect of any overdraft or revolving facility to the extent there is not an equivalent permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the relevant member of the Restricted Group would not be able to reborrow all or any of the amount so prepaid),

determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Excess Cash Flow and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof).

"Excluded Account" means any account held by a member of the Restricted Group which:

- (a) is used exclusively for the remittance of remuneration to employees;
- (b) is a zero-balance disbursement account used exclusively for the remittance of vendor payments;
- (c) is established for the exclusive purpose of receiving funds for customers and patrons to establish credit;
- (d) is established for the exclusive benefit of officers, directors and employees in connection with share option schemes, welfare benefit schemes, pension schemes or other similar arrangements; and

- (e) the granting of a Lien in favour of a Senior Secured Creditor in respect thereof would violate applicable law or regulations provided that the Intercreditor Agent has received legal advice (in form and substance reasonably satisfactory to the Intercreditor Agent) to confirm the relevant violation of applicable law or regulation and that such relevant violation cannot be overcome by the relevant member of the Restricted Group (using all commercially reasonable efforts).

"Excluded Amount" means any amount referred to in paragraphs (a) to (e) (inclusive) of the definition of "Excluded Account" in this Clause 1.1 (*Definitions*) that is deposited into an Excluded Account *provided* that such amount must, within five days of such deposit, be applied solely towards the purpose for which that account has been established.

"Excluded Claim Proceeds" means any proceeds of a Recovery Claim which the Company notifies the Intercreditor Agent are, or are to be, applied:

- (a) to satisfy (or reimburse a member of the Restricted Group which has discharged) any liability, charge or claim upon a member of the Restricted Group by a Person which is not a member of the Restricted Group; or
- (b) in the replacement, reinstatement and/or repair of assets of members of the Restricted Group which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are deposited into and retained in an Account pending such application and are so applied within 6 months, or such longer period as the Intercreditor Agent may agree, after receipt.

"Excluded Project" means any gaming, hotel or resort related business, development or undertaking of any kind (including any business, development or undertaking referred to in clause (c) of the definition of "Permitted Businesses" in this Clause 1.1 (*Definitions*)) in the Macau SAR (other than Wynn Macau or the Cotai Project) and, save as contemplated by any Resort Management Agreement therefor in the case of the Company or Palo, neither involving nor permitting any claim, interest, liability, right of recourse of any kind in connection therewith against or in any member of the Restricted Group or its assets, including Wynn Macau and the Cotai Project. For the avoidance of doubt, an Excluded Project may be located on a portion of the Cotai Site *provided that* to the extent any such Excluded Project located on a portion of the Cotai Site is funded by the proceeds of any Advance, such funding is applied solely towards the financing or refinancing of the development costs incurred in relation to such Excluded Project (it being agreed that such development costs include, but are not limited to, costs and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest), and *further provided that* the following additional conditions are met prior to the earlier of entry into of any contract for and the commencement of the construction of an Excluded Project on the Cotai Site:

- (i) the entire Cotai Site shall remain part of the Project Security and subject to the Cotai Mortgage and there shall be no adverse effect on the validity or

enforceability of, or the effectiveness or ranking of any Security of the Finance Parties as a result of the Excluded Project being located on the Cotai Site;

- (ii) the development, operation and maintenance of such Excluded Project:
 - (A) complies in all material respects with all applicable Legal Requirements (including, without limitation, Environmental Laws), the Cotai Land Concession Contract and the Concession Contract; and
 - (B) does not materially interfere with or materially obstruct (or otherwise have any material adverse effect on) the development, operation and maintenance of the Cotai Project; and
- (iii) any claim, interest or liability, or right of recourse of any kind of any counterparty to any Resort Management Agreement, in respect of such Excluded Project against or in the Company, Palo or any other member of the Restricted Group or any of their respective assets (including, without limitation, Wynn Macau and the Cotai Project) is limited to an aggregate amount equal to all revenues derived by the Company (or, as the case may be, Palo) in respect of that Excluded Project and any other assets of the Company (or, as the case may be, Palo) comprised in that Excluded Project (and which do not form part of and are not necessary to ensure to the Restricted Group the full benefit of Wynn Macau or the Cotai Project).

"Excluded Subsidiary" means a Subsidiary of the Company exclusively engaged in the development, financing, ownership, leasing or operation of Excluded Projects on terms which, save as contemplated by any Resort Management Agreement to which such Subsidiary is party in the case of the Company, neither involve nor permit any claim, interest, liability, right of recourse of any kind in connection therewith against or in any member of the Restricted Group or its assets.

"Executive Director" means an individual:

- (a) who is an executive director of the Company, is a Macau permanent resident and holds the Executive Director Shares, pursuant to Clause 2 of Article 19 of Macau SAR Law 16/2001; and
- (b)
 - (i) whose Executive Director Shares are subject to the Executive Director Option Agreement and the Executive Director Share Pledge, in each case entered into by that individual prior to the Fifth Amendment Effective Date; or
 - (ii) (other than the person referred to in sub-paragraph (i) above) who has satisfied all the requirements pursuant to an Executive Director Substitution.

"Executive Director Event" means any of the following events:

- (a) any representation or warranty made or deemed to be made by the Executive Director under the Executive Director Share Pledge proves to have been incorrect in any material respect on or as of the date made or deemed made;
- (b) the Executive Director defaults in the observance or performance of any covenant or agreement contained in the Executive Director Share Pledge in any material respect and such default continues unremedied for a period of 30 days or, provided the Executive Director is diligently pursuing action to remedy the default and it is of a nature that is capable of being remedied, 60 days after the earlier of (i) the Executive Director becoming aware of such default and (ii) receipt by the Executive Director of notice from the Security Agent of such default; or
- (c) the Executive Director commences or there is commenced against the Executive Director any case, proceeding or other action relating to his or her bankruptcy or (ii) the death or incompetency of the Executive Director.

"**Executive Director Option Agreement**" means the option agreement between Mr Wong Chi Seng, Wynn International and the Company delivered on or about 14 September 2004 or such other option agreement entered into between the Company, Wynn International and the Executive Director from time to time.

"**Executive Director Share Pledge**" means the document formerly entitled "Wong Share Pledge" dated on or about 14 September 2004 between the Executive Director and the Security Agent.

"**Executive Director Shares**" means (as the context requires):

- (a) the Existing Executive Director Shares; or
- (b) the New Executive Director Shares.

"**Executive Director Substitution**" means each of the following having occurred:

- (a) the Macau SAR government has approved a new executive director of the Company in accordance with the Concession Contract (the "**New Executive Director**") and, if applicable, the issuance of the New Executive Director Shares to the New Executive Director (including the Security over such New Executive Director Shares as contemplated by paragraph (d) below) and the cancellation of the Existing Executive Director Shares;
- (b) the Executive Director has transferred all of the Existing Executive Director Shares to the New Executive Director or New Executive Director Shares have been issued to the New Executive Director and the Existing Executive Director Shares have been cancelled on or prior to such issuance;
- (c) any other contracts and accessions to existing contracts by the New Executive Director, the Company and any other relevant Obligor as are necessary or desirable in order for the New Executive Director to step into the Executive Director's position and role as executive director of the Company and owner of the Executive Director Shares have been entered into; and

- (d) the New Executive Director has duly executed and, (where applicable) the Company has provided the Intercreditor Agent with, any acknowledgement, confirmation and/or such other documents as the Intercreditor Agent, acting on the advice of its legal counsel, shall deem appropriate to ensure (1) the Existing Executive Director Shares are pledged in the same manner after the occurrence of the steps set out in paragraphs (a) to (c) (inclusive) above as such shares are pledged prior to the occurrence of the steps set out in paragraphs (a) to (c) (inclusive) above, such that the New Executive Director will be the "Pledgor" under the Executive Director Share Pledge and the outgoing Executive Director will no longer be the Pledgor thereunder and will be released from any obligations thereunder or (2) the New Executive Director Shares when issued are pledged in the same manner as the Existing Executive Director Shares are pledged prior to the occurrence of the steps set out in paragraphs (a) to (c) (inclusive) above,

in each case, in form and substance satisfactory to the Intercreditor Agent (acting reasonably), and following the occurrence of each of the steps set out in paragraphs (a) to (d) above and the Intercreditor Agent confirming its satisfaction thereto, the New Executive Director shall be (for the purposes of the Senior Finance Documents) the Executive Director (pursuant to paragraph (b)(ii) of the definition set out in Clause 1.1 (*Definition*)) (it being agreed and acknowledged that the Intercreditor Agent is not obliged to obtain any further instructions, authorizations or consents from the Lenders (or any of them) or from any other Senior Secured Creditor in respect of confirming its satisfaction as so contemplated by this paragraph (and that the Lenders and the other Senior Secured Creditors party to this Agreement so authorise the Intercreditor Agent to provide such confirmation on being so satisfied)).

"Executive Order" means Executive Order 13224 on Terrorist Financing: Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, Or Support Terrorism issued September 23, 2001, as amended by Order 13268.

"Existing Executive Director Shares" means the shares in the Company held by the Executive Director as at the Fifth Amendment Effective Date and having *de minimis* economic interest.

"Facility" means any of:

- (a) the Term Loan Facilities; or
- (b) the Revolving Credit Facilities.

"Facility Agents" means the Term Facility Agent, the Revolving Credit Facility Agent and each Additional Facility Agent.

"Facility Agreements" means:

- (a) the Term Facility Agreement;
- (b) the Revolving Credit Facility Agreement; and
- (c) each Additional Lender Facility Agreement.

"Facility Office" means the office or offices notified by a Senior Secured Creditor to the relevant Facility Agent under the Facilities and by the relevant Facility Agent to the Company and the Intercreditor Agent in writing on or before the date it becomes a Senior Secured Creditor (or, following that date, by not less than 10 Business Days' written notice) as the office or offices through which it shall perform its obligations under the relevant Facility.

"Fee Letters" means each of the fee letters entered into from time to time between the Company on the one hand and any of the Agents and the Security Agent on the other hand.

"Fifth Amendment Effective Date" has the meaning given in the Common Terms Agreement Fifth Amendment Agreement.

"Fifth Amendment Effective Date Fee Letters" means the Fee Letters referred to in Schedule 1 (*Conditions Precedent*) of the Common Terms Agreement Fifth Amendment Agreement.

"Fifth Amendment Signing Date" means the date of the Common Terms Agreement Fifth Amendment Agreement.

"Final Repayment Date" means:

- (a) in relation to the Term Facility, the sixth anniversary of the Fifth Amendment Effective Date; and
- (b) in relation to an Additional Lender Facility providing for a term loan, the date set forth in the applicable Additional Lender Facility Agreement.

"Finance Document" has the meaning given in the Deed of Appointment and Priority.

"Finance Party Accession Undertaking" has the meaning given in the Deed of Appointment and Priority.

"Financial Indebtedness" means, in relation 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 purchase price of Property or services to the extent the payment of such obligations is deferred for a period in excess of 90 days (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 (unless 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 (to the extent treated as finance or capital lease obligations in accordance with applicable GAAP) or Synthetic Lease Obligations of such Person;
- (f) any indebtedness of such Person for or in respect of receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis or on a basis where recourse is limited solely to warranty claims relating to title or objective characteristics of the relevant receivables);
- (g) any indebtedness of such Person in respect of any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) all indebtedness of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities;
- (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person;
- (j) all obligations of such Person in respect of Swap Agreements or any other derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;
- (k) all Guarantee Obligations of such Person in respect of obligations (whether of such Person or another Person) of the kind referred to in paragraphs (a) through (j) above;
- (l) all obligations of the kind referred to in paragraphs (a) through (k) 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; and
- (m) 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.

"Financing Costs" means:

- (a) interest, fees, commissions, costs and expenses payable by the Company under the Senior Finance Documents;
- (b) interest, fees, commissions, costs and expenses payable by the Company under the Performance Bond Facility;
- (c) amounts payable by the Company under Clause 10 (*Changes to the Calculation of Interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) and Clause 13 (*Currency and Other Indemnities*);

- (d) any other amounts of interest, fees, commissions, discounts, prepayment penalties or premiums and other finance payments payable in respect of Financial Indebtedness permitted to be incurred by a member of the Restricted Group pursuant to paragraphs 2.1(e) and 2.1(f) of Part B of Schedule 5 (*Covenants*);
- (e) any amounts of dividends, disbursements or other payments payable for the purpose of paying any amount with respect to Guaranteed WML Debt (pursuant to paragraph 6.1(v) of Part B of Schedule 5 (*Covenants*));
- (f) net amounts payable by the Company under any Hedging Agreement and Permitted Swap Transaction; and
- (g) any value added or other taxes payable by the Company or any other member of the Restricted Group in respect of paragraphs (a) through (f) above and, save to the extent already included in paragraph (c) above, any withholding tax on a party under a Senior Finance Document, the Performance Bond Facility or any other agreement relating to the provision of Financial Indebtedness referred to above in respect of which the Company or any other member of the Restricted Group has an obligation to gross up.

"**FinCEN**" means the Financial Crimes Enforcement Network of the U.S. Department of the Treasury.

"**Fiscal Quarter**" means any one of the four consecutive three calendar month periods comprised in a Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Company, the Restricted Group and the Wynn Obligors ending on 31 December of each calendar year.

"**Fitch**" means Fitch Ratings Ltd.

"**Floating Charge**" means the charge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"**Fourth Amendment Effective Date**" has the meaning given in the Common Terms Agreement Fourth Amendment Agreement.

"**Fundamental Term**" means, in respect of a Senior Finance Document:

- (a) the definitions of Required Lenders and Fundamental Term in Clause 1.1 (*Definitions*) and Clause 34 (*Amendments and Waivers*);
- (b) the provisions setting out the date for, or the amount of, or the currency of, any payment of principal (other than Clause 8.2 (*Voluntary Prepayment of the Term Loan Facilities*)) or interest under a Senior Finance Document or any interest rate hedging payment to a Hedging Counterparty (but excluding, in each case, any amendment bringing forward the date of any such interest rate hedging payment or increasing the amount of any such interest rate hedging payment);
- (c) [Not used];

- (d) the provisions setting out the amount of a Lender's Available Commitment under a Facility (otherwise than by a transfer in accordance with the terms of this Agreement) or the duration of its availability or any additional obligation on a Lender to lend money or provide any other form of credit;
- (e) a term which expressly requires the consent of each Lender or Senior Secured Creditor;
- (f) the priority or ranking of any Security or the Secured Obligations (and any other provisions which, if amended, would have the effect of changing the priority or ranking thereof);
- (g) the provisions dealing with the order of distribution on partial payment by the Company or the proceeds of Security;
- (h) paragraph 2.1(e) of Part B of Schedule 5 (*Covenants*) or paragraph 2.1(f) of Part B of Schedule 5 (*Covenants*);
- (i) Clause 25 (*Sharing Among the Senior Secured Creditors*); and
- (j) Clause 33 (*Intercreditor Arrangements*).

Notwithstanding the above:

- (i) unanimity among the Lenders and Hedging Counterparties shall not be required with respect to any changes, additions, deletions, modifications or supplements (herein "changes") comprised in any amendment to the Deed of Appointment and Priority made in accordance with paragraph (c) of clause 24.1 (*Required Consents*) of the Deed of Appointment and Priority with respect to subparagraphs (a), (e), (f), (g), (h) and (j) above and any Decision related to such changes shall be effected pursuant to subparagraph (a) of the definition of "Required Lenders" in this Clause 1.1 (*Definitions*) (and as if a Hedging Voting Right Event had occurred and was continuing in relation to each Hedging Counterparty) *provided* that, in each case, the Senior Secured Creditors' rights, benefits and interests in respect of the First Ranking Liabilities (as defined in the Deed of Appointment and Priority) and the Security, the enforcement thereof and the priority and ranking of their claims in respect thereof and the subordination thereto of all other claims, remain unaffected by any such changes; and
- (ii) any amendment or waiver that is an Affected Lender Decision may be made in accordance with Clause 34.5 (*Amendment and Waiver of an Affected Lender Decision*).

"Funded Debt" means, in relation to any Person, all Financial Indebtedness of such Person of the types described in sub-clauses (a) through (g) of the definition of "Financial Indebtedness" in this Clause 1.1 (*Definitions*).

"Funds" means any funds that are unconditionally available and have been made available, raised, procured or obtained in a manner that does not breach the terms of this Agreement, including such amount of Financial Indebtedness permitted to be created, incurred, assumed or allowed to remain outstanding pursuant to paragraph 2.1(e) of Part B of Schedule 5 (*Covenants*) as, when aggregated with all other amounts of Financial Indebtedness permitted to be created, incurred, assumed or allowed to remain outstanding pursuant to paragraph 2.1(e), does not exceed USD500,000,000 or its equivalent.

"GAAP" means, in respect of the Company and other members of the Restricted Group, IFRS and, in respect of any Wynn Obligor, generally accepted accounting principles in the United States of America as in effect from time to time.

"Gaming Concession Consent Agreement" means the Agreement Relating to Security (with the Exclusion of Land Concession and Immovable Property) between the Government of the Macau SAR, the Company and the Security Agent and the Supplement in respect thereof dated 14 September 2005.

"Global Coordinating Lead Arrangers" or **"GCLAs"** means the Mandated Lead Arrangers and Bookrunners, the Mandated Lead Arrangers, the Lead Arrangers and the Arrangers (each a **"Global Coordinating Lead Arranger"** or **"GCLA"**).

"Governing Documents" means, collectively, as to any Person, the certificate of incorporation, the memorandum and articles of association or bylaws, any shareholders agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation or constituent documents applicable to such Person.

"Governmental Authority" means, as to any Person, the government of the Macau SAR, any other national, state, provincial 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, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, in each case having jurisdiction over such Person, or any arbitrator with authority to bind such Person at law.

"Group" means the Company and each of the Company's Subsidiaries (other than any Excluded Subsidiary) for the time being (including, without limitation, Palo and any other Subsidiary of the Company which becomes an Obligor pursuant to paragraph 27 of Part A of Schedule 5 (*Covenants*)).

"Guarantee" means the guarantee formerly entitled the "Wynn Pledgors' Guarantee" dated on or about the date of this Agreement between Wynn Asia 2, Wynn Holdings, Wynn HK, Wynn International, Palo and the Security Agent, as amended, restated, supplemented and novated by, *inter alia*, the Guarantee Fourth Deed of Amendment and Acknowledgement.

"Guarantee Fourth Deed of Amendment and Acknowledgement" has the meaning given in the Common Terms Agreement Fifth Amendment Agreement.

"Guaranteed WML Debt" means WML Debt in respect of which the Company or any Obligor has incurred, assumed or allowed to remain outstanding any Guarantee

Obligations in compliance with paragraph 2.1(i) of Part B of Schedule 5 (*Covenants*) of this Agreement.

"Guarantee Obligation" means any guarantee, indemnity, letter of credit or other legally binding assurance against loss granted by one Person in respect of any Financial Indebtedness or other liability or obligation of another Person, or any agreement to assume any Financial Indebtedness of any other Person or to supply funds or to invest in any manner whatsoever in such other Person by reason of Financial Indebtedness of such Person; *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 (1) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (2) 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 Company in good faith).

"Hedging Agreements" means any agreement entered into by the Company in accordance with paragraph 1 of Schedule 8 (*Hedging Arrangements*) but, for the avoidance of doubt, excludes any Permitted Swap Transaction.

"Hedging Arrangements" means the requirements concerning interest rate hedging set out in Schedule 8 (*Hedging Arrangements*).

"Hedging Counterparties" means a financial institution identified as such in Part C of Schedule 1 (*The Lenders and Hedging Counterparties*) and the parties, other than the Company, to the Hedging Agreements and who have executed a Hedging Counterparty's Deed of Accession.

"Hedging Counterparty's Deed of Accession" means a deed of accession in substantially the form set out in Appendix 1 to Schedule 8 (*Hedging Arrangements*).

"Hedging Voting Right Event" means, in relation to any Hedging Counterparty, the occurrence and continuation of both of the following events:

- (a) the serving of any notice given by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*); and
- (b) a Realised Hedge Loss is not paid when due under the Hedging Agreement to which such Hedging Counterparty is party.

"HIBOR" in relation to any Facility Agreement, has the meaning given in such Facility Agreement.

"HKD" or **"HK dollars"** denotes the lawful currency of the Hong Kong SAR.

"**HKD Debt Service Account**" means the account so designated in Schedule 6 (*Accounts*).

"**HKD Debt Service Reserve Account**" means the account so designated in Schedule 6 (*Accounts*).

"**HKD Operating Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Hong Kong SAR**" means the Hong Kong Special Administrative Region.

"**IFRS**" means the International Financial Reporting Standards issued by the International Accounting Standards Board or its successor.

"**Increased Costs**" has the meaning given in Clause 12 (*Increased Costs*).

"**Information Memorandum**" means the information memorandum dated August 2015 prepared by the Company in relation to Wynn Macau and the Cotai Project for the purposes of the financing of any or all of the Facilities, and sent to the Lenders on 19 August 2015 by the Intercreditor Agent.

"**Initial Advance**" means the first Advance made under each of the Facilities.

"**Insolvency Event**" in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or

- (ii) (is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Insurance" means a Direct Insurance or a Reinsurance.

"Insurance Proceeds" means all amounts and proceeds (including monetary instruments) paid under any insurance policy maintained by the Company or Palo (including, without limitation, any insurance policy required to be maintained by the Company or Palo under any Transaction Document but excluding any public liability, third party liability, workers compensation and legal liability insurances and also excluding any other insurance the proceeds of which are payable to the employees of the Company or Palo) less any costs or expenses incurred by the Company, Palo or their respective agents in collecting such amounts and proceeds.

"Insurer" means a Direct Insurer or a Reinsurer.

"Insurer Notices and Acknowledgements" means the notices and acknowledgements to be delivered to and executed by each Insurer and Reinsurer in accordance with the Assignment of Insurances and the Assignments of Reinsurances, respectively.

"Intellectual Property" means the collective reference to all rights, priorities and privileges relating to intellectual property, including copyrights, patents, trademarks, service-marks, technology, know-how and processes, 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.

"Intercreditor Agent" means Bank of China Limited, Macau Branch in its capacity as intercreditor agent for the Senior Secured Creditors or its successor appointed in accordance with this Agreement.

"Interest Coverage Ratio" means, in relation to any period, the ratio of EBITDA to Financing Costs for such period.

"Interest Payment Date" means each date on which an Interest Period ends.

"Interest Period" means, in relation to any Advance, each period for the calculation of interest in respect thereof ascertained in accordance with Clause 9 (*Interest, Interest Periods and Default Interest*).

"Investment Income" means any interest, dividends or other income arising from or in respect of a Permitted Investment.

"Investment Proceeds" means any net proceeds received upon any disposal, realisation or redemption of a Permitted Investment, but excluding any Investment Income.

"Investments" has the meaning given to it in paragraph 8 of Part B of Schedule 5 (*Covenants*).

"IP Agreement" means the Amended and Restated Fourth Amendment to Intellectual Property Licence Agreement dated 19 September 2009.

"IP Fees" means the "Licensing Fee" as defined in the IP Agreement.

"ISDA Master Agreement" has the meaning given in Schedule 8 (*Hedging Arrangements*).

"ISDA Schedule" means the schedule to the ISDA Master Agreement in form and substance reasonably satisfactory to the Intercreditor Agent.

"Land Concession Contract" means the land concession contract agreed to by the Company with the Macau SAR on 4 June 2004 which forms an integral part of Dispatch number 81/2004.

"Land Concession Consent Agreement" means the Agreement relating to Security under the Land Concession Contract between the Government of the Macau SAR, the Company and the Security Agent and the Supplement in respect thereof dated 14 September 2005.

"Land Security Assignment" means the assignment so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"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.

"Lender" means a Term Facility Lender, a Revolving Credit Facility Lender or an Additional Lender.

"Lending Group" means the Term Lending Group, each Revolving Lending Group and each Additional Lending Group.

"Leverage Ratio" means, in relation to any period, the ratio of Total Debt on the last day of such period to EBITDA for such period.

"LIBOR", in relation to any Facility Agreement, has the meaning given in such Facility Agreement.

"Licensor" has the meaning given in the IP Agreement.

"Lien" means, 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 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 UCC (or equivalent statutes of any jurisdiction)).

"Listing Rules" means the rules as in effect from time to time governing the listing of securities on The Stock Exchange of Hong Kong Limited.

"Livrança Covering Letter" means the letter from the Company to the Security Agent dated on or about the Fifth Amendment Effective Date in relation to the Livranças, duly acknowledged by Palo.

"Livranças" means the promissory notes dated on or about the date of this Agreement issued by the Company and endorsed and payable to the Security Agent.

"London Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Macau Gaming Laws" means Law No. 16/2001 and Administrative Regulation No. 26/2001, as amended from time to time, and other laws promulgated by any Governmental Authority of the Macau SAR and applying to gaming operations in the Macau SAR.

"Macau SAR" means the Macau Special Administrative Region.

"Major Project Document" means any of:

- (a) the Concession Contract;
- (b) the Land Concession Contract;
- (c) the IP Agreement;
- (d) the Performance Bond Facility Agreement;
- (e) the Concession Contract Performance Bond;
- (f) any Resort Management Agreement; and

(g) the Cotai Land Concession Contract.

"Major Project Participants" means:

- (a) each Obligor;
- (b) the Macau SAR; and
- (c) each other Person who is party to a Major Project Document (other than any Resort Management Agreement).

"Market Disruption Event" has the meaning given in Clause 10.2 (*Market disruption*).

"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 or Palo or the Company, the Restricted Group and the Wynn Obligors, taken as a whole;
- (b) the ability of the Company or any other Obligor to perform its obligations under the Senior Finance Documents;
- (c) [not used];
- (d) the validity or enforceability of any Senior Finance Document (other than any Palo Security Document *provided that* such material adverse condition or material adverse change in or affecting the validity or enforceability of that Palo Security Document arises as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation);
- (e) the validity, enforceability or priority of any of the Liens purported to be created under any of the Security Documents (other than any of the Palo Security Documents, *provided that* such material adverse condition or material adverse change in or affecting the validity, enforceability or priority of any of the Liens purported to be created under that Palo Security Document arises as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation); or
- (f) the rights and remedies of any Senior Secured Creditor under any Senior Finance Document (other than any Palo Security Document *provided that* such material adverse condition or material adverse change in or affecting the rights or remedies of any Senior Secured Creditor under that Palo Security Document arises as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation).

"**Money Laundering Laws**" has the meaning given to that term in paragraph 33 of Part A of Schedule 5 (*Covenants*).

"**Moody's**" means Moody's Investors Service, Inc or its successor.

"**MOP Operating Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Mortgage**" means the mortgage so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"**Multiemployer Plan**" means a Plan that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA.

"**Net Cash Proceeds**" means:

- (a) in connection with any Asset Sale, the proceeds thereof in the form of cash (including any such proceeds received by way of deferred payment of principal pursuant to a note or instalment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale, net of attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Financial 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) and other 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 attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other fees and expenses, in each case, to the extent actually incurred by the Company or any other member of the Restricted Group in connection therewith.

"**Net Income**" means, in relation to any period, the net income (or loss) of the Restricted Group for such period, determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Net Income and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof) and otherwise in accordance with GAAP without taking account of any amount of cash or cash proceeds paid or received in respect of the grant or entry into any Subconcession and before any reduction in respect of preferred equity dividends.

"**New Executive Director Shares**" means the shares in the Company which constitute a ten percent (10%) non-blocking voting interest in the Company (and having *de minimis* economic interest) issued to a New Executive Director in connection with an Executive

Director Substitution on or prior to the cancellation of the Existing Executive Director Shares.

"**Notional Amount**", in relation to a Hedging Agreement or a Permitted Swap Transaction, has the meaning referred to in paragraph 10 of Schedule 8 (*Hedging Arrangements*).

"**Novation Certificate**" means a novation certificate in substantially the form set out in Part B of Schedule 11 (*Transfers and Accession*).

"**Obligations**" means:

- (a) all loans, advances, debts, liabilities and obligations howsoever arising, owed by the Company or any other Obligor under the Senior Finance Documents to any Senior Secured Creditors 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 Senior Finance Documents or any of the other Transaction Documents, including all interest (including interest accruing after the maturity of any Advance and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Obligor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, premiums, if any, and any charges, expenses, attorneys' fees and accountants' fees, in each case chargeable to any Obligor in connection with its dealings with such Obligor and payable by such Obligor thereunder;
- (b) any and all sums advanced by any Agent or any Lender in order to preserve the Project Security or preserve any Senior Secured Creditor's security interest in the Project Security as permitted by the Senior Finance Documents; and
- (c) in the event of any proceeding for the collection or enforcement of the Obligations after issuance of an Enforcement Notice, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realising on the Project Security, or of any exercise by any Senior Secured Creditor of its rights under the Security Documents, together with attorneys' fees and court costs, in each case as permitted by the Senior Finance Documents.

"**Obligors**" means the Company, the Wynn Obligors, Palo, the other members of the Restricted Group (in each case, on and from the date on which the requirements of paragraph 27.1 of Part A of Schedule 5 (*Covenants*) have been satisfied in respect of such other member of the Restricted Group) and any party to a Senior Finance Document referred to in paragraph (f) of the definition of "Senior Finance Document" in this Clause 1.1 (*Definitions*) (other than, in each case, the Wynn Non-Obligor Subordination Deed Parties, any Person that accedes to the Subordination Deed on or after the Fifth Amendment Effective Date as a "Wynn Non-Obligor" (or in any additional capacity at the same time as such Person's accession as a "Wynn Non-Obligor"), a Secured Party or a Person who is solely party to an acknowledgement of Security).

"**OFAC**" has the meaning given to that term in paragraph 31 of Part A of Schedule 5 (*Covenants*).

"**Open Market Purchases**" means the purchase of outstanding Advances from a Lender or Lenders by the Company pursuant to secondary market purchases entered into with such a Lender or Lenders as the Company shall see fit.

"**Operatives**" means a shareholder, officer, employee, servant, controlling Person, executive, director, agent, authorised representative or Affiliate of any of the Obligors.

"**Palo**" means Palo Real Estate Company Limited a company with limited liability incorporated in the Macau SAR with registration number 27319 SO.

"**Palo Assignment of Insurances**" means the Palo Assignment of Onshore Insurance Policies entered into between Palo and the Security Agent on 15 October 2012.

"**Palo Floating Charge**" means the charge so entitled entered into between Palo and the Security Agent on 15 October 2012.

"**Palo Pledge over Onshore Accounts**" means the pledge so entitled dated on or about the Fourth Amendment Effective Date and made between Palo and the Security Agent.

"**Palo Share Pledge**" means the Share Pledge entered into between the Company, Wynn International, Wynn HK, Palo and the Security Agent on 15 October 2012.

"**Palo Security Documents**" means (in each case, from the date thereof):

- (a) the Cotai Mortgage;
- (b) the Cotai Power of Attorney;
- (c) the Palo Assignment of Insurances;
- (d) the Palo Floating Charge;
- (e) the Palo Pledge over Onshore Accounts; and
- (f) the Palo Share Pledge.

"**Patacas**" or "**MOP**" denotes the lawful currency of the Macau SAR.

"**Performance Bond Facility**" means a facility extended to the Company by the Performance Bond Provider in accordance with the terms of the Performance Bond Facility Agreement for the issuance of the Concession Contract Performance Bond and subordinated to amounts owed to the Senior Secured Creditors under the Senior Finance Documents in accordance with the Deed of Appointment and Priority.

"**Performance Bond Facility Agreement**" means the agreement dated as of 14 September 2004 between the Performance Bond Provider and the Company.

"Performance Bond Provider" means Banco Nacional Ultramarino, S.A. or such other Person as may be acceptable to the Intercreditor Agent.

"Permits" means all approvals, licences, consents, permits, authorisations, registrations and filings, necessary in connection with the execution, delivery or performance, admission into evidence or enforcement of the Transaction Documents and all material approvals, licences, consents, permits, authorisations, registrations and filings required for the development, construction, ownership or operation of Wynn Macau and the Cotai Project, in each case, as contemplated under the Transaction Documents.

"Permitted Businesses" means:

- (a) the development, construction, ownership, operation, management, maintenance, refurbishment, enhancement and financing of hotel resorts and casinos in the Macau SAR as permitted under the Concession Contract;
- (b) the operation of casino games of chance or other forms of gaming in one or more locations in the Macau SAR in connection with Wynn Macau, the Cotai Project or any Excluded Project, in each case as permitted under the Concession Contract and, in the case of any Excluded Project, as contemplated by the Resort Management Agreement entered into by the Company in respect thereof; and
- (c) the ownership, operation or oversight of food and beverage, spa, entertainment production, convention, retail, residential, foreign exchange, transportation and outsourcing of in-house facilities, businesses or other activities which are necessary for, incident to, arising out of, supportive of or connected to the development, construction, financing, ownership, operation, maintenance, refurbishment or enhancement of such hotel resorts and casinos,

and, in the case of the Company and other members of the Restricted Group, the holding of shares and other interests permitted hereunder in Subsidiary Obligors and Excluded Subsidiaries.

"Permitted Cotai Reorganisation" means any transaction or series of transactions in which Palo Disposes to the Company Palo's interest in the Cotai Site (whether by assignment, novation, transfer or replacement of the Cotai Land Concession Contract or otherwise) and Palo's ownership of, and interest in, all of Palo's other assets (including, without limitation, assets relating to the Cotai Site and/or the Cotai Project) *provided* that, in any such case:

- (i) such Disposal, does not conflict with the Cotai Land Concession Contract, the Concession Contract and applicable Legal Requirements (taking into account any relevant Macau SAR Permits obtained or to be obtained as a condition to any such Permitted Cotai Reorganisation);
- (ii) the Company gives prompt written notice to the Intercreditor Agent of the occurrence of such Disposal (and such written notice includes a confirmation that both the Company and Palo are then (and will, following the completion of such Disposal, be) Solvent);

- (iii) the entire Cotai Site shall remain at all times part of the Project Security and there shall be no adverse effect on the validity or enforceability of, or the effectiveness or ranking of any Security as a result of such Disposal; and
- (iv) (without prejudice to paragraph (iii) above) the Company complies with paragraph 15 of Part A of Schedule 5 (*Covenants*) with respect to its acquisition of any Disposed Property.

"Permitted Financial Indebtedness" has the meaning given in paragraph 2.1 of Part B of Schedule 5 (*Covenants*).

"Permitted Investments" means the following:

- (a) 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 nine months from the date of acquisition;
- (b) securities issued, or directly and fully guaranteed or insured, by the government of the Hong Kong SAR or any agency or instrumentality of the government of the Hong Kong SAR (as long as the full faith and credit of the Hong Kong SAR is pledged in support of those securities) having maturities of not more than nine 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 in paragraph (a) or (b) above, of 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 paragraphs (a), (b) and (c) above entered into with any financial institution meeting the qualifications specified in paragraph (c) above;
- (e) commercial paper having a rating of A-1, P-1 or F1 from one or more of S&P, Moody's or Fitch respectively and in each case maturing within nine months after the date of acquisition;
- (f) corporate bonds having a rating of at least BBB-, Baa3 or BBB from two or more of S&P, Moody's or Fitch respectively, with an aggregate principal amount not exceeding (when aggregated with the principal amount of any Dim Sum Bonds then held by any Obligor pursuant to paragraph (h) below) USD250,000,000 or its equivalent at any time;
- (g) money market or mutual funds which are rated at least AAA by S&P or Aaa by Moody's or have an equivalent rating from another internationally recognised rating agency; and

- (h) corporate bonds denominated in Renminbi (commonly known as "offshore RMB" or "Dim Sum" bonds) which do not satisfy the ratings requirements set out in paragraph (f) above ("**Dim Sum Bonds**") with an aggregate principal amount not exceeding USD100,000,000 or its equivalent at any time.

"**Permitted Liens**" means the collective reference to:

- (a) in the case of any Property other than any Pledged Stock, Liens permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto (but only of the priority and to the extent of coverage expressly set forth in paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto); and
- (b) in the case of any Property consisting of Pledged Stock, non-consensual Liens permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto to the extent arising by operation of law.

"**Permitted Loan Repurchase**" means any purchase of Advances by the Company made in accordance with Clause 21.10 (*Permitted Loan Repurchases*); *provided that*:

- (a) the aggregate amount paid by the Company for such purchases (excluding payments of accrued interest) during the period commencing on the Fifth Amendment Effective Date and ending on (and including) the Release Date shall not exceed the Permitted Loan Repurchase Amount; and
- (b) each such purchase is either an Open Market Purchase or is consummated pursuant to a written offer made to all Term Facility Lenders (if the Company proposes to purchase Advances under the Term Facility), all Revolving Credit Facility Lenders (other than Additional Lenders) (if the Company proposes to purchase Advances under a Revolving Credit Facility that is not an Additional Lender Facility), all Additional Lenders party to the applicable Additional Lender Facility (if the Company proposes to purchase Advances under such Additional Lender Facility), and delivered to the Intercreditor Agent concurrently with the delivery of such offer to the applicable Lenders.

"**Permitted Loan Repurchase Amount**" means USD200,000,000.

"**Permitted Swap Transaction**" means any derivative transaction entered into to protect against or benefit from any Obligor's exposure to fluctuations in any rate, price, index or credit rating (whether in relation to interest rates, commodity prices, currency exchange or otherwise) but excluding any transaction entered into for purely speculative purposes.

"**Person**" means any natural person, corporation, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"**Plan**" means, 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 any Obligor or any Commonly Controlled Entity maintains, administers, contributes to

or is required to contribute to or under which any Obligor or any Commonly Controlled Entity could reasonably be expected to incur any liability.

"Pledge over Gaming Equipment and Utensils" means the pledge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"Pledge over Onshore Accounts" means the pledge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

"Pledged Stock" means any Property expressed to be subject to any Lien created or purported to be created under all and any of the Company Share Pledge, the Palo Share Pledge, the Wynn International Share Charge and the Wynn HK Share Charge.

"Post-Amendment Global Transfer Agreement" has the meaning given in the Common Terms Agreement Fifth Amendment Agreement.

"Power of Attorney" means the irrevocable power of attorney dated on or about the Fifth Amendment Effective Date granted by the Company in favour of the Security Agent in connection with the Mortgage.

"Pre-Amendment Global Transfer Agreement" has the meaning given in the Common Terms Agreement Fifth Amendment Agreement.

"Proceedings" has the meaning given to it in paragraph 12(i) of Part A of Schedule 5 (*Covenants*) hereto.

"Project Security" means any Property expressed to be subject to any Lien created or purported to be created under any of the Security Documents.

"Project Works" means the design, development and construction of the Cotai Project.

"Projections" has the meaning given in paragraph 2(c) of Part A of Schedule 5 (*Covenants*).

"Property" means any property or assets including without limitation any right or interest (whether legal or equitable) in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

"Quarterly Date" means:

- (a) with respect to the first Quarterly Date, the last day of the first full Fiscal Quarter falling after the Fifth Amendment Effective Date; and
- (b) with respect to each subsequent Quarterly Date, the last day of the next succeeding Fiscal Quarter.

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two London Business Days before the first day of that period or, in the case of any interest rate determined using HIBOR, the first day of that period.

"**Realised Hedge Loss**" has the meaning given in paragraph 7 of Schedule 8 (*Hedging Arrangements*).

"**Recovering Senior Secured Creditor**" has the meaning given in Clause 25.1 (*Payments to Senior Secured Creditors*).

"**Reference Banks**", in relation to any Facility Agreement, has the meaning given in such Facility Agreement.

"**Reinsurance**" means any contract or policy of reinsurance from time to time taken out or effected in respect of any Direct Insurance.

"**Reinsurer**" means an international reinsurer of good standing and responsibility with whom a Reinsurance is placed from time to time in accordance with paragraph 10 of Part A of Schedule 5 (*Covenants*).

"**Release Date**" means the date on which the Intercreditor Agent notifies the Company that the following conditions have been satisfied:

- (a) receipt by the Intercreditor Agent of confirmation from each Agent and Hedging Counterparty that all liabilities to its Lending Group or, as the case may be, to it have been discharged in full under the Senior Finance Documents; and
- (b) unless the discharge in paragraph (a) above is effected using the proceeds of Financial Indebtedness incurred pursuant to paragraph 2.1(d) of Part B of Schedule 5 (*Covenants*), receipt by the Intercreditor Agent of a legal opinion from the Lenders' Macanese counsel in a form satisfactory to the Intercreditor Agent on the basis of which the Intercreditor Agent is able to determine that the risk of the discharge of the Financial Indebtedness owed by the Company to the Senior Secured Creditors in accordance with the Senior Finance Documents not being recognised or deemed to be discharged under the insolvency laws of the Macau SAR is acceptable to the Intercreditor Agent.

"**Renminbi**" or "**RMB**" denotes the lawful currency of the People's Republic of China.

"**Repair Plan**" has the meaning given in paragraph 5 of Schedule 9 (*Mandatory Prepayment*).

"**Repayment Date**" means:

- (a) in relation to the Term Facility, each of the dates on which repayments of principal are scheduled to be made, as set forth in the Term Facility Agreement; and
- (b) in relation to an Additional Lender Facility providing for a term loan, each of the dates on which repayments of principal are scheduled to be made, as set forth in the applicable Additional Lender Facility Agreement.

"**Reportable Event**" means 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 regulations under ERISA.

"Required Filings" has the meaning given to that term in the Common Terms Agreement Fifth Amendment Agreement.

"Required Lenders" means:

- (a) in relation to any Decision other than on a Fundamental Term, Lenders (and, after the occurrence and continuation of a Hedging Voting Right Event in relation to any Hedging Counterparty, that Hedging Counterparty) who:
 - (i) have notified the Intercreditor Agent of their vote in respect of such Decision within the time required by the Intercreditor Agent pursuant to this Agreement; and
 - (ii) hold, in aggregate, more than 50% of the Voting Entitlements of all such Senior Secured Creditors who have so notified their votes; and
- (b) in relation to a Decision on a Fundamental Term, all Lenders (and, after the occurrence of a Hedging Voting Rights Event in relation to a Hedging Counterparty that is continuing, that Hedging Counterparty).

"Resort Management Agreement" means (a) any agreement entered into by the Company (that does not conflict with the Concession Contract and all other applicable Legal Requirements) with an Excluded Subsidiary or other third party for the management or operation by the Company in compliance with the Concession Contract and all other applicable Legal Requirements of an Excluded Project or any part thereof (other than an Excluded Project or any part thereof located on the Cotai Site) and/or (b) any Cotai Resort Management Agreement.

"Responsible Officer" means, as to any Person in respect of any matter, the chief executive officer, president, managing director, chief financial officer, chief operating officer or treasurer of such Person duly authorised in respect of such matter, but in any event, with respect to financial matters, the chief financial officer or treasurer of such Person or the chief financial officer of WML or Wynn Resorts. Unless otherwise qualified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Company.

"Restricted Group" means the Group other than any Excluded Subsidiary.

"Restricted Payments" has the meaning given to it in paragraph 6 of Part B of Schedule 5 (*Covenants*) hereto.

"Revolving Credit Facilities" means each of the revolving loan facilities to be provided under the Revolving Credit Facility Agreements.

"Revolving Credit Facility Agent" means Bank of China Limited, Macau Branch as facility agent for the Revolving Credit Facility Lenders.

"Revolving Credit Facility Agreements" means:

- (a) the agreement so entitled between the Company, the Revolving Credit Facility Agent and the Revolving Credit Facility Lenders; and
- (b) each Additional Lender Facility Agreement providing for a revolving credit facility.

"Revolving Credit Facility Availability Period" means the period specified in Clause 4.2 (*Revolving Credit Facility Availability Period*).

"Revolving Credit Facility Lender" means:

- (a) a lender identified as such in Part B of Schedule 1 (*The Lenders and the Hedging Counterparties*) or in an Additional Lender Facility Agreement providing for a revolving credit facility; or
- (b) a Transferee in respect of a Revolving Credit Facility made available pursuant to a Revolving Credit Facility Agreement.

"Revolving Credit Facility Termination Date" means, in relation to the Revolving Credit Facilities, the fifth anniversary of the Fifth Amendment Effective Date.

"Revolving Lending Group" means the Revolving Credit Facility Lenders under a Revolving Credit Facility Agreement, acting as a lending group in accordance with, and subject to the decision making rules under, that Revolving Credit Facility Agreement.

"Sanctions" means any sanctions administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury, the Federal Government of Canada or other relevant sanctions authority.

"Secured Obligations" has the meaning given in the Deed of Appointment and Priority.

"Secured Parties" has the meaning given in the Deed of Appointment and Priority.

"Security" means the Liens created or purported to be created under the Security Documents.

"Security Agent" means Bank of China Limited, Macau Branch in its capacity as agent and security trustee for the Secured Parties or its successor appointed in accordance with the Deed of Appointment and Priority.

"Security Confirmation Documents" has the meaning given to that term in the Common Terms Agreement Fifth Amendment Agreement.

"Security Documents" means:

- (a) the Mortgage;
- (b) the Cotai Mortgage;
- (c) the Power of Attorney;

- (d) the Cotai Power of Attorney;
- (e) the Land Security Assignment;
- (f) the Assignment of Rights;
- (g) the Pledge over Gaming Equipment and Utensils;
- (h) the Pledge over Onshore Accounts;
- (i) the Assignment of Insurances;
- (j) the Palo Assignment of Insurances;
- (k) the Assignment(s) of Reinsurances;
- (l) the Floating Charge;
- (m) the Palo Floating Charge;
- (n) the Livranças and the Livrança Covering Letter;
- (o) the Debenture;
- (p) the Palo Pledge over Onshore Accounts;
- (q) the Guarantee;
- (r) the Executive Director Share Pledge;
- (s) the Company Share Pledge;
- (t) the Palo Share Pledge;
- (u) the Wynn International Share Charge;
- (v) the Wynn HK Share Charge;
- (w) the Charge over HK Accounts;
- (x) the Subordination Deed;
- (y) the Deed of Appointment and Priority;
- (z) each Direct Agreement;
- (aa) (with effect from the date thereof) each Supplemental Security Document;
- (bb) any other document from time to time creating, evidencing or entered into as security for or guaranteeing the Obligations of the Company or any other Obligor or member of the Restricted Group and any documents entered into pursuant to any of the documents referred to in this definition, including any such document

notifying or acknowledging the granting or creation of such security or creating or evidencing security over an Account; and

- (cc) any document entered into pursuant to any further assurance provisions set out in any of the documents referred to in this definition which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document and any other document which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document.

"Senior Finance Documents" means:

- (a) each Facility Agreement;
- (b) this Agreement;
- (c) each Security Document;
- (d) the Ancillary Finance Documents;
- (e) each Hedging Agreement; and
- (f) any other document entered into which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Senior Finance Document.

"Senior Secured Creditors" means the GCLAs, the Agents, the Security Agent, the Lenders and the Hedging Counterparties.

"Senior Secured Indebtedness" means all Financial Indebtedness (actual or contingent) of the Company to the Senior Secured Creditors under the Senior Finance Documents together with all other amounts payable by the Company to the Senior Secured Creditors (or any of them) under or arising out of the Senior Finance Documents.

"Shareholder Guarantees" means the Guarantee and the Executive Director Share Pledge.

"Shareholder Loans" means Financial Indebtedness advanced by one or more of the Shareholders, the Wynn Obligors or Affiliates of the Wynn Obligors (including, without limitation, Wynn Resorts, WML or any Affiliate of any of Wynn Resorts or WML) to the Company or any other member of the Group that is subordinated in accordance with the terms provided by the Subordination Deed.

"Shareholders" means Wynn HK, Wynn International and the Executive Director.

"Shareholders' Agreement" means the amended and restated shareholders' agreement entered into between the Shareholders and the Company dated 16 September 2004.

"Sharing Payment" has the meaning given in Clause 25.1 (*Payments to Senior Secured Creditors*).

"**Signing Date**" means the date of signing of this Agreement being 14 September 2004 (and any reference in this Agreement to the date of this Agreement shall be construed accordingly).

"**Single Employer Plan**" means any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"**Site**" means the land described in the Land Concession Contract.

"**Site Easements**" the easements appurtenant, easements in gross, licence agreements and other rights running for the benefit of the Company and/or appurtenant to the Site.

"**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 Legal Requirements. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured or unsecured or (B) 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, secured or unsecured.

"**Special Gaming Tax Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Specified Equity Contributions**" means:

- (a) on and prior to 30 June 2016, any cash contribution (whether by way of equity, debt or otherwise) the proceeds of which are paid to the Company or Palo (each such cash contribution being a "**Contribution**"); and
- (b) after 30 June 2016, any Contribution at any time,

designated by the Company as a "Specified Equity Contribution" in writing to the Intercreditor Agent and made, in each case, in accordance with and as permitted by (and which shall be treated, for all purposes under the Senior Finance Documents, as specified in) the Specified Equity Contributions Conditions.

"**Specified Equity Contributions Conditions**" means each of the following conditions, stipulations and other requirements:

- (a) no more than two Contributions may be made in any period of four consecutive Fiscal Quarters (commencing with the Fiscal Quarter ending on 30 September 2016);
- (b) when two Contributions are made in any period of four consecutive Fiscal Quarters (commencing with the Fiscal Quarter ending on 30 September 2016), no Contribution is permitted to be made at any time during the immediately succeeding period of four consecutive Fiscal Quarters (commencing with the Fiscal Quarter immediately succeeding the Fiscal Quarter in which the second of the two Contributions referenced in this paragraph was made);
- (c) each Contribution shall be deemed to be made on the first day of the relevant Fiscal Quarter in which it is made;
- (d) each Contribution shall only be included in EBITDA where EBITDA is calculated for the purposes of testing compliance with the financial covenants set out in paragraphs 1(a) and 1(b) of Part B of Schedule 5 (*Covenants*) and in EBITDA where EBITDA is calculated for the purposes of determining the Leverage Ratio used in ascertaining the ECF Percentage;
- (e) no Contribution shall be included or taken into account for any purpose (other than as set out in paragraph (d) above) and (without limitation) the effect of each Contribution shall be ignored or excluded (to the extent it would otherwise be taken into account or included under the terms of any Senior Finance Document) in any calculation (other than those specified in paragraph (d) above) for the purposes of (or definitions set out in) the Senior Finance Documents;
- (f) without prejudice to paragraph (e) above, the aggregate amount of all Contributions standing to the credit of any Account or Accounts (as well as the aggregate amount of all Permitted Investments made using such Contributions) shall be excluded for the purposes of paragraph (f) of the definition of "Total Debt" in this Clause 1.1 (*Definitions*); and
- (g) any Contribution:
 - (i) (where made by way of loan or the incurrence of other Financial Indebtedness), constitutes Subordinated Debt; and
 - (ii) (where made by way of equity, being the provision of cash consideration for the issuance of Capital Stock by the relevant Obligors), such issuance of Capital Stock is made, in each case, to the existing direct shareholder of such Obligor and is either subject to the existing first ranking fixed Lien in favour of the Security Agent over the Capital Stock of the Obligor or, if needed (in the opinion of the Intercreditor Agent, acting reasonably), is otherwise in such form and on such terms as the Intercreditor Agent may require.

"**Standard & Poor's**" or "**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or its successor

"**Subconcession**" means any subconcession for the operation of games of chance and other games in casinos in the Macau SAR granted by the Company under the Concession Contract with the approval of Macau SAR and in accordance with paragraph 17 of Part B of Schedule 5 (*Covenants*).

"**Subordinated Debt**" means Financial Indebtedness that is subordinated in accordance with the terms provided by the Subordination Deed.

"**Subordination Deed**" means the deed formerly entitled the "Sponsor's Subordination Deed" and dated on or about the Signing Date between the Wynn Obligors, the Company, Wynn Resorts, Wynn Holdings and the Security Agent as further amended, restated, supplemented and novated by, *inter alia*, the Subordination Deed Third Deed of Amendment and Acknowledgement of Security (as such term is defined in the Common Terms Agreement Fourth Amendment Agreement), the Sponsors' Subordination Deed Second Deed of Amendment and Acknowledgment of Security (as such term is defined in the Common Terms Agreement Third Amendment Agreement) and the Sponsors' Subordination Deed of Release, Amendment and Acknowledgement of Security (as such term is defined in the Common Terms Agreement Second Amendment Agreement) .

"**Subsidiary**" means, 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.

"**Subsidiary Obligor**" has the meaning given to it in paragraph 2.1(g) of Part B of Schedule 5 (*Covenants*).

"**Substitution**" has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

"**Supplemental Security Documents**" has the meaning given to it in Part H of Schedule 2 (*Conditions Precedent*) to the Common Terms Agreement Fifth Amendment Agreement.

"**Swap Agreements**" means interest rate swaps, caps or collar agreements or similar arrangements 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.

"**Synthetic Lease Obligations**" means 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 Financial Indebtedness of such Person (without regard to accounting treatment).

"**Tax**" means any tax (including, without limitation, value-added and income), levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**Tax Deduction**" means any deduction or withholding for or on account of Tax.

"**Tax Payment**" means an increased payment made by the Company to a Senior Secured Creditor under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

"**Term Facility**" means the term loan facilities provided pursuant to the Term Facility Agreement.

"**Term Facility Agent**" means Bank of China Limited, Macau Branch as facility agent for the Term Facility Lenders or its successor appointed in accordance with this Agreement.

"**Term Facility Agreement**" means the agreement formerly entitled the "Hotel Facility Agreement" between the Company, the Term Facility Agent and the Term Facility Lenders as further amended, restated, supplemented and novated from time to time by, *inter alia*, the Term Facility Agreement Fourth Amendment Agreement.

"**Term Facility Agreement Fourth Amendment Agreement**" has the meaning given to such term in the Common Terms Agreement Fifth Amendment Agreement.

"**Term Facility Availability Period**" means the period specified in Clause 4.1 (*Term Facility Availability Period*).

"**Term Facility HKD Disbursement Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Term Facility Lender**" means a lender identified as such in Part A of Schedule 1 (*The Lenders and Hedging Counterparties*) or a Transferee in respect of the Term Facility.

"**Term Facility USD Disbursement Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Term Lending Group**" means the Term Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Term Facility Agreement.

"**Term Loan Facilities**" means each of the term loan facilities provided pursuant to the Term Loan Facilities Agreements.

"**Term Loan Facilities Agreements**" means:

(a) the Term Facility Agreement; and

(b) each Additional Lender Facility Agreement providing for a term loan facility.

"Term Loan Facility Lender" means a Term Facility Lender or an Additional Lender party to an Additional Lender Facility Agreement providing for a term loan facility.

"Termination Event" has the meaning given in paragraph 2 (*Certificates; Other Information*) of Part A of Schedule 5 (*Covenants*).

"Termination Proceeds" means compensation or other proceeds paid by the Macau SAR in relation to the termination or rescission of the Concession Contract.

"Total Debt" means, in relation to the Restricted Group at any time, the aggregate principal amount of all Financial Indebtedness of each member of the Restricted Group at such time (without double counting) but:

- (a) excluding Financial Indebtedness referred to in paragraph (j) of the definition thereof (save in relation to any Realised Hedge Loss);
- (b) excluding Financial Indebtedness arising in respect of the Performance Bond Facility (save in relation to any drawing under the Concession Contract Performance Bond);
- (c) excluding Financial Indebtedness arising in respect of any Shareholder Loans;
- (d) excluding such Financial Indebtedness to the extent it is owed to another member of the Restricted Group;
- (e) including the amount of any liability or obligation, whether or not contingent, assumed by the Company under any Resort Management Agreement and quantified in the same manner as though it were a Guarantee Obligation, in accordance with the deeming provision set out in the definition thereof in this Clause 1.1; and
- (f) subject to paragraph (f) of the definition of "Specified Equity Contributions Conditions" in this Clause 1.1 (*Definitions*), deducting the aggregate amount of any balances standing to the credit of, amounts on deposit in and any Permitted Investments held, in each case, in any Account.

"Transaction Document" means a Senior Finance Document or a Major Project Document (other than any Resort Management Agreement).

"Transfer Date" means, in relation to a Transferee, the later of:

- (a) the proposed Transfer Date specified in the Novation Certificate; and
- (b) the date on which the Intercreditor Agent executes the Novation Certificate.

"Transferee" means a Person to whom the rights and obligations of a Lender under the Senior Finance Documents to which that Lender is a party are transferred in accordance with Clause 21.6 (*Transfers by Lenders*).

"**UCC**" means the Uniform Commercial Code of any State in the United States of America, as in effect from time to time.

"**Unpaid Sum**" means any sum due and payable by an Obligor but unpaid under the Senior Finance Documents.

"**Upfront Premium Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Upsize Advance**" has the meaning given to it in Clause 3.1.3.

"**Upsized Amount**" has the meaning given to it in paragraph 1 of Part H of Schedule 2 (*Conditions Precedent*).

"**USD**" or "**US dollars**" or "**US\$**" denotes the lawful currency of the United States of America.

"**USD Debt Service Account**" means the account so designated in Schedule 6 (*Accounts*).

"**USD Debt Service Reserve Account**" means the account so designated in Schedule 6 (*Accounts*).

"**USD Operating Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Voting Entitlement**" means, in respect of a Decision:

- (a) in relation to a Lender, the sum of the US dollar equivalent amounts, as at the Decision Date for such Decision, of its participations in the outstanding Advances and the aggregate undrawn Available Commitments of such Lender under the Facilities;
- (b) in relation to each Hedging Counterparty (after a Hedging Voting Right Event has occurred in relation to such Hedging Counterparty and is continuing), the US dollar equivalent value, as at the Decision Date for such Decision, of the Realised Hedge Loss due and payable but unpaid by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is party.

"**Voting Stock**" means, 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.

"**WML**" means Wynn Macau, Limited.

"**WML Debt**" means Financial Indebtedness of WML (or a Subsidiary of WML, other than an Obligor, any Excluded Subsidiary or any member of the Group).

"**Wholly Owned Subsidiary**" means, as to any Person, any other Person in which all (or, in the case of a *Sociedade Anonima* incorporated in Macau, not less than 99.8%) of the Capital Stock (other than directors' qualifying shares required by any Legal

Requirement) of such other Person is beneficially owned by such first-mentioned Person directly and/or through other Wholly Owned Subsidiaries.

"Working Capital" means, at any date, an amount equal to Current Assets on such date minus Current Liabilities on such date.

"Wynn Asia 2" means WM Cayman Holdings Limited II.

"Wynn Event" means:

- (a) the first day on which Wynn Resorts ceases to beneficially own, directly or indirectly, 51% of the outstanding Capital Stock of the Company (measured by both voting power and size of equity interests); or
- (b) the first day on which Wynn Resorts otherwise ceases to have, directly or indirectly, the ability or the right to direct or procure the direction of the management and policies of the Company.

"Wynn HK" means Wynn Resorts (Macau), Limited.

"Wynn HK Share Charge" means the share charge so entitled dated on or about the date of this Agreement between Wynn Holdings and the Security Agent.

"Wynn Holdings" means Wynn Resorts (Macau) Holdings, Ltd.

"Wynn International" means Wynn Resorts International, Ltd.

"Wynn International Share Charge" means the share charge so entitled dated on or about the date of this Agreement between Wynn Asia 2 and the Security Agent.

"Wynn Macau" means the luxury hotel resort, casino, retail and entertainment complex located in peninsular Macau, owned and operated by the Company, and including "Encore at Wynn Macau".

"Wynn Non-Obligor Subordination Deed Party" means each of Worldwide Wynn, LLC, Wynn Design & Development, LLC Wynn International Marketing, Ltd., WML Finance I Limited, the Corporate Services Provider and the Licensor.

"Wynn Obligor" means Wynn Holdings, Wynn Asia 2, Wynn International and Wynn HK.

"Wynn Resorts" means Wynn Resorts, Limited.

"Wynn Resorts Group" means Wynn Resorts and each of its Subsidiaries for the time being.

1.3 Principles of Construction

Any reference in this Agreement to:

- 1.3.1 "**continuing**", in relation to a Default or an Event of Default, shall be construed as a reference to a Default or an Event of Default which has not been remedied or waived;
- 1.3.2 the "**equivalent**" of one currency (the "**original currency**") in another currency (the "**conversion currency**") shall (unless otherwise specified) be determined by the Intercreditor Agent or such Person nominated by the Intercreditor Agent for that purpose by reference to its spot rate of exchange in Hong Kong for the purchase of the conversion currency with the original currency at or about 11:00 a.m. on the date of the determination or if no such spot rate of exchange exists on that date, by such other method as the Intercreditor Agent (in consultation with the Company) shall reasonably determine;
- 1.3.3 "**include**", "**includes**" and "**including**" is without limitation;
- 1.3.4 a "**month**" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that:
- (a) if any such numerically corresponding day is not a Business Day, such period shall end on the immediately succeeding Business Day to occur in that next succeeding calendar month or, if none, it shall end on the immediately preceding Business Day; and
 - (b) if there is no numerically corresponding day in that next succeeding calendar month, that period shall end on the last Business Day in that next succeeding calendar month,
- (and references to "**months**" shall be construed accordingly);
- 1.3.5 "**repay**" (or any derivative form thereof) shall, subject to any contrary indication, be construed to include "**prepay**" (or, as the case may be, the corresponding derivative form thereof); and
- 1.3.6 a document being in "**substantially the Agreed Form**" or in substantially a specified form shall be construed as meaning such document being in the same form as the Agreed Form or the specified form save for the insertion of information left in blank or the correction of typographical errors.

1.4 **Rules of Interpretation**

In this Agreement, unless the context otherwise requires:

- 1.4.1 words importing the singular include the plural and vice versa;
- 1.4.2 words importing a gender include every gender;
- 1.4.3 references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, confirmed, novated or replaced from time to time;

- 1.4.4 references to this Agreement are references to this Agreement and the Schedules;
- 1.4.5 references to clauses and Schedules are references to clauses of, and Schedules to, this Agreement;
- 1.4.6 headings are for convenience only and shall be ignored in construing this Agreement;
- 1.4.7 references to any party to this Agreement include references to its respective successors, permitted transferees and permitted assigns;
- 1.4.8 references to law shall be construed as references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgement;
- 1.4.9 references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;
- 1.4.10 references to any judgement include references to any order, injunction, decree, determination or award of any court or tribunal;
- 1.4.11 a time of day is a reference to Hong Kong time unless otherwise stated.

Following the Fourth Amendment Effective Date, any reference to the Hotel Facility Agent or a Hotel Facility Lender in any Senior Finance Document, shall be deemed to be a reference to the Term Facility Agent or a Term Facility Lender, as the case may be.

Following the Fifth Amendment Effective Date, unless the context otherwise requires, the terms "**Wong Option Agreement**" and "**Shareholders Agreement**" shall have the meaning given to each such term in clause 1.5 (*Other Definitions*) of the Deed of Appointment and Priority.

In this Agreement, on and following the date on which (a) a Permitted Cotai Reorganisation and (b) the first to occur of (i) a voluntary liquidation, winding up or dissolution (or similar action) of, or in respect of, Palo and (ii) the date on which all rights, title and interests in, or to, the assets of Palo have been transferred, novated or assigned (as the case may be) to the Company and the Company has assumed all of the rights and obligations of Palo under all contracts to which Palo is party, have each occurred, Palo's obligations under this Agreement shall be deemed to be (and shall be construed as) obligations of the Company.

1.5 **Conflict with a Senior Finance Document**

In the case of any conflict between:

- 1.5.1 the terms of this Agreement and the terms of any other Senior Finance Document (save for the Facility Agreements and the Deed of Appointment and Priority), the terms of this Agreement shall prevail;
- 1.5.2 the terms of this Agreement and the terms of any Facility Agreement, the terms of that Facility Agreement shall prevail (save in the case of Clause 33)

(*Intercreditor Arrangements*), which shall prevail over the terms of the Facility Agreement);

- 1.5.3 the terms of this Agreement and the terms of the Deed of Appointment and Priority, the terms of the Deed of Appointment and Priority shall prevail; or
- 1.5.4 the terms of the Deed of Appointment and Priority and the terms of any Facility Agreement, the terms of the Deed of Appointment and Priority shall prevail.

1.6 **Third party rights**

1.6.1 The Contracts (Rights of Third Parties) Act 1999 applies to:

- (c) sub-clause 3.2.5 of Clause 3.2 (*Completion of an Advance Request*) but only for the benefit of the relevant officer of the Company;
- (d) Clause 23.10 (*No Actions*) but only for the benefit of any director, officer or employee of any of the Agents or any of the GCLAs;
- (e) [Not used];
- (f) paragraph 1 of Part A of Schedule 5 (*Covenants*) but only for the benefit of the relevant Responsible Officers of the Company;
- (g) Clause 18.3 (*Permitted Cotai Reorganisation; Release of Palo Security*), paragraph 15.3 (*Additional Collateral, Discharge of Liens, etc.*) of Part A of Schedule 5 (*Covenants*), paragraph 6 (*Limitation on Restricted Payments*) of Part B of Schedule 5 (*Covenants*), paragraph 15.2(a) (*Other Contracts*) of Part B of Schedule 5 (*Covenants*) and paragraphs 1 and 3.7 of Schedule 6 (*Accounts*) but, in each case, only for the benefit of the Obligors and the Wynn Non-Obligor Subordination Deed Parties;
- (h) Clause 23.9 (*Exclusion of Liabilities*) but only for the benefit of any officer, employee or agent of an Agent or GCLA; and
- (i) Clause 28 (*Non-Recourse Liability*) but only for the benefit of the Operatives,
subject always to the terms of Clause 37 (*Governing Law*) and Clause 38 (*Jurisdiction*).

1.6.2 Except as provided in sub-clause 1.5.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1.6.3 Notwithstanding any term of any Senior Finance Document, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

1.7 [Not used]

1.8 **Application of Agreement**

The parties acknowledge that this Agreement contains references to certain obligations and contracts which have been performed and references to certain matters and circumstances that have occurred, in each case, prior to the Fifth Amendment Effective Date. The existence of such references shall not be construed so as to imply (in respect of such obligations, contracts, matters and circumstances) additional or continuing obligations beyond the express terms of this Agreement.

2. **CONDITIONS PRECEDENT**

2.1 [Not used]

2.2 **Conditions Precedent to each Advance**

The obligation of each Lender to participate in each Advance under a Term Loan Facility and a Revolving Credit Facility is subject to the Company having satisfied the conditions set out in Part B2 of Schedule 2 (*Conditions Precedent*) in respect of each Facility in form and substance acceptable to the Intercreditor Agent.

2.3 **Independent rights and obligations of Lenders**

2.3.12 The obligations of each Senior Secured Creditor under the Senior Finance Documents are several. Failure by a Senior Secured Creditor to perform its obligations under the Senior Finance Documents does not affect the obligations of any other party under the Senior Finance Documents. No Senior Secured Creditor is responsible for the obligations of any other Senior Secured Creditor under the Senior Finance Documents.

2.3.13 The rights of each Senior Secured Creditor under or in connection with the Senior Finance Documents are separate and independent rights and any debt arising under the Senior Finance Documents to a Senior Secured Creditor from an Obligor shall be a separate and independent debt. Each participation by a Lender in an Advance shall constitute a separate and independent debt arising under the Senior Finance Documents to such Lender from the Company of an amount equal to such participation, and references to repayment of an Advance by the Company or to the payment by the Company of interest or any fee or other amount in respect of or in connection with an Advance or determined by reference to the amount of an Advance or a Facility shall be construed accordingly.

2.3.14 A Senior Secured Creditor may, except as otherwise stated in the Senior Finance Documents, separately enforce its rights under the Senior Finance Documents. In relation to any amount due and payable by any Obligor to any Senior Secured Creditor under any Senior Finance Document (whether on account of such Senior Secured Creditor's participation in any Advance that has become due and payable or otherwise), nothing in any Senior Finance Document shall (or shall be construed so as to) prevent or restrict such Senior Secured Creditor (whether alone or with any other Senior Secured Creditor) from (without limitation) seeking any judicial remedy or commencing or taking any legal proceeding or

other procedure or step under the laws of any jurisdiction (including any application for a winding-up, bankruptcy or moratorium of or for any Obligor).

3. **DRAWDOWN OF ADVANCES**

3.1 **Drawdown conditions**

Subject to the terms of this Agreement and the Facility Agreements, the Company may request, and the relevant Lending Group shall make, Advances under a Facility if:

- 3.1.7 not later than 5:00 p.m. on the tenth Business Day before the proposed Advance Date (in the case of an Advance under the Term Loan Facilities and with any necessary amendments thereto made and received by the Intercreditor Agent and the relevant Facility Agent not later than 3:00 p.m. on the sixth Business Day before the proposed Advance Date) or the fourth day before the proposed Advance Date (in the case of an Advance under a Revolving Credit Facility), the Intercreditor Agent and the relevant Facility Agent have received a completed Advance Request;
- 3.1.8 in the case of the Term Loan Facilities, no other Advance Request has been served by the Company in respect of any Term Loan Facility in the same month; and
- 3.1.9 in the case of the Revolving Credit Facility and the Term Loan Facilities, if any Advance to be requested under the Advance Request, when drawn on the proposed Advance Date, would result in the aggregate US dollar equivalent amount of all Advances outstanding under the Facilities to exceed USD2,500,000,000 (such Advance being an "**Upsize Advance**"), the Intercreditor Agent has received (prior to the duly completed Advance Request in respect of such Advance being received) all documents and other evidence listed in either paragraph 1 of Part H of Schedule 2 (*Conditions Precedent*) or paragraphs 2 to 8 (inclusive) of Part H of Schedule 2 (*Conditions Precedent*), in each case, in form and substance satisfactory to the Intercreditor Agent.

3.2 **Completion of an Advance Request**

Each Advance Request is irrevocable and shall not be regarded as having been completed unless:

- 3.2.15 it is signed by a Responsible Officer of the Company whose specimen signature has been delivered to the Intercreditor Agent and who is identified as being authorised to so sign on behalf of the Company by a resolution of its Board of Directors, a copy of which, together with a certification in relation thereto by a Responsible Officer, has also been delivered to the Intercreditor Agent;
- 3.2.16 the proposed Advance Date is a Business Day within the relevant Availability Period;
- 3.2.17 it specifies:
 - (a) the amount and currency of the Advances to be made;
 - (b) the Facility under which each such Advance shall be made;
 - (c) the first Interest Period for such Advances (which shall be the same for each such Advance requested under a Term Loan Facility);
 - (d) (in the case of Advances under the Term Facility) the purpose for which such Advances shall be applied; and
 - (e) (in the case of Advances under the Revolving Credit Facility) the purpose for which such Advances shall be applied.
- 3.2.18 the amount requested under each Facility is not more than the aggregate for the time being of each Lender's Available Commitment under such Facility and, in the case of:
 - (a) any Term Loan Facility, the amount requested is either a minimum amount of USD5,000,000 or (as the case may be) its HK dollar equivalent which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount;
 - (b) the Revolving Credit Facilities, the aggregate amount requested is either a minimum amount of USD5,000,000 or (as the case may be) its HK dollar equivalent which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount; and

3.2.19 it certifies, among other things and without any personal liability on the part of the officer of the Company signing such Advance Request, that:

- (a) no Default (or, in the case of any Rollover Advance (as defined in each Revolving Credit Facility Agreement), Event of Default) is continuing or would result from the proposed Advances; and
- (b) the representations and warranties contained in Schedule 4 (*Representations and Warranties*) which are repeated by the Company at the Advance Date are true and correct in all material respects with reference to the facts and circumstances existing on the date of the Advance Request.

3.3 **Funding of Development Account from Revolving Credit Facility and the Term Facility**

The Company shall ensure that an aggregate US dollar equivalent amount at least equal to:

3.3.5 (in respect of the Term Facility) US\$414,934,426 (the "**Term Facility Portion**"); and

3.3.6 (in respect of the Revolving Credit Facility) US\$135,065,574 (the "**RCF Portion**"),

is paid (immediately upon utilisation) from the first Advance made under each tranche of the Term Facility and the Revolving Credit Facility and the Company shall ensure that it submits Advance Requests such that Advances under:

(a) the Term Facility are drawn on a *pro rata* basis between each of the Tranche A Facility, the Tranche B Facility and the Tranche C Facility in an aggregate amount equal to the Term Facility Portion as further set out in the Completion Memorandum; and

(b) the Revolving Credit Facility are drawn on a *pro rata* basis between each of the tranches thereunder in an aggregate amount equal to the RCF Portion,

in order to fund an aggregate equivalent amount of not less than US\$550,000,000 into a Development Account in accordance with each relevant Facility Agreement.

4. AVAILABILITY PERIODS

4.1 Term Facility Availability Period

Subject to other terms of the Senior Finance Documents, the Term Facility shall be made available from the Fifth Amendment Effective Date until the date falling 5 Business Days from the Fifth Amendment Effective Date.

4.2 Revolving Credit Facility Availability Period

Subject to other terms of the Senior Finance Documents, the Revolving Credit Facility shall be made available pursuant to the Revolving Credit Facility Agreement from the Fifth Amendment Effective Date until the earliest of:

4.2.7 the Termination Date (as defined in the Revolving Credit Facility Agreement); and

4.2.8 the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*).

4.3 Additional Lender Facility Availability Period

Subject to other terms of the Senior Finance Documents, each Additional Lender Facility shall be made available from the date of such Additional Lender Facility Agreement until the earliest of:

(a) the termination date (as set out in the applicable Additional Lender Facility Agreement); and

(b) the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*).

5. **PURPOSE**

5.1 **Purpose - General**

The Company shall apply the proceeds of each Advance under a Facility in accordance with the relevant Facility Agreement and this Agreement.

5.2 **No Obligation to be Concerned with Application**

None of the Senior Secured Creditors shall be obliged to concern themselves with the application of proceeds of the Facilities.

5.3 **Limitation on Advances**

5.3.1 The proceeds of the Advances shall not be applied towards the acquisition (or maintenance or repair) of any equipment or utensils used in the operation of casino games of chance or other forms of gaming.

5.3.2 The Company shall ensure that, in the case of the Revolving Credit Facility, the first Advance thereunder is sufficient to ensure that an amount equal to the RCF Portion (as defined in Clause 3.3.2) is paid into a Development Account pursuant to Clause 3.3 (*Funding of Development Account from Revolving Credit Facility and the Term Facility*).

6. **PRO RATA DRAWINGS**

The Company shall ensure that:

- (a) where an Advance is requested under a Term Loan Facility, an Advance, as a proportion of the Available Commitments under such Facility, in a US dollar equivalent amount pro rata with that requested has also been requested to be made on the same Advance Date under each of the other Term Loan Facilities; and
- (b) where an Advance is requested under a Revolving Credit Facility, an Advance, as a proportion of the Available Commitments under such Facility, in a US dollar equivalent amount pro rata with that requested has also been requested to be made on the same Advance Date under each of the other Revolving Credit Facilities.

7. **[NOT USED]**

8. **REPAYMENTS, PREPAYMENTS AND CANCELLATION**

8.1 **Repayments**

The Company may repay principal amounts falling due under any Facility Agreement only in accordance with that Facility Agreement and this Agreement.

8.2 **Voluntary Prepayment of the Term Loan Facilities**

8.2.1 Subject to the other provisions of this Clause 8 and any applicable terms in the Facility Agreements, the Company may, on at least 30 days' prior written notice to the Intercreditor Agent (which notice shall, if not withdrawn prior thereto, become irrevocable on the tenth Business Day prior to the proposed prepayment date), make voluntary prepayments under the Term Loan Facilities on the last day of any Interest Period, *provided* that for each voluntary prepayment, the amount prepaid under the Term Loan Facilities must exceed an aggregate of USD10,000,000 or its equivalent or, if less, the balance of the principal amount owing to all Term Loan Facility Lenders.

8.2.2 Amounts prepaid under sub-clause 8.2.1 above shall be applied on the Interest Payment Date on which they are made *pro rata* between the Advances outstanding under the Term Loan Facilities and applied *pro rata* against the repayment instalments of those Advances.

8.2.3 For purposes of clarification, Permitted Loan Repurchases shall not constitute payments or prepayments of any amount under the Term Loan Facilities and shall not be subject to the provisions of this Clause 8.

8.3 **Mandatory Prepayment**

8.3.1 The Company shall prepay Advances and/or cancel Available Commitments under the Facilities on the dates and in the amounts specified in Schedule 9 (*Mandatory Prepayment*) and this Clause 8.3.

8.3.2 Any amount prepaid under this Clause 8.3 and Schedule 9 (*Mandatory Prepayment*) shall be applied in the following order:

- (a) **first**, pro rata between the Advances outstanding under the Term Loan Facilities and then in inverse order of maturity against the remaining repayment instalments of those Advances;
- (b) **second**, in cancellation of the Available Commitments under the Revolving Credit Facilities (and the Available Commitments of the Lenders under the Revolving Credit Facilities will be cancelled rateably); and
- (c) **thirdly**, in prepayment pro rata of Advances outstanding under the Revolving Credit Facilities (and any Available Commitments of the Lenders under the Revolving Credit Facilities associated therewith shall be automatically cancelled).

8.3.3 Each of the Facilities (and any Available Commitments thereunder) shall be automatically cancelled upon the Company being required to make prepayment pursuant to paragraph 7 of Schedule 9 (*Mandatory Prepayment*).

8.4 Cancellation

- (a) Save as provided in Clause 8.5 (*Prepayment and Cancellation of Individual Lenders*) and Clause 14 (*Illegality*), the Company may only cancel the whole or any part (being a minimum amount of USD25,000,000) of the Available Commitments under the Revolving Credit Facilities made available pursuant to the Revolving Credit Facility Agreements on not less than seven Business Days' prior irrevocable written notice to the Intercreditor Agent and the relevant Facility Agent, in all cases without penalty or payment of fees or charges save as provided for in Clause 8.6.2 (*Restrictions*) or the relevant Facility Agreement. Such cancellation shall apply *pro rata* across all Revolving Credit Facilities made available under the Revolving Credit Facility Agreements.
- (b) The Available Commitments of each Lender under each of the Term Loan Facilities will be automatically cancelled at the close of business in Hong Kong on the last day of the relevant Availability Period for that Term Loan Facility to the extent undrawn at that date.

8.5 Prepayment and Cancellation of Individual Lenders

If:

- (a) any sum payable to any Lender by the Company is required to be increased under Clause 11.2 (*Tax gross-up*); and/or
- (b) any Lender claims indemnification from the Company under Clause 11.3 (*Tax Indemnity*) or Clause 12 (*Increased costs*); and/or
- (c) a Market Disruption Event occurs in relation to any Advance for any Interest Period pursuant to Clause 10.2 (*Market disruption*); and/or
- (d) any Lender withholds its consent to the incurrence of any Financial Indebtedness by the Company such that the Intercreditor Agent is unable to approve the incurrence of additional Financial Indebtedness in accordance with paragraph 2.1(j) of Part B of Schedule 5 (*Covenants*) or the amendment or waiver of paragraph 2.1 of Part B of Schedule 5 (*Covenants*); and/or
- (e) any Lender becomes a Non-Consenting Lender (as defined in Clause 8.8.3 below) and that Non-Consenting Lender has not, within 10 Business Days of being supplied with the same, executed (and returned to the Intercreditor Agent) all agreements and other instruments (to which it is required to be a party) needed to effect the transfer contemplated by (and in accordance with) Clause 8.8 (*Replacement of Non-Consenting Lender*); and /or
- (f) any Lender becomes an Outgoing Lender (as defined in Clause 8.9 (*Anti-Terrorism and Restricted Party Events*) below) and that Outgoing Lender has not, within 10 Business Days of being supplied with the same, executed (and returned to the Intercreditor Agent) all agreements and other instruments (to which it is required to be a party) needed to effect the transfer contemplated by (and in accordance with) Clause 8.9 (*Anti-Terrorism and Restricted Party Events*),

then, the Company may, subject to the other provisions hereof and, in the case of paragraph (d) above, whilst the circumstances described therein continue, and on giving at least fifteen days' prior irrevocable written notice to the Intercreditor Agent:

- (i) prepay that Lender's participation in the Advances outstanding under the relevant Facility Agreement on the Interest Payment Date which immediately ends after the Company's notice; and/or
- (ii) cancel that Lender's undrawn and uncanceled Available Commitments under the relevant Facility Agreement.

8.6 Restrictions

- 8.6.1 Any notice of cancellation or prepayment given under this Clause 8 shall be irrevocable if not withdrawn in accordance with Clause 8.2.1 (*Voluntary Prepayment of the Term Loan Facilities*) and shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of the cancellation or prepayment.
- 8.6.2 Any prepayment or cancellation pursuant to this Clause 8 shall be made together with accrued interest and fees on the amount prepaid or cancelled and without premium or penalty, save that the Company shall pay any Break Costs and any other fees specified in the relevant Facility Agreement.
- 8.6.3 The Company shall not repay or prepay all or any part of the Advances or cancel all or any part of the Available Commitments under any Facility Agreement except in accordance with that Facility Agreement and this Clause 8.
- 8.6.4 The Company may not reborrow any part of the Term Loan Facilities which is prepaid.
- 8.6.5 No amount of the Available Commitments cancelled under this Clause 8 may be subsequently reinstated.
- 8.6.6 If the Intercreditor Agent receives a notice under this Clause 8, it shall promptly forward a copy of that notice to either the Company or the affected Lender (or the Facility Agent acting for such Lender), as appropriate.
- 8.6.7 [Not used]

8.7 Replacement of Lender

If any Lender:

- (a) claims any amounts from the Company under Clauses 11.2 (*Tax gross-up*), 11.3 (*Tax indemnity*) or 12 (*Increased costs*) hereof;
- (b) fails to make its portion of any Advance to be made by it on the relevant Advance Date;
- (c) withholds its consent in any of the circumstances contemplated in Clause 8.5(d) (*Prepayment and Cancellation of Individual Lenders*); or
- (d) is a Defaulting Lender,

(an "**Affected Lender**"), the Company may (after paying all amounts then due under Clauses 11.2 (*Tax gross-up*), 11.3 (*Tax indemnity*) or 12 (*Increased costs*) hereof to the Affected Lender and, in the case of paragraph (c) above, whilst the circumstances referred to therein continue) designate a non-Affected Lender, any commercial bank or any other financial institution or bank reasonably satisfactory to the Intercreditor Agent (the "**Replacement Lender**") to accept a transfer in accordance with Clause 21.6 (*Transfers by Lenders*) of the Affected Lender's rights, benefits and obligations hereunder, and, promptly following such designation, the Affected Lender shall be obliged to execute the Novation Certificate required for such transfer in accordance with Clause 21.6 (*Transfers by Lenders*) and the non-Affected Lender may, but shall not be obliged to, execute such Novation Certificate and, if it does so, shall be obliged to accept such transfer in accordance with Clause 21.6 (*Transfers by Lenders*). Any such acceptance of transfer shall be for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Affected Lender's participation in the outstanding Advances and all accrued interest, Break Costs and other amounts payable in relation thereto under the Senior Finance Documents.

8.8 Replacement of Non-Consenting Lender

- 8.8.1 If at any time any Lender becomes a Non-Consenting Lender (as defined in Clause 8.8.3 below), then the Company may, on 5 Business Days' prior written notice to the Intercreditor Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 21 (*Changes to the Parties*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company, and which is acceptable to the Intercreditor Agent (acting reasonably) which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Advances and all accrued interest, Break Costs and other amounts payable in relation thereto under the Senior Finance Documents. Such Non-Consenting Lender shall provide all reasonable assistance to effect the foregoing transfer.
- 8.8.2 The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:
- (a) neither the Intercreditor Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;

- (b) such replacement of a Non-Consenting Lender must take place no later than 60 days after the date the Lender was deemed a Non-Consenting Lender under Clause 8.8.3; and
- (c) in no event shall the Lender replaced under this Clause 8.8.2 be required to pay or surrender to such Replacement Lender any of the fees previously received by such Lender pursuant to the Senior Finance Documents.

8.8.3 In the event that:

- (a) the Intercreditor Agent (at the request of the Company) has pursuant to sub-clause 33.1.2 of Clause 33.1 (*Notices of Required Decisions*) notified the relevant Senior Secured Creditors of a Decision required in respect of a waiver or amendment of any provisions of the Senior Finance Documents;
- (b) the waiver or amendment in question requires the consent of all Lenders and, after the occurrence of a Hedging Voting Rights Event in relation to a Hedging Counterparty that is continuing, that Hedging Counterparty; and
- (c) Lenders and, after the occurrence and continuation of a Hedging Voting Right Event in relation to any Hedging Counterparty, that Hedging Counterparty, who hold, in aggregate, more than 66 2/3% of the Voting Entitlements of all such Senior Secured Creditors have voted in favour of that Decision,

then any Lender who does not and continues not to vote in favour of such Decision shall be deemed a "**Non-Consenting Lender**".

8.9 **Anti-Terrorism and Restricted Party Events**

- (a) If any litigation, governmental, regulatory or other proceedings by OFAC, FinCEN, the Monetary Authority of Macao, the Hong Kong Monetary Authority or any other United States, European Communities, Macau or Hong Kong Governmental Authority (or any divisions of any of them or authority deriving power from any of them) is pending or adversely determined against a Lender (an "**Outgoing Lender**") as a direct result of that Outgoing Lender's (i) receipt of funds or other property from a Designated Person, (ii) breach of any Anti-Terrorism Law, (iii) breach of any anti-money laundering law or (iv) breach of any anti-corruption law, the Company may on 5 Business Days' prior written notice to the Intercreditor Agent and such Outgoing Lender, replace such Outgoing Lender by requiring such Outgoing Lender to (and such Outgoing Lender shall) transfer pursuant to Clause 21.4 (*Assignment and Transfer by Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (an "**Incoming Lender**") selected by the Company and which is acceptable to the Intercreditor Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations of the transferring Outgoing Lender (including the assumption of the transferring Outgoing Lender's participations on the same basis as the transferring Outgoing Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Outgoing Lender's participation in the outstanding Advances and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Senior Finance Documents.
- (b) The replacement of an Outgoing Lender pursuant to this Clause shall be subject to the following conditions:
 - (i) neither the Intercreditor Agent nor the Outgoing Lender shall have any obligation to the Company to find an Incoming Lender;
 - (ii) in the event of a replacement of an Outgoing Lender such replacement must take place no later than 60 days after the date the Outgoing Lender notifies the Company and the Intercreditor Agent, or the Company notifies the Intercreditor Agent, as the case may be, of the occurrence of any event set out in paragraph (a) above; and
 - (iii) in no event shall the Outgoing Lender replaced under this paragraph (b) be required to pay or surrender to such Incoming Lender any of the fees previously received by such Outgoing Lender pursuant to the Senior Finance Documents.

9. **INTEREST, INTEREST PERIODS AND DEFAULT INTEREST**

9.1 **Calculation of interest**

The Company shall pay interest under each Facility Agreement at the rate specified in that Facility Agreement.

9.2 **Payment of interest**

- 9.2.4 Subject to Clause 9.2.2 below, interest on each Advance shall be due on each Interest Payment Date relating to that Advance.

- 9.2.5 If an Interest Period for a Revolving Credit Facility Advance is 6 months or longer, interest on that Advance shall be due on the dates falling on three month intervals after the first day of that Interest Period *provided that* the last such due date shall be brought forward or postponed (as the case may be) so as to coincide with the Interest Payment Date relating to that Advance.

9.3 Interest Periods

The duration of each Interest Period shall be determined as follows:

- 9.3.1 Each Interest Period for a Term Loan Facility Advance shall start on the Advance Date for such Advance or (if already made) on the last day of its preceding Interest Period. A Revolving Credit Facility Advance has one Interest Period only which shall start on the Advance Date for such Advance.

- 9.3.2 Subject to this Clause 9, the duration of each Interest Period for each Advance under:

- (a) a Term Loan Facility shall be one, two, three or six months; and
- (b) a Revolving Credit Facility shall be one, two, three or six months,

in each case as the Company may, by not less than five (or, in the case of any Term Loan Facility Advance made on or prior to the Fifth Amendment Effective Date, two) Business Days' prior notice to the Facility Agent for such Facility, select, *provided that* Term Loan Facility Advances with the same Advance Date shall have the same Interest Period and, save in the case of each Initial Advance made thereunder, the first Interest Period for each Advance made under a Term Loan Facility shall end on the same day as the end of the current Interest Period of any other outstanding Advance made under the same Facility.

- 9.3.3 If the Company fails to give such notice of its selection in relation to an Interest Period, the duration of such Interest Period shall, subject to this Clause 9, be 3 months.

- 9.3.4 Any Interest Period which would otherwise extend beyond:

- (a) a Repayment Date (in the case of any Interest Period relating to an Advance under the Term Facility); or
- (b) the Revolving Credit Facility Termination Date (in the case of any Interest Period relating to an Advance under a Revolving Credit Facility),

shall be of such duration that it shall end on such date.

- 9.3.5 If two or more Interest Periods relating to Advances in the same currency under the same Term Loan Facility end at the same time, then, on the last day of such Interest Periods, such Advances shall be consolidated into and treated as a single Advance.

- 9.3.6 The Company shall use reasonable efforts to at all times select the duration of Interest Periods so as to ensure that, in respect of such of the Advances outstanding under the Facilities as is from time to time equal to the Notional Amounts specified in the Hedging Agreements or, as the case may be, any Permitted Swap Transaction (to the extent that such Permitted Swap Transaction relates to hedging an Obligor's exposure to interest rate fluctuations under the Term Loan Facilities), the Interest Payment Dates for such Advances coincide with (and are no more frequent than) the selected dates for payment of amounts to the Company under the Hedging Agreements or, if applicable, a Permitted Swap Transaction.

- 9.3.7 Any Interest Period which would end on a day which is not a Business Day shall be extended to the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

- 9.3.8 Interest on an Advance shall accrue from and including the first day of an Interest Period relating to such Advance up to but excluding the last day of such Interest Period.

9.4 Default interest

- 9.4.1 If the Company fails to pay any amount payable by it under a Senior Finance Document on its due date, interest shall accrue on such Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to sub-clause 9.4.2 below, is 2% higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted an Advance under the relevant Facility Agreement in the currency of the overdue amount (or, where there is no such relevant Facility Agreement, an Advance in the relevant currency under the Term Facility Agreement) for successive Interest Periods, each of a duration selected by the relevant Facility Agent (each acting reasonably). Any interest accruing under this sub-

clause 9.4.1 shall be immediately payable by the Company on demand in writing by the Intercreditor Agent or the relevant Facility Agent.

- 9.4.2 If any Unpaid Sum consists of all or part of an Advance which became due on a day which was not the last day of an Interest Period relating to that Advance:
- (a) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Advance; and
 - (b) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be 2% per annum higher than the rate which would have applied if the overdue amount had not become due.
- 9.4.3 Default interest (if unpaid) arising on an Unpaid Sum shall be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but shall remain immediately due and payable.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if LIBOR or HIBOR is to be determined by reference to the Reference Banks under any Facility Agreement but a Reference Bank does not supply a quotation on the Quotation Day under such Facility Agreement, the applicable LIBOR or HIBOR for the purpose of such Facility Agreement shall be determined on the basis of the quotations of the remaining Reference Banks under such Facility Agreement. Where LIBOR or HIBOR is to be determined by reference to the Reference Banks under any Facility Agreement and none or only one Reference Bank supplies a quotation, then LIBOR or, as the case may be, HIBOR shall be treated as incapable of being determined under such Facility Agreement.

10.2 Market disruption

- 10.2.5 If a Market Disruption Event occurs in relation to an Advance under a Facility for any Interest Period, the relevant Facility Agent shall promptly notify the Intercreditor Agent of the fact and that this Clause 10.2 is in operation and the Intercreditor Agent shall promptly notify the Company and the other Lenders.
- 10.2.6 For the purpose of this Clause 10.2, "**Market Disruption Event**" means:
- (d) in the case of a US dollar Advance:
 - (i) it is not possible, in respect of the Facility under which such Advance is made, to determine LIBOR in accordance with the provisions of the relevant Facility Agreement and Clause 10.1 (*Absence of quotations*); or
 - (ii) before the close of business in London on the Quotation Day for the relevant Interest Period, the Intercreditor Agent has been notified by a Lender or Lenders (whose participations in such Advance exceed 50 per cent of the Advance) that the cost to it/them of obtaining matching deposits in the London interbank market would be in excess of LIBOR;
 - (e) in the case of a HK dollar Advance:
 - (i) it is not possible, in respect of the Facility under which such Advance is made, to determine HIBOR in accordance with the provisions of the relevant Facility Agreement and Clause 10.1 (*Absence of quotations*); or
 - (ii) before the close of business in Hong Kong on the Quotation Day for the relevant Interest Period, the Intercreditor Agent has been notified by a Lender or Lenders (whose participations in such Advance exceed 50 per cent of the Advance) that the cost to it/them of obtaining matching deposits in the Hong Kong interbank market would be in excess of HIBOR.
- 10.2.7 Within five Business Days of the Intercreditor Agent notifying the Company in accordance with sub-clause 10.2.1 above, the Company and the Intercreditor Agent shall enter into good faith negotiations for a period of up to thirty days with a view to agreeing an alternative basis for determining the rate of interest applicable to the relevant Advances. Any alternative basis agreed shall be binding on all parties hereto until (subject to the terms of such agreement) the Market Disruption Event referred to in sub-clause 10.2.1 above is at an end and the Intercreditor Agent has notified the Facility Agents and the Company accordingly.
- 10.2.8 If no alternative basis is agreed pursuant to sub-clause 10.2.3 above by the earlier of (i) the thirty-day period provided in sub-clause 10.2.3 above and (ii) the Advance Date (where the notification under sub-clause 10.2.1 applies to any Advance which has not been made) or the last day of the Interest Period (where the notification under

sub-clause 10.2.1 applies to an Advance which is outstanding), then each Lender participating in the relevant Advance shall, acting reasonably, certify an alternative basis for maintaining its participation in the relevant Advance which may include an alternative method of fixing the interest rate, alternative Interest Periods or alternative currencies but such alternative basis must reflect its cost of funding its participation in the relevant Advance from whatever sources it may in good faith select plus the applicable interest margin applicable to that Lender's participation in the relevant Advance. Each alternative basis so certified shall be binding on the Company and the certifying Lender and treated as part of this Agreement and the relevant Facility Agreement.

10.3 Break Costs

10.3.4 The Company shall, within three Business Days of demand by a Senior Secured Creditor, pay to that Senior Secured Creditor its Break Costs attributable to all or any part of an Advance or Unpaid Sum being paid by the Company on a day other than an Interest Payment Date for that Advance or Unpaid Sum.

10.3.5 Each Lender shall, as soon as reasonably practicable after a demand by the Intercreditor Agent or the Company, provide a certificate confirming the amount and providing reasonable supporting evidence of its Break Costs for any Interest Period in which they accrue.

11. TAX GROSS UP AND INDEMNITIES

11.1 Construction

Unless a contrary indication appears, in this Clause 11 a reference to "determines" or "determined" means a determination made in the absolute discretion of the Person making the determination.

11.2 Tax gross-up

11.2.6 The Company shall make all payments to be made by it under the Senior Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

11.2.7 The Company or a Senior Secured Creditor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Intercreditor Agent accordingly. Similarly, a Senior Secured Creditor shall notify the Intercreditor Agent on becoming so aware in respect of a payment payable to that Senior Secured Creditor. If the Intercreditor Agent receives such notification from a Senior Secured Creditor it shall promptly notify the Company.

11.2.8 If a Tax Deduction is required by law to be made by the Company, the amount of the payment due from the Company shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the amount which would have been due if no Tax Deduction had been required.

11.2.9 If the Company is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

11.2.10 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall deliver to the Intercreditor Agent the payment evidence reasonably satisfactory to the relevant Senior Secured Creditor that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority (*provided* that the Company shall not be obliged to provide any such evidence from a Governmental Authority to the extent that it is not provided by such Governmental Authority).

11.3 Tax indemnity

11.3.8 The Company shall (within fifteen days of demand by the Intercreditor Agent) pay to a Senior Secured Creditor an amount equal to the loss, liability or cost which that Senior Secured Creditor determines has been (directly or indirectly) suffered for or on account of Tax by that Senior Secured Creditor in respect of a Senior Finance Document including Tax arising on payment of any premia or other sums payable on an Ancillary Finance Document whether or not such payment is required to be made by such Senior Secured Creditor.

11.3.9 Sub-clause 11.3.1 above shall not apply:

(c) with respect to any Tax assessed on a Senior Secured Creditor:

(i) under the law of the jurisdiction in which that Senior Secured Creditor is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Senior Secured Creditor is treated as resident for tax purposes; or

(ii) under the law of the jurisdiction in which that Senior Secured Creditor's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Senior Secured Creditor; or

- (d) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*).

11.3.10 A Senior Secured Creditor making, or intending to make a claim under sub-clause 11.3.1 above shall promptly notify the Intercreditor Agent of the event which shall give, or has given, rise to the claim, following which the Intercreditor Agent shall promptly notify the Company.

11.3.11 A Senior Secured Creditor shall, on receiving a payment from the Company under this Clause 11.3, notify the Intercreditor Agent.

11.3.12 Each Senior Secured Creditor shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of the loss, liability or cost referred to in sub-clause 11.3.1 above and the basis thereof.

11.4 Tax Credit

If the Company makes a Tax Payment and the relevant Senior Secured Creditor determines that:

11.4.1 a Tax Credit is attributable to that Tax Payment; and

11.4.2 that Senior Secured Creditor has obtained, utilised and retained that Tax Credit,

that Senior Secured Creditor shall pay an amount to the Company which that Senior Secured Creditor determines shall leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Company.

11.5 Stamp taxes

The Company shall pay and, within fifteen days of demand, indemnify each Senior Secured Creditor against any cost, loss or liability that a Senior Secured Creditor incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Senior Finance Document.

12. INCREASED COSTS

12.1 Increased costs

12.1.11 Subject to Clause 12.3 (*Exceptions*), the Company shall, within fifteen days of a demand by the Intercreditor Agent, pay for the account of a Lender the amount of any Increased Costs incurred by that Lender or any Affiliate of that Lender as a result of:

- (c) the introduction of or change in (or in the interpretation, administration or application of) any law or regulation after the Fifth Amendment Signing Date;
- (d) compliance with any request or requirement relating to the maintenance of capital or any other request from or requirement of any central bank or other fiscal, monetary, regulatory or other authority;
- (e) the implementation or application of, or compliance with, Basel III or any law or regulation that implements or applies Basel III; or
- (f) the implementation or application of, or compliance with, the Dodd-Frank Wall Street Reform and Consumer Protection Act of the United States of America (whether enacted, adopted or issued before, on or after the date of this Agreement) and/or all requests, rules, guidelines or directives in connection therewith (in each case whether enacted, adopted or issued before, on or after the date of this Agreement) and all amendments thereto from time to time.

12.1.12 In this Agreement:

- (a) "**Increased Costs**" means:

- (iii) a reduction in the rate of return from a Facility or on a Lender's (or its Affiliate's) overall capital (including as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Lender or Affiliate);

- (iv) an additional or increased cost; or

(v) a reduction of any amount due and payable under any Senior Finance Document,

which is incurred or suffered by a Lender or any of its Affiliates to the extent that it is attributable to that Lender's having entered into or maintaining its commitment or funding or performing its obligations under any Senior Finance Document; and

(b) "**Basel III**" means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and
- (ii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

12.2 Increased cost claims

12.2.13 When a Senior Secured Creditor intends to make a claim pursuant to Clause 12.1 (*Increased costs*), it shall notify the Intercreditor Agent of the event giving rise to the claim, following which the Intercreditor Agent shall promptly notify the Company.

12.2.14 Each Senior Secured Creditor shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of its Increased Costs and the basis thereof.

12.3 Exceptions

Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

12.3.3 attributable to a Tax Deduction required by law to be made by the Company and compensated for by payment under Clause 11 (*Tax Gross Up and Indemnities*);

12.3.4 compensated for by Clause 11.3 (*Tax indemnity*) (or would have been compensated for under Clause 11.3 (*Tax indemnity*) but was not so compensated solely because one of the exclusions in sub-clause 11.3.2 of Clause 11.3 (*Tax indemnity*) applied); or

12.3.5 attributable to the wilful breach by the relevant Senior Secured Creditor or their Affiliates of any law or regulation.

13. CURRENCY AND OTHER INDEMNITIES

13.1 Currency Indemnity

If any Senior Secured Creditor receives an amount in respect of the Company's liability to that Senior Secured Creditor under any Senior Finance Document or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency (the "**contractual currency**") in which the amount is expressed to be payable under that Senior Finance Document:

13.1.15 the Company shall indemnify that Senior Secured Creditor as an independent obligation against any costs, loss or liability arising out of or as a result of the conversion; and

13.1.16 if the amount received by that Senior Secured Creditor, when converted into the contractual currency at a market rate in the usual course of its business is less than the amount owed in the contractual currency and such is specified to the Company in reasonable detail, the Company shall, within 3 Business Days of its receipt of a written demand by such Senior Secured Creditor, pay to that Senior Secured Creditor an amount in the contractual currency equal to the deficit.

13.2 Other Indemnities

The Company shall, within fifteen days of demand, indemnify each Senior Secured Creditor against any cost, loss or liability incurred by that Senior Secured Creditor as a result of:

13.2.6 the occurrence of any Event of Default;

13.2.7 funding, or making arrangements to fund, its participation in an Advance requested by the Company in an Advance Request but not made by reason of the operation of any one or more of the provisions of the Senior Finance Documents (other than by reason of default or negligence by that Senior Secured Creditor alone);

13.2.8 an Advance (or part of an Advance) not being prepaid in accordance with a notice of prepayment given by the Company; and

13.2.9 any claim concerning Wynn Macau or the Cotai Project (including, in each case, its participation therein) to the extent that loss or liability is suffered or incurred by that Senior Secured Creditor (other than by reason of default or negligence by a Senior Secured Creditor),

provided that, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

13.3 Indemnity to the Agents

The Company shall, within fifteen days of demand, indemnify each of the Agents against any cost, loss or liability incurred by such Agent (acting reasonably) as a result of:

13.3.4 investigating any event which it reasonably believes is a Default; or

13.3.5 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised,

provided that, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

14. ILLEGALITY

If it becomes, or shall become, unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by the Senior Finance Documents to which it is a party or to fund or maintain its participation in any Advance:

14.1.10 that Lender shall promptly notify the Company through the Intercreditor Agent and the relevant Facility Agent upon becoming aware of that event; and

14.1.11 by the latest date necessary to ensure compliance with the relevant law or regulation:

(a) if the relevant Facility Agent so requires, the Company shall prepay that Lender's participation in all the Advances (or such lesser amount if required to comply with the relevant law or regulation) together with all other relevant amounts payable by it to that Lender under the Senior Finance Documents to which it is a party; and

(b) that Lender's undrawn Available Commitment (or such lesser amount if permitted by the relevant law or regulation) shall be cancelled.

15. MITIGATION BY THE SENIOR SECURED CREDITORS

15.1 Mitigation

15.1.6 Each Lender shall, in consultation with the Company, take all reasonable steps to mitigate or remove any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 10 (*Changes to the calculation of interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) or Clause 14 (*Illegality*) including (but not limited to) transferring its rights and obligations under the Senior Finance Documents to another Affiliate or Facility Office.

15.1.7 Sub-clause 15.1.1 above does not in any way limit the obligations of any Obligor under the Senior Finance Documents.

15.2 Indemnity by Company

15.2.2 The Company shall indemnify each Senior Secured Creditor for all costs and expenses reasonably incurred by that Senior Secured Creditor as a result of steps taken by it under Clause 15.1 (*Mitigation*).

15.2.3 A Senior Secured Creditor is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Senior Secured Creditor (acting reasonably), to do so might be prejudicial to it.

16. FEES, COSTS AND EXPENSES

16.1 Agency Fees

The Company shall pay to each Agent for its own account a fee in amounts and on dates separately agreed between that Agent and the Company in the relevant Fee Letter.

16.2 **Transaction expenses**

The Company shall, within fifteen days of receipt of a written demand, pay the Agents the amount of all reasonable costs and expenses (including legal fees) incurred by any of them in connection with the review, negotiation, preparation, printing and execution of:

16.2.1 this Agreement, the other Senior Finance Documents and any other documents referred to herein or therein; and

16.2.2 any other Senior Finance Documents executed after the Fifth Amendment Signing Date,

in accordance with, in the case of any fees, costs and expenses of the legal advisers appointed on or prior to the Fifth Amendment Signing Date, the appointment or engagement letters (if any) executed by the Company on or prior to the Fifth Amendment Signing Date.

16.3 **Amendment costs**

If the Company or any other Obligor requests an amendment, waiver or consent under any Senior Finance Document, the Company shall, within thirty days of demand, reimburse the Agents for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agents in responding to, evaluating, negotiating or complying with that request.

16.4 **Enforcement costs**

The Company shall, within fifteen days of written demand, pay to each Senior Secured Creditor the amount of all costs and expenses (including legal fees) incurred by that Senior Secured Creditor in connection with the enforcement of, or the preservation of, any rights under and in accordance with any Senior Finance Document *provided* that, prior to the delivery of an Enforcement Notice, such costs and expenses shall be reasonable.

17. **REPRESENTATIONS AND WARRANTIES**

17.1 **Matters represented**

The Company makes the representations and warranties set out in Schedule 4 (*Representations and Warranties*) to each Senior Secured Creditor as at each of the dates specified in Clause 17.2 (*Timing*).

17.2 **Timing**

17.2.1 Each of the representations and warranties set out in Schedule 4 (*Representations and Warranties*) are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the Fifth Amendment Signing Date.

17.2.2 Unless otherwise stated to have been made as of a specific date, each of the representations and warranties set out in Schedule 4 (*Representations and Warranties*) is made by the Company (with reference to the facts and circumstances then existing) on the Fifth Amendment Effective Date and (other than the representations and warranties set out in paragraphs 10.5 (*Taxes*), 21.1 to 21.6 (inclusive) (*Subsidiaries and Beneficial Interest*) and 36 (*Wynn Asia 2*) of Schedule 4 (*Representations and Warranties*)) is deemed to be repeated by the Company on each subsequent Advance Date (with reference to the facts and circumstances then existing), as if any reference therein to any Senior Finance Document in respect of which any amendment, acknowledgement, confirmation, consolidation, novation, restatement, replacement or supplement is expressed to be made by any of the documents referred to in Clause 1.3 (*Designation*) of the Common Terms Agreement Fifth Amendment Agreement or by the Common Terms Agreement Fifth Amendment Agreement included, to the extent relevant, such document and the Senior Finance Document as so amended, acknowledged, confirmed, consolidated, novated, restated, replaced or supplemented.

18. **COVENANTS**

18.1 **Content**

The Company undertakes to each of the Senior Secured Creditors that it shall comply with the covenants set out in Schedule 5 (*Covenants*).

18.2 **Duration**

The covenants in Schedule 5 (*Covenants*) shall remain in force from the Fifth Amendment Signing Date until the Senior Secured Indebtedness has been fully discharged.

18.3 **Permitted Cotai Reorganisation; Release of Palo Security**

18.3.1 Notwithstanding any other provision of this Agreement or the other Senior Finance Documents to the contrary, the

Company shall be permitted to undertake a Permitted Cotai Reorganisation. If, for the purposes of carrying out such Permitted Cotai Reorganisation, where Palo has created a Lien over any of its assets or business under the Palo Security Documents (save for the Palo Share Pledge) in favour of the Security Agent and such Lien is required (in order to effect such Permitted Cotai Reorganisation) to be released, the Security Agent shall, at the cost and request of the Company, promptly release such Liens.

- 18.3.2 The Company may, in writing to the Intercreditor Agent, request that Palo be the subject of a voluntary liquidation, winding up or dissolution (or similar action) after a Permitted Cotai Reorganisation. Such written request from the Company shall also confirm that Palo has no (and shall not have any) assets, no Default is continuing or would result from such voluntary liquidation, winding up or dissolution (or similar action) and any payments or assets to be distributed as a result of such voluntary liquidation, winding up or dissolution (or similar action) shall be distributed to the Company.
- 18.3.3 Palo may, following such written request, be the subject of such voluntary liquidation, winding up or dissolution (or similar action) if the Intercreditor Agent confirms in writing that it is satisfied that the matters contemplated by paragraphs (i) to (iv) (inclusive) of the definition of "Permitted Cotai Reorganisation" in Clause 1.1 (*Definitions*) have occurred in a form and substance satisfactory to it (acting reasonably) and that no payment is due from Palo pursuant to the Guarantee or any Palo Security Document.
- 18.3.4 If Palo is or is proposed to be, pursuant to Clause 18.3.3 above, the subject of such voluntary liquidation, winding up or dissolution (or similar action) then:
- (c) where Palo has created a Lien over any of its assets or business under the Security Documents in favour of the Security Agent, or any Lien in favour of the Security Agent was created over the shares (or equivalent) of Palo, the Security Agent shall, at the cost and request of the Company, promptly release such Liens and the Security Agent (and/or, as required, the Intercreditor Agent) shall promptly release Palo from its obligations under the Senior Finance Documents (including, without limitation, any obligations Palo has as an Obligor) and Palo shall, upon such release occurring, no longer be an Obligor for the purposes of the Senior Finance Documents;
 - (d) the releases referred to in paragraph (a) above shall not become effective until the date of such voluntary liquidation, winding up or dissolution (or similar action); and
 - (e) if such voluntary liquidation, winding up or dissolution (or similar action) does not occur in respect of Palo, the releases referred to in paragraph (a) above shall have no effect and the obligations of Palo under the Senior Finance Documents (including, without limitation, its obligations as an Obligor) and the Liens created or intended to be created by or over Palo shall continue in such force and effect (and Palo shall continue to be an Obligor for the purposes of the Senior Finance Documents) as if those releases had not been effected.

18.4 Release of Security over the Existing Executive Director Shares

If the Existing Executive Director Shares are (or are proposed) to be cancelled in connection with an Executive Director Substitution then:

- 18.4.1 where there is a Lien over such Existing Executive Director Shares under the Security Documents in favour of the Security Agent, the Security Agent shall, at the cost and request of the Company, promptly release such Liens;
- 18.4.2 the releases referred to in Clause 18.4.1 above shall not become effective until immediately prior to the cancellation of such Existing Executive Director Shares; and
- 18.4.3 if such cancellation of the Existing Executive Director Shares does not occur, the releases referred to in Clause 18.4.1 above shall have no effect and the Liens created or intended to be created over such Existing Executive Director Shares shall continue in such force and effect as if those releases had not been effected.

19. EVENTS OF DEFAULT

19.1 Events of Default

Each of the events set out in Schedule 10 (*Events of Default*) is an Event of Default.

19.2 Remedies following an Event of Default

Upon the occurrence of an Event of Default and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, by written notice to the Company:

- 19.2.5 declare that the Available Commitments under any of the Facility Agreements be cancelled or suspended,

whereupon they shall be cancelled or suspended;

- 19.2.6 declare that all or any part of the Advances, together with accrued interest, and all other amounts accrued or outstanding under the Senior Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- 19.2.7 declare that all or part of the Advances be payable on demand, whereupon they shall immediately become payable on demand by the Intercreditor Agent;
- 19.2.8 notify the Security Agent that an Event of Default has occurred and is continuing and instruct the Security Agent to issue an Enforcement Notice;
- 19.2.9 following the issue of an Enforcement Notice, require the Security Agent to take action to enforce all or any part of the Security or all or any of the Shareholder Guarantees (subject to the expiration of any cure periods contained therein), whereupon any such action shall be taken;
- 19.2.10 following the issue of an Enforcement Notice, instruct the Security Agent to require the perfection of the Liens granted pursuant to the Land Security Assignment and the Assignment of Rights;
- 19.2.11 following the issue of an Enforcement Notice, give (or require the Security Agent to give) notices regarding the payment of insurance proceeds in accordance with the terms of the Senior Finance Documents;
- 19.2.12 following the issue of an Enforcement Notice, give (or require the Security Agent to give) notice to any Account Bank in relation to the operation of the Accounts in accordance with paragraph 3.3 (*Default*) of Schedule 6 (*Accounts*); and/or
- 19.2.13 exercise any or all other remedies available at law not inconsistent with the foregoing,

provided that the foregoing shall not in any way affect the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents.

19.3 Remedies following an Executive Director Event

Without prejudice to Clause 19.2 (*Remedies following an Event of Default*) or in any way affecting the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents, upon the occurrence of an Executive Director Event and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, require the Security Agent to take action to enforce all or any part of the Security granted pursuant to the Executive Director Share Pledge.

20. APPLICATION OF ENFORCEMENT PROCEEDS

After delivery of an Enforcement Notice and notwithstanding the provisions of Schedule 6 (*Accounts*), all Enforcement Proceeds shall be applied in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

21. CHANGES TO THE PARTIES

21.1 Binding Agreement

This Agreement shall be binding upon and enure to the benefit of each party hereto and its or any subsequent successors and transferees.

21.2 Assignment and Transfer by the Company or the GCLAs

21.2.1 The Company may not assign, transfer, novate or dispose of any of its rights or obligations under this Agreement or the other Senior Finance Documents.

21.2.2 The GCLAs may not assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the Company.

21.3 Assignment and Transfer by Agents

Each Agent may assign or transfer any of its rights and obligations under any Senior Finance Document to which it is party only in accordance with its voluntary or requested resignation under and subject to the relevant Senior Finance Document and this Agreement and then only if it first procures that its assignee or transferee executes a duly completed Agent's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by such Agent, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for

which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent) and enters into such other acknowledgements as may be necessary or desirable to protect the Security.

21.4 Assignment and Transfer by Lenders

21.4.1 Subject to the provisions of the Facility Agreement to which it is a party and execution and delivery by the assignee or Transferee of a Finance Party Accession Undertaking, any Lender may, at any time, assign in accordance with Clause 21.5 (*Assignments by Lenders*) all or any of its rights and benefits under the Senior Finance Documents or transfer in accordance with Clause 21.6 (*Transfers by Lenders*) all or any of its rights, benefits and obligations under the Senior Finance Documents to:

- (c) another Lender or an Affiliate of a Lender;
- (d) any commercial bank;
- (e) any other bank or financial institution or trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets;
- (f) in the case of a Permitted Loan Repurchase, the Company; or
- (g) any other entity with the consent of the Company (such consent not to be unreasonably withheld or delayed and which consent shall not be required in respect of any assignment or transfer after the occurrence of an Event of Default which is continuing),

provided that all transactional costs (including any stamp duties, transfer taxes and any costs attributable to any transfer of Security) of such assignment or transfer shall be borne by the relevant Lender or assignee or Transferee except for:

- (i) any transfer in connection with the syndication of the Facilities, all such costs of which (including those set forth in Clause 21.7 (*Assignment and Transfer Fees*)) shall be borne by the Company; and
- (ii) any transfer contemplated by the Pre-Amendment Global Transfer Agreement or the Post-Amendment Global Transfer Agreement, all such costs of which shall be borne by the Company.

21.4.2 Any assignment or transfer of a Lender's participations in Advances outstanding or, as the case may be, Available Commitments under:

- (a) the Term Facility shall be in a minimum amount of USD1,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility; or
- (b) a Revolving Credit Facility shall be in a minimum amount of USD1,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility.

21.4.3 Each assignee or Transferee, by executing a Finance Party Accession Undertaking (including, without limitation, the Pre-Amendment Global Transfer Agreement and the Post-Amendment Global Transfer Agreement), confirms, for the avoidance of doubt, that the Intercreditor Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the assigning or transferring Lender would have been had it remained a Lender.

21.5 Assignments by Lenders

If any Lender assigns all or any of its rights and benefits under the Senior Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), then, unless and until the assignee has delivered:

- (a) a notice to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) confirming in favour of the Senior Secured Creditors that it shall be under the same obligations towards each of them as it would have been under if it had been an original party hereto as a Lender and to the relevant Facility Agreement as a Term Facility Lender, Additional Lender or Revolving Credit Facility Lender (as the case may be); and
- (b) a duly completed Finance Party Accession Undertaking executed by such Lender, such assignee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

(whereupon such assignee shall become a party hereto as a "Lender" or thereto as a "Term Facility Lender", "Additional Lender" or "Revolving Credit Facility Lender"), the Company and the Senior Secured Creditors shall not be obliged to recognise such assignee as having the rights against each of them which it would have had if it had been such a party hereto or thereto. This Clause 21.5 shall not apply to the Company's acquisition of an Advance pursuant to a Permitted Loan Repurchase.

21.6 Transfers by Lenders

Except in the case of a Permitted Loan Repurchase, if any Lender wishes to transfer all or any of its rights, benefits and/or obligations under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents as contemplated in Clause 21.4 (*Assignment and Transfer by Lenders*), then such transfer shall only be effective if the procedure set out in this Clause 21.6 is complied with. Such transfer shall be effected by the delivery to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) of:

- (a) a duly completed Novation Certificate executed by such Lender, the relevant Transferee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent); and
- (b) a duly completed Finance Party Accession Undertaking executed by such Lender, the relevant Transferee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

in which event, on the later of the Transfer Date specified in such Novation Certificate and the fifth Business Day after (or such earlier Business Day endorsed by the Intercreditor Agent on such Novation Certificate falling on or after) the date of delivery of such Novation Certificate and Finance Party Accession Undertaking to the Intercreditor Agent:

21.6.1 to the extent that in such Novation Certificate the Lender party thereto seeks to transfer by novation its rights, benefits and obligations under this Agreement and the corresponding rights, benefits and obligations under the other Senior Finance Documents, the Company and such Lender shall be released from further obligations towards one another under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents and their respective rights against one another shall be cancelled (such rights and obligations being referred to in this Clause 21.6 as "**discharged rights and obligations**");

21.6.2 each of the Company and the Transferee shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar the Company and such Transferee have assumed and/or acquired the same in place of such other party and such Lender;

21.6.3 the Agents, the GCLAs, such Transferee and the other Lenders shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such Transferee been an original party to this Agreement and the other relevant Senior Finance Documents as a Lender with the rights, benefits and/or obligations acquired or assumed by it as a result of such transfer and to that extent the Agents, the GCLAs and the relevant Lender shall each be released from further obligations to each other under this Agreement and the other relevant Senior Finance Documents; and

21.6.4 such Transferee shall become a party hereto as a "Lender" and to the relevant Facility Agreement as a "Term Facility Lender", "Additional Lender" or "Revolving Credit Facility Lender" (as the case may be).

21.7 Assignment and Transfer Fees

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*), the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee of USD2,000.

21.8 Disclosure of Information

Any Senior Secured Creditor may disclose to any of its Affiliates and any other Person:

21.8.1 to (or through) whom such Senior Secured Creditor assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and obligations in accordance with the Senior Finance Documents;

21.8.2 in the case of a Lender, with (or through) whom such Lender enters into (or may potentially enter into) any sub-participation in relation to the Senior Finance Documents or any Obligor; or

21.8.3 to whom information may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement;

such information about any Obligor, Wynn Macau, the Cotai Project and the Senior Finance Documents as such Senior Secured Creditor may consider appropriate, *provided* that the Person to whom such information is provided under sub-clause 21.8.1 or 21.8.2 first enters into a Confidentiality Undertaking (or, in the case of the Security Agent, the confidentiality undertaking referred to in clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority) and that the Company has received a copy of such signed undertaking.

21.9 Change of Facility Office

Any Lender may change its Facility Office *provided* that the Company shall have no liability (or no increase in liability) under Clause 11 (*Tax gross-up and Indemnities*) or Clause 12 (*Increased costs*) which would not exist as at the date of such change but for such change, unless such change was requested by the Company pursuant to Clause 15 (*Mitigation by the Senior Secured Creditors*).

21.10 Permitted Loan Repurchases

21.10.1 Notwithstanding anything to the contrary contained in this Agreement or the other Senior Finance Documents, the Company shall be permitted to acquire Advances pursuant to a Permitted Loan Repurchase (including through Open Market Purchases), so long as any Advances so acquired are cancelled and retired immediately upon such Permitted Loan Repurchase becoming effective, the consideration for such Permitted Loan Repurchase is not funded from any Advance (or the proceeds thereof) and where such Permitted Loan Repurchase is made by way of Open Market Purchase, no Event of Default has occurred and is continuing or might reasonably be expected to occur as a result of such Permitted Loan Repurchase. For all purposes under this Agreement and the other Senior Finance Documents, upon a Permitted Loan Repurchase becoming effective:

- (a) any Advances acquired by the Company pursuant to such Permitted Loan Repurchase:
 - (ii) shall be deemed not to be outstanding and to have no principal amount (or any other amount owing in respect thereof);
 - (iii) shall be deemed to be automatically cancelled and retired without any further action by the Company, the Intercreditor Agent, the Lenders or any other Person; and
 - (iv) shall be deemed not to constitute payments (or prepayments) of Advances for any purpose hereunder;
- (b) for the purposes of testing compliance with the financial covenants in paragraph 1 of Part B of Schedule 5 (*Covenants*), any impact of such Permitted Loan Repurchase on EBITDA shall be ignored;
- (c) for the avoidance of doubt and without otherwise limiting the definition or interpretation of "Permitted Business", the Company shall be deemed not to be in breach of paragraph 14 of Part B of Schedule 5 (*Covenants*) solely by virtue of carrying out a Permitted Loan Repurchase;
- (d) Clause 25 (*Sharing Among The Senior Secured Creditors*) shall not be applicable to the consideration paid under such Permitted Loan Repurchase;
- (e) no Obligor shall be permitted to receive any payment or prepayment under this Agreement which is payable to any Lender by virtue of the Company having made a Permitted Loan Repurchase; and
- (f) the Company shall not be permitted to sell, transfer or otherwise dispose of the subject matter of such Permitted Loan Repurchase.

21.10.2 The Company shall take such actions and execute such documents and agreements as may be reasonably requested by the Intercreditor Agent to further evidence the cancellation and retirement referred to in Clause 21.10.1 above.

21.10.3 The Company shall promptly notify the Intercreditor Agent of any Permitted Loan Repurchase made by way of an Open Market Purchase and the identity of the Facilities to which they relate. The Intercreditor Agent shall disclose such information to any Lender that requests the same.

21.10.4 For so long as the Company beneficially owns or has any Voting Entitlements following a Permitted Loan Repurchase, those Voting Entitlements shall be deemed to be zero and the Company shall be deemed not to be a Lender. The Company agrees that, following a Permitted Loan Repurchase by it, it shall not, in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, attend or participate in the same or be entitled to receive the agenda or any minutes of the same and it shall not be entitled to receive any report or other document prepared at the request of, or on the instructions of, the Intercreditor Agent or one or more of the Lenders or any other Secured Party or Secured Parties.

22. HEDGING COUNTERPARTIES

22.1 Accession

Each Hedging Counterparty shall execute and deliver to the Intercreditor Agent a Hedging Counterparty's Deed of Accession and shall execute and deliver to the Security Agent in accordance with the Deed of Appointment and Priority a Finance Party Accession Undertaking. A Hedging Counterparty may, at any time, assign all or any of its rights and benefits or transfer all or any of its rights, benefits and obligations under and in accordance with the Senior Finance Documents subject to delivery to the Intercreditor Agent of a duly completed:

- (a) Hedging Counterparty's Deed of Accession executed by the assignee or transferee; and
- (b) Finance Party Accession Undertaking executed by the assignee or transferee, the Hedging Counterparty, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent).

22.2 Interest in the Security

The obligations of the Company owed to each Hedging Counterparty shall be secured by the Security and each Hedging Counterparty shall be entitled to share in the Enforcement Proceeds in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

22.3 Voting rights

Nothing in this Clause 22 nor any other provisions of any Senior Finance Document shall be deemed to entitle any Hedging Counterparty in its capacity as such under any Hedging Agreement to exercise any voting, consent, approval or similar right under the Senior Finance Documents (other than the Hedging Agreements) including any right to participate in any Decision *provided* that:

22.3.1 each Hedging Counterparty shall have the right to participate in all Decisions after the occurrence of a Hedging Voting Right Event in relation to such Hedging Counterparty that is continuing; and

22.3.2 the consent of all Hedging Counterparties shall be required for any change to the matters referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) in the definition of "Fundamental Term" in Clause 1.1 (*Definitions*) and for any amendment to Clause 33.6 (*Application of Enforcement Proceeds*) and this Clause 22.

22.4 Restrictions on Amendment

Each Hedging Counterparty agrees that, except with the prior written consent of the Intercreditor Agent, no amendment may be made to a Hedging Agreement to an extent which would result in:

- 22.4.1 any payment under that Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in that Hedging Agreement; or
- 22.4.2 the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of that Hedging Agreement; or
- 22.4.3 the Company becoming liable to make any payment under that Hedging Agreement in any currency other than in the currency provided for under the original provisions of that Hedging Agreement.

22.5 **Restrictions on Termination**

No Hedging Counterparty may terminate a hedging facility or close out any hedging transaction under a Hedging Agreement prior to its stated maturity except in accordance with the terms of the ISDA Master Agreement and the ISDA Schedule (each as may be amended pursuant to paragraph 4 of Schedule 8 (*Hedging Arrangements*)).

22.6 **Termination at request of Intercreditor Agent**

After a notice has been given by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*), a Hedging Counterparty shall, at the written request of the Intercreditor Agent, terminate the hedging facility or close out any hedging transaction under the Hedging Agreement to which it is party in accordance with the terms of such Hedging Agreement.

23. **AGENTS AND GLOBAL COORDINATING LEAD ARRANGERS**

23.1 **Appointment and duties of the Agents**

23.1.1 Each of:

- (f) the Senior Secured Creditors appoints the Intercreditor Agent;
- (g) the Term Facility Lenders appoints the Term Facility Agent;
- (h) the Revolving Credit Facility Lenders appoints the Revolving Credit Facility Agent; and
- (i) the Additional Lenders under each Additional Lender Facility Agreement appoint the applicable Additional Facility Agent as facility agent for those Additional Lenders (or its successor approved in accordance with this Agreement),

to act as its agent under and in connection with the Senior Finance Documents and irrevocably authorises it on its behalf to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the Senior Finance Documents, together with any other incidental rights, powers and discretions.

23.1.2 None of the Agents may begin any legal action or proceeding in the name of a Senior Secured Creditor (other than itself) without that Senior Secured Creditor's consent.

23.1.3 Each Agent has only those duties which are expressly specified in the Senior Finance Documents, and those duties are solely of a mechanical and administrative nature.

23.2 **Relationship**

23.2.3 The relationship between each Agent and the relevant Senior Secured Creditors is that of principal and agent only. Nothing in this Agreement constitutes any Agent as trustee or fiduciary for any other Person and no Agent need hold in trust any moneys paid to it for a Person or be liable to account for interest on those moneys except to the extent expressly stated in a Senior Finance Document.

23.2.4 No Agent shall in any respect be the agent of the Company by virtue of this Agreement.

23.2.5 No Agent shall be liable to the Company for any breach by any other Senior Secured Creditor of any Senior Finance Document or be liable to any other Senior Secured Creditor for any breach by the Company of the Senior Finance Documents.

23.3 **Role of the GCLAs**

Except as specifically provided in the Senior Finance Documents, none of the GCLAs has any obligations of any kind to any other party to a Senior Finance Document under or in connection with any Senior Finance Document.

23.4 Delegation

Each Agent may act through its personnel and agents.

23.5 Instructions

23.5.1 Unless otherwise expressly provided in the Senior Finance Documents, the Intercreditor Agent shall act (and shall be fully protected if it so acts) in accordance with the instructions of the Required Lenders in connection with the exercise of any right, power or discretion under or in connection with the Senior Finance Documents.

23.5.2 Each Facility Agent shall be fully protected if it acts in accordance with the instructions of its Lending Group in connection with the exercise of any right, power or discretion under or in connection with any matter not expressly provided for in the Senior Finance Documents.

23.5.3 In the absence of such instructions each Agent may act, subject to the terms of the Senior Finance Documents, as that Agent, in its sole discretion, considers to be in the best interests of all the Senior Secured Creditors or, in the case of each Facility Agent, its Lending Group.

23.6 Discretions

Notwithstanding any provision of the Senior Finance Documents, each Agent may:

23.6.4 assume, unless it has, in its capacity as Agent, received written notice to the contrary from any other Party, that (a) any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) no Default has occurred, (c) no Obligor is in breach of or default under its obligations under the Senior Finance Documents and (d) any right, power, authority or discretion vested in the Senior Finance Documents upon the Required Lenders, a Lending Group, the Lenders or any other Person or group of Persons has not been exercised;

23.6.5 assume that (a) the Facility Office of each Lender is that notified to it by such Lender in writing and (b) the information provided by each Lender pursuant to Clause 29 (*Notices*) is true and correct in all respects until it has received from such Lender notice of a change to the Facility Office or any such information and act upon any such notice until the same is superseded by a further notice;

23.6.6 engage and pay for the advice or services of any lawyers, accountants, surveyors or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;

23.6.7 rely as to any matters of fact which might reasonably be expected to be within the knowledge of an Obligor upon a certificate signed by or on behalf of such Obligor;

23.6.8 rely upon any communication or document believed by it to be genuine;

23.6.9 refrain from exercising any right, power or discretion vested in it as Agent under the Senior Finance Documents unless and until instructed as described in Clause 23.5 (*Instructions*) as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised;

23.6.10 refrain from acting in accordance with any instructions to begin any action or proceeding arising out of or in connection with the Senior Finance Documents until it shall have received such security as it may require (whether by way of payment in advance or otherwise) for all costs, claims, losses, expenses (including legal fees) and liabilities which it shall or may expend or incur in complying with such instructions;

23.6.11 refrain from acting where to do so would put it in breach of an applicable Legal Requirement;

23.6.12 treat each Facility Agent as the duly appointed and authorised agent of the relevant Lenders until it receives written notice to the contrary from the relevant Lenders; and

23.6.13 (in the case of the Intercreditor Agent) in applying any moneys received by it under any Security Document under Clause 33.6 (*Application of Enforcement Proceeds*), rely on any certificate made by the relevant Facility Agent or Hedging Counterparty as to the identity of, and the amounts owing to, any of the Senior Secured Creditors and shall be protected in so relying.

23.7 Agents' Obligations

23.7.1 Each Agent shall:

- (a) promptly inform each Senior Secured Creditor (in the case of the Intercreditor Agent) or the Intercreditor Agent and the Lenders in its Lending Group (in the case of each Facility Agent) of the contents of any notice

or document received by it pursuant to the terms of any Senior Finance Document in its capacity as Agent from the Security Agent or an Obligor under the Senior Finance Documents; and

- (b) promptly notify each Senior Secured Creditor (in the case of the Intercreditor Agent) or the Intercreditor Agent and the Lenders in its Lending Group (in the case of each Facility Agent) of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under the Senior Finance Documents of which such Agent has notice from any other party.

23.7.2 The Intercreditor Agent shall promptly inform the Security Agent of the occurrence of the Release Date.

23.8 Excluded Obligations

Notwithstanding anything to the contrary expressed or implied herein, none of the Agents nor any of the GCLAs shall:

23.8.5 be bound to enquire as to (a) whether or not any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) the occurrence or otherwise of any Default, (c) the performance by an Obligor of its obligations under the Senior Finance Documents or (d) any breach of or default by an Obligor of or under its obligations under the Senior Finance Documents;

23.8.6 be bound to account to any Senior Secured Creditor for any sum or the profit element of any sum received by it for its own account;

23.8.7 be bound to disclose to any other Person any information relating to any Obligor, any party to a Major Project Document or any of their respective related entities if (a) such Person, on providing such information, expressly stated to such Agent or, as the case may be, such GCLA, that such information was confidential or (b) such disclosure would or might in its opinion constitute a breach of any law or be otherwise actionable at the suit of any Person; or

23.8.8 be under any obligations other than those for which express provision is made herein or in any other Senior Finance Document to which such Agent or GCLA is a party.

23.9 Exclusion of Liabilities

None of the Agents and the GCLAs accepts any responsibility:

23.9.1 for the adequacy, accuracy and/or completeness of the Information Memorandum or any other information supplied by the Agents or the GCLAs, by an Obligor or by any other Person in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;

23.9.2 for the legality, validity, effectiveness, adequacy or enforceability of the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; or

23.9.3 for the exercise of, or the failure to exercise, any judgement, discretion or power given to any of them by or in connection with the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, none of the Agents and the GCLAs shall be under any liability (whether in negligence or otherwise) in respect of such matters.

No party hereto (other than the applicable Agent or GCLA) may take any proceedings against any officer, employee or agent of an Agent or a GCLA in respect of any claim it might have against such Agent or such GCLA, as the case may be, or in respect of any act or omission of any kind by that officer, employee or agent (other than by reason of the fraud, gross negligence or wilful misconduct of such officer, employee or agent) in relation to any Senior Finance Document and any officer, employee or agent of such Agent or GCLA may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

23.10 No Actions

Each of the Lenders and the Hedging Counterparties agrees that it shall not assert or seek to assert against any director, officer or employee of any of the Agents or any of the GCLAs any claim it might have against any of them.

23.11 Business with the Obligors

Each Agent and GCLA may accept deposits from, lend money to and generally engage in any kind of banking or other business with any of the Obligors or their Affiliates.

23.12 Resignation

23.12.1 An Agent may resign its appointment hereunder at any time without assigning any reason therefor by giving not less than 25 Business Days' prior notice to that effect to the Senior Secured Creditors and the Company, in which case:

- (a) the Required Lenders (in the case of the Intercreditor Agent) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Required Lenders and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Required Lenders may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent; and
- (b) the relevant Lending Group under a Facility (in the case of a Facility Agent for that Facility) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of such Lending Group and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Lending Group may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent.

23.12.2 If the Required Lenders have not, within 15 Business Days after notice of resignation, appointed a successor Intercreditor Agent which accepts the appointment, the outgoing Agent may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Intercreditor Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the Intercreditor Agent may appoint a successor Agent on the same terms and conditions as previously applied to it.

23.12.3 If a Lending Group has not, within 15 Business Days after notice of resignation appointed a successor Facility Agent which accepts the appointment, the outgoing Facility Agent may appoint a successor Facility Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the outgoing Facility Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the outgoing Facility Agent may appoint a successor Facility Agent on the same terms and conditions as previously applied to it.

23.12.4 If, at the time of expiry of the period specified in sub-clause 23.12.2 or, as the case may be, sub-clause 23.12.3 above, the outgoing Agent cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of Wynn Macau and the Cotai Project.

23.12.5 If the Agent has not been paid an amount due to it under the Senior Finance Documents and gives notice thereof as its reason for resigning together with its notice pursuant to Clause 23.12.1, it shall not be obliged to appoint a successor. If, at the time of expiry of the period specified in clause 23.12.1, the Required Lenders or, as the case may be, the relevant Lending Group, cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Company.

23.12.6 The resignation of an Agent and the appointment of any successor Agent shall both become effective only upon the successor Agent executing an Agent's Deed of Accession *provided* that, where the Agent has notified the reason for its resignation pursuant to Clause 23.12.5, its resignation shall become effective upon the expiry of the period notified by it pursuant to Clause 23.12.1. Upon the execution of an Agent's Deed of Accession, the successor Agent shall succeed to the position of the retiring Agent (as the case may be) under the Senior Finance Documents and the term "Agent" shall mean the successor Agent.

23.12.7 The Intercreditor Agent agrees that it shall, if so requested in writing by the Required Lenders, tender its resignation in accordance with this Clause 23.12.

23.12.8 Each Facility Agent agrees that it shall, if so requested in writing by its Lending Group, tender its resignation in accordance with this Clause 23.12.

23.12.9 Upon the appointment of a successor (or, as the case may be, its resignation becoming effective), the retiring Agent shall be discharged from any future (but not accrued) obligations in respect of the Senior Finance Documents but shall remain entitled to the benefit of Clause 13.2 (*Other Indemnities*) and sub-clauses 23.1, 23.2, 23.5.2, 23.5.3, 23.6.10, 23.8, 23.9, 23.10 and 23.15 of this Clause 23.

23.13 Own Responsibility

It is understood and agreed by each Senior Secured Creditor that at all times it has itself been, and shall continue to be, solely responsible for making its own independent appraisal of, and investigation into, all risks arising under or in

connection with the Senior Finance Documents including, but not limited to:

23.13.1 the financial condition, creditworthiness, condition, affairs, status and nature of Wynn Macau, the Cotai Project and each Obligor;

23.13.2 the legality, validity, effectiveness, adequacy and enforceability of the Senior Finance Documents and any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;

23.13.3 whether such Senior Secured Creditor has recourse, and the nature and extent of that recourse, against an Obligor or any other Person or any of their respective assets under or in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; and

23.13.4 the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Agents or the GCLAs, an Obligor, or by any other Person in connection with the Senior Finance Documents, the transactions contemplated therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, each Senior Secured Creditor acknowledges to the Agents and the GCLAs that it has not relied on and shall not hereafter rely on the Agents and the GCLAs or any of them in respect of any of these matters.

23.14 Agency Division Separate

In acting as Agent under the Senior Finance Documents, each of the Agents shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments and, notwithstanding the foregoing provisions of this Clause 23, any information received by some other division or department of such Agent may be treated as confidential and shall not be regarded as having been given to such Agent's agency division.

23.15 Indemnity to Intercreditor Agent

23.15.1 Each Senior Secured Creditor shall rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Senior Secured Creditors (or, if all such amounts have been reduced to zero, such proportion determined immediately prior to such reduction) for the time being, indemnify the Intercreditor Agent, within fifteen days of demand (accompanied by reasonable written certification), against cost, loss or liability incurred by the Intercreditor Agent (other than by reason of fraud, negligence or wilful misconduct of the Intercreditor Agent) in acting as Intercreditor Agent in accordance with the terms of the Senior Finance Documents (unless the Intercreditor Agent has been reimbursed by, or indemnified to its satisfaction by, an Obligor pursuant to a Senior Finance Document or otherwise in writing). For the purposes of this Clause 23.15.1, each Hedging Counterparty shall, in respect of each Hedging Agreement entered into by it, be deemed to have made an Advance to the Company in an amount equal to the Realised Hedge Loss (if any) under the Hedging Agreement to which such Hedging Counterparty is party.

23.15.2 Clause 23.15.1 shall not apply to the extent that the Intercreditor Agent is otherwise actually indemnified or reimbursed by any party to a Senior Finance Document under any other provision of the Senior Finance Documents.

23.15.3 Provided that the Company is required to reimburse or indemnify the Intercreditor Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Senior Secured Creditor, indemnify such Senior Secured Creditor in relation to any payment actually made by such Senior Secured Creditor pursuant to Clause 23.15.1 above.

24. CONDUCT OF BUSINESS BY THE SENIOR SECURED CREDITORS

No provision of the Senior Finance Documents shall:

24.1.6 interfere with the right of any Senior Secured Creditor to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

24.1.7 subject to Clause 15 (*Mitigation by Senior Secured Creditors*), oblige any Senior Secured Creditor to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

24.1.8 oblige any Senior Secured Creditor to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

25. SHARING AMONG THE SENIOR SECURED CREDITORS

25.1 **Payments to Senior Secured Creditors**

If a Senior Secured Creditor (a "**Recovering Senior Secured Creditor**") receives or recovers any amount from an Obligor other than in accordance with the provisions of the Senior Finance Documents (excluding any such provision which permits the setting off of obligations owed by such Obligor against obligations owed to it by such Recovering Senior Secured Creditor but allowing, for the avoidance of doubt, any such provision in any Hedging Agreement permitting netting off between transactions under such Hedging Agreement) and applies that amount to a payment due under the Senior Finance Documents then:

25.1.4 the Recovering Senior Secured Creditor shall, within 5 Business Days, notify details of the receipt or recovery, to the Intercreditor Agent;

25.1.5 the Intercreditor Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Senior Secured Creditor would have been paid had the receipt or recovery been received and distributed in accordance with this Agreement, without taking account of any Tax which would be imposed on that Agent in relation to the receipt, recovery or distribution; and

25.1.6 the Recovering Senior Secured Creditor shall, within 10 Business Days of demand by the Intercreditor Agent, pay to the Intercreditor Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Intercreditor Agent determines may be retained by the Recovering Senior Secured Creditor as its share of any payment to be made, in accordance with this Agreement.

For purposes of clarification, Permitted Loan Repurchases shall not constitute payments (or prepayments) of Advances or the recovery of any amount from an Obligor for any purpose hereunder.

25.2 **Redistribution of payments**

The Intercreditor Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Senior Secured Creditors (other than the Recovering Senior Secured Creditor) in accordance with this Agreement.

25.3 **Recovering Senior Secured Creditor's Rights**

25.3.4 On a distribution by the Intercreditor Agent under 25.2 (*Redistribution of payments*), the Recovering Senior Secured Creditor shall be subrogated to the rights of the Senior Secured Creditors which have shared in the redistribution.

25.3.5 If and to the extent that the Recovering Senior Secured Creditor is not able to rely on its rights under sub-clause 25.3.1 above, the Company shall be liable to the Recovering Senior Secured Creditor for a debt equal to the Sharing Payment which is immediately due and payable.

25.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Senior Secured Creditor becomes repayable and is repaid by such Recovering Senior Secured Creditor, then:

25.4.14 each Senior Secured Creditor which has received a share of such Sharing Payment pursuant to Clause 25.2 (*Redistribution of payments*) shall, upon request of the Intercreditor Agent, pay to the Intercreditor Agent for account of that Recovering Senior Secured Creditor an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Senior Secured Creditor for its proportion of any interest on the Sharing Payment which that Recovering Senior Secured Creditor is required to pay); and

25.4.15 that Recovering Senior Secured Creditor's rights of subrogation in respect of any reimbursement shall be cancelled and the Company shall be liable to the reimbursing Senior Secured Creditor for the amount so reimbursed.

25.5 **Exceptions**

This Clause 25 shall not apply to the extent that the Recovering Senior Secured Creditor would not, after making any payment pursuant to this Clause 25, have a valid and enforceable claim against the relevant Obligor.

25.6 **Benefit**

The provisions of this Clause 25 are for the sole benefit of the Senior Secured Creditors and may be waived or amended by the Required Lenders without the consent of the Company provided there is no increase in the liability of the Company as a result.

26. **PAYMENT MECHANICS**

26.1 Payments under the Senior Finance Documents

26.1.5 *Prior to an Event of Default*

Unless and until an Event of Default has occurred and is continuing and except with respect to any payments pursuant to a Permitted Loan Repurchase:

- (g) all payments to be made by the Company to or for the account of any Lender under the Facility Agreement to which that Lender is a party shall be made to the relevant Facility Agent under that Facility Agreement for the account of that Lender, in the manner stipulated in the relevant Facility Agreement; and
- (h) all payments to be made by a Lender under a Facility Agreement shall be made to the relevant Facility Agent, not later than the time (if any) specified in the relevant Facility Agreement, to its account at such office or bank as it may notify to that Lender from time to time for this purpose.

26.1.6 *After the occurrence of an Event of Default*

Subject to the Deed of Appointment and Priority, after the occurrence of an Event of Default that is continuing and unless the Intercreditor Agent agrees in writing that payment should continue to be made in accordance with sub-clause 26.1.1 (*Prior to an Event of Default*) and except with respect to any payments pursuant to a Permitted Loan Repurchase:

- (a) all payments to be made by the Company to or for the account of any Senior Secured Creditor or under any Senior Finance Document shall be made to the Intercreditor Agent (other than any such payments to be made to or for the account of the Security Agent which shall continue to be made to the Security Agent);
- (b) all payments to be made by any Lender under any Senior Finance Document (whether pursuant to Clause 25 (*Sharing Among the Senior Secured Creditors*) or otherwise) shall be paid to the Intercreditor Agent; and
- (c) all payments received by the Intercreditor Agent under this sub-clause 26.1.2 shall be distributed in accordance with Clause 33.6 (*Application of Enforcement Proceeds*) to the Person(s) specified therein or, where any such Person is a Lender, to the relevant Facility Agent for the account of that Lender.

26.2 Payments by an Agent

26.2.6 Save as otherwise provided herein, each payment received by an Agent as agent for or otherwise for the benefit of another Person shall, subject to Clause 26.3 (*Distributions to an Obligor*) and Clause 26.4 (*Clawback*), be made available by that Agent to the Person entitled to receive such payment for value the same day by transfer to such account of such Person with such bank in the principal financial centre of the country of the relevant currency as such Person shall have previously notified to that Agent.

26.2.7 A payment shall be deemed to have been made by an Agent on the date on which it is required to be made under the Senior Finance Documents if such Agent has, on or before that date, taken steps to make that payment in accordance with the regulations or operating procedures of the clearing or settlement system used by such Agent in order to make the payment.

26.3 Distributions to an Obligor

Each Agent may (with the consent of the relevant Obligor or in accordance with Clause 27 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Senior Finance Documents or in or towards purchase of any amount of any currency to be so applied at a market rate of exchange in its usual course of business.

26.4 Clawback

26.4.3 Where a sum is to be paid to an Agent under the Senior Finance Documents for another Person, that Agent is not obliged to pay that sum to that Person until it has been able to establish to its satisfaction that it has actually received that sum.

26.4.4 If an Agent pays an amount to another Person and it proves to be the case that that Agent had not actually received that amount, then the Person to whom that amount was paid by that Agent shall on demand refund the same to that Agent together with interest on that amount from the date of payment to the date of receipt by that Agent, calculated by that Agent to reflect its cost of funds.

26.5 No Set-off by Obligors

All payments to be made by an Obligor under the Senior Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

26.6 **Business Days**

26.6.4 Any payment which is due to be made under any Senior Finance Document on a day that is not a Business Day shall be made on the next Business Day in the calendar month (if there is one) or the preceding Business Day (if there is not).

26.6.5 During any extension of the due date for payment of any principal pursuant to sub-clause 26.6.1 above, interest is payable on that principal at the rate payable on the original due date.

26.7 **Currency of account**

26.7.1 A repayment of an Advance or Unpaid Sum or a part of an Advance or Unpaid Sum shall be made in the currency in which the Advance or Unpaid Sum is denominated on its due date.

26.7.2 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

26.7.3 Each payment in respect of costs, expenses or Taxes under the Senior Finance Documents shall be made in the currency in which the costs, expenses or Taxes are incurred.

26.7.4 Any other amount payable under any of the Senior Finance Documents is, except as otherwise provided elsewhere in the Senior Finance Documents, payable in US dollars.

27. **SET-OFF**

Without prejudice to the provisions of Schedule 6 (*Accounts*) and subject to the terms of Clause 25 (*Sharing Among the Senior Secured Creditors*) and Clause 33 (*Intercreditor Arrangements*), a Senior Secured Creditor may, upon the occurrence of an Event of Default and for so long as it is continuing, set off any matured obligations owed by the Company under the Senior Finance Documents (to the extent beneficially owned by that Senior Secured Creditor) against any obligation (which, for the purpose of this provision only, shall be treated as due and payable, save for unmatured obligations under the Hedging Agreements) owed by that Senior Secured Creditor to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Senior Secured Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

28. **NON-RECOURSE LIABILITY**

Notwithstanding any provision in the Senior Finance Documents to the contrary no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Senior Secured Creditors for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of an individual holding the Executive Director Shares, his or her liability shall be limited to his or her shares in the Company.

29. NOTICES

29.1 Communications in Writing

Any notice, demand or other communication (each, for the purposes of this Clause 29, a "**communication**") to be made under or in connection with the Senior Finance Documents shall be made in writing but, unless otherwise stated, may be made by fax or letter.

29.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Senior Finance Documents is:

29.2.9 in the case of the Company, each of the GCLAs, each of the Agents, each of the Lenders and each of the Hedging Counterparties party to the Common Terms Agreement Fifth Amendment Agreement, identified with its name on the signing pages thereto; and

29.2.10 in the case of each other Lender, each other Hedging Counterparty and each other Obligor, that notified in writing to the Intercreditor Agent prior to the date it becomes a party to the Senior Finance Documents,

or any substitute address, fax number or department or officer as the party may notify to the Intercreditor Agent (or the Intercreditor Agent may notify to the other parties, if a change is made by the Intercreditor Agent) by not less than 10 Business Days' notice.

29.3 Delivery

29.3.6 Any communication or document made or delivered by one Person to another under or in connection with the Senior Finance Documents shall only be effective:

- (a) if delivered personally or by overnight courier, when left at the relevant address;
- (b) if by way of fax, when received in legible form; or
- (c) if by way of letter, when it has been left at the relevant address or 10 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.

29.3.7 Any communication or document to be made or delivered to an Agent shall be effective only when actually received by that Agent and then only if it is expressly marked for the attention of the department or officer specified as part of its address details provided under Clause 29.2 (*Addresses*) (or any substitute department or officer as that Agent shall specify for this purpose).

29.3.8 All notices to an Obligor shall be sent through a Facility Agent or the Intercreditor Agent (but always with a copy to the Intercreditor Agent). All notices from an Obligor under the Senior Finance Documents shall be sent to the Intercreditor Agent who shall distribute them to the Senior Secured Creditors.

29.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 29.2 (*Addresses*) or changing its own address or fax number, the Intercreditor Agent shall notify the other parties.

29.5 Electronic communication

29.5.1 Any communication to be made between an Agent and a Lender or between an Agent and another Agent under or in connection with the Senior Finance Documents may be made by electronic mail or other electronic means, if that Agent and the relevant Lender or Agent:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (c) notify each other of any change to their address or any other such information supplied by them.

29.5.2 Any electronic communication made between an Agent and a Lender or another Agent shall be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to an Agent or by an Agent to another Agent only if it is addressed in such a manner as the relevant Agent shall specify for this purpose.

29.6 Electronic supply of materials

29.6.10 The Company shall (and shall ensure that each other Obligor shall), unless otherwise requested by the Intercreditor Agent, provide to the Intercreditor Agent all information, documents and other materials that such Obligor is obligated to furnish to the Intercreditor Agent pursuant to the Senior Finance Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a new, or a conversion of an existing, Advance or other extension of credit (including any election of an interest rate or Interest Period relating thereto), (ii) relates to the payment of any principal or other amount due under any Senior Finance Document prior to the scheduled date therefor, (iii) provides notice of any Default under any Senior Finance Document, (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of any Senior Finance Document and/or any Advance or other extension of credit hereunder or (v) initiates or responds to

legal process (all such non-excluded information being referred to herein collectively as the "**Communications**") by transmitting the Communications in an electronic/soft medium (provided such Communications contain any required signatures) in a format acceptable to the Intercreditor Agent to each of Loan_Agency@bocmacau.com, ieong_lengchan@bocmacau.com and wong_iaokun@bocmacau.com (or such other e-mail address or addresses designated by the Intercreditor Agent from time to time).

29.6.11 Each party hereto agrees that the Intercreditor Agent may make the Communications available to the any Senior Secured Creditor by posting the Communications on IntraLinks or another relevant website, if any, to which such Senior Secured Creditor has access (whether a commercial, third-party website or whether sponsored by the Intercreditor Agent) (the "**Platform**"). Nothing in this Clause 29.6 shall prejudice the right of the Intercreditor Agent to make the Communications available to any Senior Secured Creditor in any other manner specified in this Agreement or any other Senior Finance Documents.

29.6.12 Each Senior Secured Creditor agrees that e-mail notice to it (at the address provided pursuant to the next sentence and deemed delivered as provided in the next paragraph) specifying that Communications have been posted to the Platform shall constitute effective delivery of such Communications to such Senior Secured Creditor for purposes of this Agreement and the other Senior Finance Documents. Each Senior Secured Creditor agrees (i) to notify the Intercreditor Agent in writing (including by electronic communication) from time to time to ensure that the Intercreditor Agent has on record an effective e-mail address for such Senior Secured Creditor to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.

29.6.13 Notwithstanding sub-clause 29.6.5 below, each party hereto agrees that any electronic communication referred to in this Clause 29.6 shall be deemed delivered upon the posting of a record of such communication (properly addressed to such party at the e-mail address provided to the Intercreditor Agent) as "sent" in the e-mail system of the sending party or, in the case of any such communication to the Intercreditor Agent, upon the posting of a record of such communication as "received" in the e-mail system of the Intercreditor Agent; *provided* that if such communication is not so received by the Intercreditor Agent during the normal business hours of the Intercreditor Agent, such communication shall be deemed delivered at the opening of business on the next Business Day for the Intercreditor Agent.

29.6.14 Each party hereto acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Communications and the Platform are provided "as is" and "as available", (iii) none of the Intercreditor Agent, its affiliates nor any of their respective officers, directors, employees, agents, advisors or representatives (collectively, the "**Intercreditor Parties**") warrants the adequacy, accuracy or completeness of the Communications or the Platform, and each Intercreditor Party expressly

disclaims liability for errors or omissions in any Communications or the Platform and (iv) no representation or warranty of any kind, express, implied or statutory, including any representation or warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Intercreditor Party in connection with any Communications or the Platform.

29.7 **English language**

29.7.5 Any notice given under or in connection with any Senior Finance Document must be in English.

29.7.6 All other documents provided under or in connection with any Senior Finance Document must be in English or, if not in English, and if so required by the relevant Agent, accompanied by a certified English translation and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other official document.

30. **CALCULATIONS AND CERTIFICATES**

30.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Senior Finance Document, the entries made in the accounts maintained by a Senior Secured Creditor are *prima facie* evidence of the matters to which they relate.

30.2 **Certificates and Determination**

Any certification or determination by a Senior Secured Creditor of a rate or amount under any Senior Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

30.3 **Day count convention**

Any interest, commission or fee accruing under a Senior Finance Document shall accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days (where due in US dollars) and 365 days (where due in HK dollars).

31. **PARTIAL INVALIDITY**

If, at any time, any provision of the Senior Finance Documents is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

32. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Senior Secured Creditor, any right or remedy under the Senior Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Senior Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

33. **INTERCREDITOR ARRANGEMENTS**

33.1 **Notices of Required Decisions**

33.1.3 If, at any time, a matter requiring a Decision comes to the notice of a Senior Secured Creditor, that Senior Secured Creditor shall promptly inform the Intercreditor Agent and, where relevant, its Facility Agent in writing.

33.1.4 If, at any time, a matter requiring a Decision comes to the notice of the Intercreditor Agent, the Intercreditor Agent shall promptly notify in writing each Facility Agent (and, after the occurrence of a Hedging Voting Right Event in relation to any Hedging Counterparty that is continuing, that Hedging Counterparty) of that matter specifying:

- (i) whether the matter concerns a Fundamental Term and, if not, which Senior Secured Creditors may vote in respect of the Decision and the aggregate Voting Entitlement required for the Decision to be made;
- (ii) the date and time by which the Intercreditor Agent requires receipt of all votes in respect of the Decision (the "**Decision Date**"); and
- (iii) following a Hedging Voting Right Event, the identity of the relevant Hedging Counterparty.

33.2 **Notice of Votes**

Each Senior Secured Creditor shall copy notice of its vote to the Intercreditor Agent, to each Facility Agent and each Hedging Counterparty notified by the Intercreditor Agent pursuant to Clause 33.1.2(iii) (*Notices of Required Decisions*).

33.3 Decisions under the Senior Finance Documents

Subject to the other provisions of this Agreement, the exercise of any right, power, discretion or determination which has been delegated to the Intercreditor Agent under the Senior Finance Documents (save for any such right, power, discretion or determination to be exercised by any such party for its own account) shall require the consent or agreement of the Required Lenders *provided* that the Intercreditor Agent may exercise any such right, power, discretion or determination (including giving instructions to the Security Agent) without requiring any Decision which the Intercreditor Agent, acting reasonably, considers is a minor, administrative or technical matter which does not adversely affect the rights of the Senior Secured Creditors under the Senior Finance Documents.

33.4 Restrictions On Remedies

Subject to this Clause 33 (*Intercreditor Arrangements*), no Senior Secured Creditor may, at any time:

33.4.1 set off, or purport to set off, at any time, any amount owing to it under the Senior Finance Documents against any amount payable by it to an Obligor (except that any Hedging Counterparty may net off between transactions under a single Hedging Agreement);

33.4.2 take any action or commence any legal proceedings of whatsoever nature against an Obligor under or in respect of a Senior Finance Document to which that Obligor is a party including taking any steps or legal proceedings for the winding-up, dissolution or administration of any of the Obligors or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of any of the Obligors or of any or all of its assets or revenues; or

33.4.3 foreclose on, or enforce or seek an order of the court to enforce all or any of the Security.

33.5 Notice of Default

33.5.4 If any Lender has actual knowledge of a Default which has occurred, it shall so advise the Intercreditor Agent and, where relevant, its Facility Agent in writing.

33.5.5 If any Facility Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall so advise the Intercreditor Agent and, where relevant, each Lender in its Lending Group in writing.

33.5.6 If the Intercreditor Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall notify each Facility Agent and each Hedging Counterparty in writing and, in the case of an Event of Default, it shall issue a notice under Clause 33.1 (*Notices of Required Decisions*) in respect of that Event of Default.

33.6 Application of Enforcement Proceeds

Following the delivery of an Enforcement Notice, all Enforcement Proceeds paid to the Intercreditor Agent in accordance with the Deed of Appointment and Priority shall be applied by it (together with any other payments received by it pursuant to sub-clause 26.1.2 of Clause 26.1 (*Payments under the Senior Finance Documents*)) in the following order:

- (iv) first, in payment of all costs and expenses incurred by or on behalf of the Intercreditor Agent in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Intercreditor Agent;
- (v) second, in payment *pro rata* of all costs and expenses incurred by or on behalf of the Facility Agents in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Facility Agent seeking recovery;
- (vi) third, in payment *pro rata* of all amounts paid by the Senior Secured Creditors under Clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (vii) fourth, in payment *pro rata* of all amounts paid by the Term Facility Lenders under clause 15.3 (*Indemnity to Term Facility Agent*) of the Term Facility Agreement or the Revolving Credit Facility Lenders under clause 15.3 (*Indemnity to Revolving Credit Facility Agent*) of the Revolving Credit Facility Agreement or the Additional Lenders under the equivalent provisions of each Additional Lender Facility Agreement in respect of indemnities to each Additional Facility Agent but which, in each case, have not been reimbursed by the Company;

- (viii) fifth, in payment *pro rata* of all costs and expenses incurred by or on behalf of each Senior Secured Creditor in accordance with the Senior Finance Documents in connection with such enforcement and which have been certified, in writing, as having been incurred by the Senior Secured Creditor seeking recovery;
- (ix) sixth, in payment *pro rata* of all accrued and unpaid fees owing to the Agents under the Senior Finance Documents;
- (x) seventh, in payment *pro rata* of all accrued and unpaid fees and commissions due to the Lenders under the Senior Finance Documents;
- (xi) eighth, in payment *pro rata* of all accrued but unpaid interest (including default interest) due under the Facility Agreements and all sums due under the Hedging Agreements;
- (xii) ninth, in payment *pro rata* of all principal instalments due under the Facility Agreements;
- (xiii) tenth, in payment *pro rata* of all other amounts owing to the Senior Secured Creditors due and payable under the Senior Finance Documents; and
- (xiv) eleventh, in payment of the surplus (if any) to the Security Agent in accordance with the Deed of Appointment and Priority or to its order,

provided that, following the giving of any notice by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (Remedies following an Event of Default), the amounts referred to in paragraphs (viii) and (ix) above shall rank pari passu.

33.7 Representations and Warranties

On the Fifth Amendment Signing Date and on the Fifth Amendment Effective Date, each Senior Secured Creditor party hereto represents and warrants to each other Senior Secured Creditor party hereto that:

33.7.1 it is duly organised and validly existing under the laws of the jurisdiction in which it is incorporated;

33.7.2 it has power to enter into and has duly authorised the execution, delivery and performance of this Agreement;

33.7.3 the obligations expressed to be assumed by it hereunder are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof; and

33.7.4 it is not the beneficiary of any Liens in respect of any Financial Indebtedness owed to it by the Company other than under the Senior Finance Documents.

33.8 The provisions of this Clause 33 (*Intercreditor Arrangements*) are for the sole benefit of the Senior Secured Creditors and may be waived or amended without the consent or agreement of the Company provided there is no increase in the liability of the Company as a result.

34. AMENDMENTS AND WAIVERS

34.1 Amendment and waiver of common terms

Subject to Clause 25.6 (*Benefit*) and to Clause 34.2 (*Amendment and waiver of Facility Agreements*) to Clause 34.5 (*Amendment and Waiver of an Affected Lender Decision*) below, any term of, or matter dealt with under, this Agreement and any other Senior Finance Document may be amended, waived or supplemented with the agreement of the Company and/or the other Obligors which are a party to that Senior Finance Document and/or, as the case may be, the Required Lenders.

34.2 Amendment and waiver of Facility Agreements

Subject to Clause 34.3 (*Amendment and waiver of Fundamental Terms*) and Clause 34.4 (*Amendment and waiver affecting Agents*) below, any term of, or matter dealt with under, a Facility Agreement may be amended, waived or supplemented with the agreement of the Company and/or, as the case may be, the required Senior Secured Creditors as specified in that Facility Agreement.

34.3 Amendment and waiver of Fundamental Terms

34.3.4 Save as set out in Clause 34.3.4, a Fundamental Term may only be amended or waived by agreement between the Obligors which are a party to the Senior Finance Document which contains that Fundamental Term and each Lender (and, in the case of the provisions referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) of the definition of "Fundamental Term" in Clause 1.1 (*Definitions*), each Hedging Counterparty).

34.3.5 An amendment or waiver that has the effect of changing or which relates to (other than as expressly permitted by the

provisions of any Senior Finance Document) the nature or scope of the Project Security or the Security (except insofar as it relates to a Disposition of any Property which is the subject of the Security where such Disposition is expressly permitted under this Agreement or any other Senior Finance Document) shall not be made without agreement between the Company, each Lender and each Hedging Counterparty.

34.3.6 An amendment or waiver that has the effect of changing the currency of any fee (or portion thereof) payable under any Senior Finance Document to a Secured Party shall not be made without agreement between the Company and that Secured Party.

34.3.7 For the avoidance of doubt, any amendment, waiver or consent of, or in relation to, any of the provisions referred to paragraph (b) of the definition of "Fundamental Term" in Clause 1.1 (*Definitions*) that does not have the effect of changing or which does not relate to:

- (a) an extension to the date of payment of any amount under the Senior Finance Documents;
 - (b) a reduction in the interest margin applicable to a Lender's participation in an Advance or a reduction in the amount of any payment of principal, interest or fees owing or payable under any Senior Finance Document; or
 - (c) a change in currency of payment of any amount under the Senior Finance Document,
- does not require unanimity among the Lenders and Hedging Counterparties.

34.4 **Amendment and waiver affecting Agents**

An amendment or waiver of any term of the Senior Finance Documents which relates to the rights and/or obligations of any Agent may not be effected without the prior written consent of that Agent.

34.5 **Amendment and Waiver of an Affected Lender Decision**

An Affected Lender Decision that relates solely to:

34.5.2 the Term Facility may not be effected without the prior consent of the Company and all of the Term Facility Lenders, and not any other Lenders;

34.5.3 the Revolving Credit Facility (other than any Additional Lender Facility) may not be effected without the prior consent of the Company and all of the Revolving Credit Facility Lenders (excluding any Additional Lenders party to an Additional Lender Facility Agreement providing for a revolving credit facility), and not any other Lenders; or

34.5.4 any Additional Lender Facility may not be effected without the prior consent of the Company and all of the Additional Facility Lenders in respect of that Additional Lender Facility, and not any other Lenders.

35. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

36. **LANGUAGE**

The English language shall be the only official and recognised language of this Agreement. If for any reason a translation of this Agreement is required, such translation shall in the event of any dispute be secondary to the original English version which shall take precedence.

37. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

38. **JURISDICTION**

38.1 **Jurisdiction of English courts**

38.1.5 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a "**Dispute**").

38.1.6 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they shall not argue to the contrary.

38.1.7 This Clause 38.1 is for the benefit of the Senior Secured Creditors only. As a result, no Senior Secured Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Senior Secured Creditors may take concurrent proceedings in any number of jurisdictions.

38.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

38.2.5 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

38.2.6 agrees that failure by a process agent to notify the Company of the process shall not invalidate the proceedings concerned.

39. **CONFIDENTIALITY**

Subject to Clause 40 (*Gaming Authorities*), each of the Senior Secured Creditors agrees to keep confidential all non-public information of a proprietary or confidential nature provided to it by any Obligor or any Wynn Non-Obligor Subordination Deed Party pursuant to this Agreement *provided* that nothing herein shall prevent any Senior Secured Creditor from disclosing any such information:

- (a) to any other Senior Secured Creditor, or any Affiliate thereof that is bound by confidentiality obligations;
- (b) to any other Person pursuant to Clause 21.8 (*Disclosure of Information*) or clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority;
- (c) to any of its or its Affiliates' employees, directors, agents, auditors, attorneys, accountants and other professional advisors who or that is bound by confidentiality obligations;
- (d) upon the request or demand of any Governmental Authority having jurisdiction over it;
- (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Legal Requirement or the rules of any stock exchange on which the shares or other securities of such Senior Secured Creditor or any Affiliate thereof are listed or by any other competent supervisory or regulatory body;
- (f) if required to do so in connection with any litigation or similar proceeding;
- (g) that has been publicly disclosed other than in breach of this Clause;
- (h) in connection with the exercise of any remedy hereunder or under any other Senior Finance Document;
- (i) to any insurer, insurance broker or other service providers of such Senior Secured Creditor or any of its Affiliates who are under a duty of confidentiality to such Senior Secured Creditor or its Affiliate, as the case may be; or

(j) to any rating agency or direct or indirect provider of credit protection to such Senior Secured Creditor or any of its Affiliates.

The obligations in this Clause 39 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Senior Secured Creditor until the earlier of:

- (A) the date that is 12 months after the Final Repayment Date in respect of the Term Facility (or if such Senior Secured Creditor is an Additional Lender, the later of (i) the date that is 12 months after the Final Repayment Date in respect of the Term Facility and (ii) the date that is 12 months after the Final Repayment Date in respect of the Additional Lender Facility in respect of which it is an Additional Lender); and
- (B) the date that is 12 months after the date on which such Senior Secured Creditor ceases to be a Senior Secured Creditor (unless such date falls after the date referred to in paragraph (A) above in respect of such Senior Secured Creditor, in which case, for the avoidance of doubt, the obligations in this Clause 39 (*Confidentiality*) shall cease to remain binding on the date referred to in paragraph (A) above in respect of such Senior Secured Creditor).

40. **GAMING AUTHORITIES**

Each of the Senior Secured Creditors agrees to cooperate, having regard to its internal procedures and policies, with the reasonable requests of any and all gaming authorities in connection with the administration of their regulatory jurisdiction over the Company, any other Obligor or any Wynn Non-Obligor Subordination Deed Party, to the extent not inconsistent with any applicable legal, regulatory or contractual restrictions (including any duties of confidentiality) or the terms of the Senior Finance Documents, *provided* that the Senior Secured Creditors are indemnified for any cost, loss or liabilities incurred in connection with such cooperation.

41. **WAIVER OF IMMUNITY**

The Company irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or any other grounds from:

- (a) suit;
- (b) jurisdiction of any court;
- (c) relief by way of injunction or order for specific performance or recovery of property;
- (d) attachment of its assets (whether before or after judgment); and
- (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction (and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any immunity in any such proceedings).

Schedule 1 THE LENDERS AND HEDGING COUNTERPARTIES

Part A Term Facility Lenders

Bank of China Limited, Macau Branch

Part B Revolving Credit Facility Lenders

Bank of China Limited, Macau Branch

Part C Hedging Counterparties

The Bank of Nova Scotia

DBS Bank Ltd.

Schedule 2 CONDITIONS PRECEDENT

Part A

[Not used]

Part B 1

[Not used]

Part B2

(I) Conditions Precedent to each Advance under the Term Facility and the Revolving Credit Facility on and from the Fifth Amendment Effective Date

In respect of the Advances to be made under the Term Facility and the Revolving Credit Facility on and from the Fifth Amendment Effective Date (as detailed, in respect of the Advances to be made under the Term Facility on the Fifth Amendment Effective Date, in the Completion Memorandum), as set out in Schedule 1 to the Common Terms Agreement Fifth Amendment Agreement, the Term Facility Agreement and the Revolving Credit Facility Agreement (as applicable).

(II) Conditions Precedent to each Advance under each Additional Lender Facility on and from the Fifth Amendment Effective Date

As set out in the applicable Additional Lender Facility Agreement.

Part B3

[Not used]

Part C

[Not Used]

Part D

[Not Used]

Part E

[Not Used]

Part F

[Not Used]

Part G

[Not Used]

Part H

Upsize Conditions Precedent

1. Macau SAR approval

Receipt by the Intercreditor Agent of evidence that the Macau SAR government has:

- (a) approved the submission made by the Company to the Macau SAR government on 24 August 2015;
- (b) consented to the incremental increase in the Company's financial indebtedness in respect of the Upsized Amount; and
- (c) confirmed that the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (as amended, consolidated, supplemented, novated or replaced from time to time prior to the proposed date on which the Upsize Advance is to be made) continue to apply with respect to such indebtedness in an amount equal to the aggregate USD equivalent of all outstanding Advances and all undrawn Available Commitments of each Lender under the Facilities (excluding any Additional Lender Facility) (the "**Upsized Amount**"),

together with a legal opinion of the Macanese legal adviser to the Senior Secured Creditors, in respect thereof and in respect of the validity, enforceability, effectiveness and ranking of the Mortgage (as well as confirming the Secured Obligations thereunder also cover the Upsized Amount) in form and substance satisfactory to the Intercreditor Agent, acting reasonably.

2. Due establishment, authority and certification

In relation to each Obligor, receipt by the Intercreditor Agent of a certificate signed by a duly authorised signatory of that Person and which:

- (a) either (A) attaches a copy of that Person's Governing Documents or (B) certifies that the copy of that Person's Governing Documents (which was previously delivered to the Intercreditor Agent on or about 14 September 2004 or subsequently) remains correct, complete and in full force and effect as at a date no earlier than the date on which the Upsize Advance is to be made;
- (b) attaches a copy of a board resolution or such other equivalent corporate authorisation approving the execution, delivery and performance of the Supplemental Security Documents referred to in paragraph 3 below to which it is a party, the terms and conditions thereof and the transactions contemplated thereby, authorising a named person or persons to sign such Supplemental Security Document and any document to be delivered by that Person pursuant to such Supplemental Security Documents and authorising the signatory of the relevant certificate to sign certificates in connection therewith;
- (c) (in the case of the Company only) certifies that each document listed in this Part H of Schedule 2 and delivered by an Obligor is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date on which the Upsize Advance is to be made; and
- (d) confirms that borrowing, guaranteeing or securing as appropriate, the total commitments of all Lenders in respect of the Term Facility and the Revolving Credit Facility would not cause any borrowing, guarantee, security or similar limit binding on any such Person to be exceeded;

3. Supplemental Security Documents

- (a) Receipt by the Intercreditor Agent of an original of each of the following documents (each, a "**Supplemental Security Document**"), in each case duly executed by the parties thereto:
 - (i) a Macau law mortgage (ranking after the Mortgage) granted by the Company over Wynn Macau and the Site (but excluding any horizontal property classified as a casino in accordance with article 42 of the Concession Contract) (the "**Supplemental Mortgage**");
 - (ii) an irrevocable power of attorney from the Company in favour of the Security Agent in connection with the Supplemental Mortgage (the "**Supplemental Power of Attorney**");
 - (iii) a Macau law pledge over certain rights derived from the ownership of the shares in the Company and any sale agreement relating to such shares (the "**Supplemental Assignment of Company Shareholder Rights**");
 - (iv) a Macau law pledge over certain rights derived from the ownership of the shares in Palo and any sale agreement relating to such shares (the "**Supplemental Assignment of Palo Shareholder Rights**");
 - (v) an English law security agreement granted by Wynn Asia 2 with respect to the proceeds of any sale of the

shares in Wynn International and Wynn Asia 2's rights under any sale agreement relating to such shares (the "**Supplemental Wynn International Security Agreement**"); and

- (vi) a Hong Kong law security agreement granted by Wynn Holdings with respect to the proceeds of any sale of the shares in Wynn HK and Wynn Holdings' rights under any sale agreement relating to such shares (the "**Supplemental Wynn HK Security Agreement**"),

and any other document entered into which the Intercreditor Agent and the Company agree prior to the date on which the Upsize Advance is made to designate as a Supplemental Security Document or a Senior Finance Document.

- (b) Each Supplemental Security Document has been duly authorised, executed and delivered by such of the Obligors party thereto and (save in respect of any registration required at the Companies House in England and Wales, the Hong Kong Companies Registry, the Conservatória dos Registos Comercial e de Bens Móveis in Macau SAR, the Conservatória do Registo Predial in Macau SAR, the applicable Uniform Commercial Code filing office for local/county, state and federal Uniform Commercial Code filings and the Isle of Man Companies Registry, as applicable, based on the Supplemental Security Document subject to the filing) duly filed, notified, recorded, stamped and registered as necessary.
- (c) All conditions precedent to the effectiveness thereof have been satisfied or waived in accordance with their respective terms and each such Supplemental Security Document (save as provided in paragraph (b)) is in full force and effect accordingly.

4. **Legal opinions**

Receipt by the Intercreditor Agent of legal opinions from legal advisers to the Senior Secured Creditors as to:

- (a) Macau law;
- (b) Isle of Man law;
- (c) Cayman Islands law;
- (d) Hong Kong SAR law; and
- (e) English law.

5. **Fees and expenses**

Receipt by the Intercreditor Agent of evidence that:

- (a) all taxes, fees and other costs payable in connection with the execution, delivery, filing, recording, stamping and registering of the documents referred to in this Part H of Schedule 2; and
- (b) all fees, costs and expenses due to the Senior Secured Creditors and their advisers under the Senior Finance Documents on or before the date on which the Upsize Advance is made,

have been paid or shall be paid (to the extent that such amounts have been duly invoiced) by no later than the date on which the Upsize Advance is made.

6. **Security**

Receipt by the Intercreditor Agent of evidence that each Supplemental Security Document has been duly filed, notified, recorded, stamped and (save as provided in paragraph 2(b) above) registered as necessary and all other actions necessary in the reasonable opinion of the Intercreditor Agent or the Security Agent to perfect the Security have been carried out.

7. **Process agents**

Where such appointment is required under any Supplemental Security Document referred to in paragraph 2 above, a copy of the process agent's acceptance of its appointment by each applicable Obligor for the acceptance of legal proceedings.

8. **Other documents and evidence**

- (a) Evidence of the definitive registration with the Macau Real Estate Registry of the horizontal property comprised in any area of Wynn Macau classified as a casino in accordance with article 42 of the Concession Contract so that the casino area is registered as one unit separate and independent from the horizontal property contained in all the remaining areas of Wynn Macau upon obtaining all Permits required from the Macau SAR for such registration to be made.

- (b) An intercreditor agreement in form and substance satisfactory to the Additional Lender(s) under the relevant Additional Lender Facility Agreement to be entered into and the Required Lenders referred to in paragraph (a) of the definition of "Required Lenders" in Clause 1.1 (*Definitions*).
- (c) A copy of any other authorisation or other document, opinion or assurance which the Intercreditor Agent (acting reasonably) considers to be necessary or desirable (if it has notified the Company accordingly) in connection with the entry into and performance of the transactions contemplated by any Supplemental Security Document or for the validity and enforceability of any Supplemental Security Document.

Schedule 3
FORM OF ADVANCE REQUEST

To: [] as Intercreditor Agent
[] as Term Facility Agent

Date: []

Dear Sirs,

Advance Request No. []

1. We refer to the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This is an Advance Request given pursuant to Clause 3 (*Drawdown of Advances*) of the Common Terms Agreement.
3. We hereby give you notice that, upon the terms and subject to the conditions contained in the Common Terms Agreement and the Facility Agreements, we wish to borrow the following Advances under the following Facilities on [*proposed Advance Date*] to be applied towards the following purposes:

[USD/HKD] [*amount*] under [the [Tranche A Facility and Tranche B Facility / Tranche C Facility] of the Term Facility to be applied towards a permitted use under the Term Facility Agreement.
4. We confirm that:
 - (i) the above purposes and Advances comply with the permitted use of the Facilities under the Facility Agreements and Clause 5 (*Purpose*) of the Common Terms Agreement and that no part of the above Advances shall be applied otherwise than as mentioned in paragraph 3 above;
 - (ii) each Advance is required for the purpose specified;
 - (iii) each condition specified in Clause 2.2 (*Conditions Precedent to each Advance*) of the Common Terms Agreement [and sub-paragraph 3.1.3 of Clause 3.1 (*Drawdown conditions*) of the Common Terms Agreement] is satisfied on the date of this Advance Request; and
 - (iv) since the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.
5. We attach signed but undated receipts for the Advances requested above and hereby authorise the Intercreditor Agent to date such receipts on the date such Advances are made.
6. The above Advances shall have a [first] Interest Period ending on [*date*].
7. The [proceeds/specified amounts] of the above Advances should be credited to, respectively, the following Accounts:

[specify relevant Account and amount]
8. We further confirm, without any personal liability on the part of our Responsible Officer signing this Advance Request, that:
 - (i) no Default is continuing; and
 - (ii) the representations and warranties contained in Schedule 4 (*Representations and warranties*) of the Common Terms Agreement which are repeated by the Company pursuant to Clause 17.2 (*Timing*) of the Common Terms Agreement

are true and correct in all material respects with reference to the facts and circumstances existing on the date of this Advance Request.

Yours faithfully,

Name:
Responsible Officer
for and on behalf of
Wynn Resorts (Macau) S.A.

Attachments: *[list]*

Schedule 4

REPRESENTATIONS AND WARRANTIES

1. Organization

Each of the Obligors is duly organised or incorporated (as the case may be), validly existing and (if applicable) in good standing under the laws of its jurisdiction of organisation or incorporation (as the case may be) and has all requisite corporate or limited liability company power and authority to:

- (a) carry on its business as now conducted;
- (b) own or hold under lease and operate the Properties it purports to own or hold under lease;
- (c) carry on its business as now being conducted and as now proposed to be conducted in respect of Wynn Macau and the Cotai Project;
- (d) incur the Financial Indebtedness contemplated hereunder; and
- (e) execute, deliver and perform under each of the Transaction Documents to which it is a party and create any Lien on its Property contemplated thereunder.

2. Authorization; No Conflict

2.1 Each of the Obligors has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Transaction Documents to which it is a party. Neither the execution, delivery or performance of each Transaction Document to which it is a party nor the consummation of the transactions contemplated thereby:

- (a) by each Obligor does or will contravene the formation or constitutional documents or any other material Legal Requirement then applicable to or binding on each such Obligor; or
- (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation or imposition of any Lien upon any of the Properties of any Obligor or under any security or agreement or instrument to which any Obligor is a party or by which it or any of its respective properties may be bound, except for Permitted Liens or as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

2.2 No consent, Permit or filing or other authorization with, notice to or other act by or in respect of, any Governmental Authority or any Person is required in connection with the borrowings under the Senior Finance Documents or with the execution, delivery, performance, validity or enforceability of any of the Transaction Documents, except consents, authorisations, recordings, stampings, filings, registrations and notices described in the definition of "Required Filings" in Clause 1.1 (*Definitions*).

3. Legality, Validity and Enforceability

3.1 Each of the Transaction Documents to which any of the Obligors is a party is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.

3.2 None of the Transaction Documents to which any of the Obligors is a party has been amended or modified except in accordance with this Agreement.

4. Compliance with Law and Permits

As of the Fifth Amendment Effective Date, each Obligor is in compliance with all Legal Requirements (including Sanctions and Permits) in all material respects and no notices of any material violation of any Permit made or issued by or with a Governmental Authority relating to Wynn Macau or the Cotai Project have been issued, entered or received by any such Obligor (and which violation is continuing). As at the Fifth Amendment Effective Date, all Permits have been obtained or effected (to the extent they are then required) and are in full force and effect. The DICJ Authorisation, when obtained, is the only Permit required from any Governmental Authority in the Macau SAR to authorise the Company to incur the financial indebtedness referred to in the definition of "DICJ Authorisation" in Clause 1.1 (*Definitions*) and such Permit confirms that the Gaming Concession Consent Agreement and the Land Concession Consent Agreement remain in full force and effect and continue to apply to all of the Security and Project Security that each such agreement purports to cover.

5. **[Not used]**

6. **Litigation**

There are no pending or, to any Obligor's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any Governmental Authority, to which any Obligor is a party or is subject, or by which any of them or any of their Properties is bound that, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

7. **Financial Statements**

The financial statements of the Obligors, delivered to the Intercreditor Agent pursuant to Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) on or prior to the CP Satisfaction Date, were, and, in the case of financial statements to be delivered after the CP Satisfaction Date pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) hereto, will be prepared in conformity with applicable GAAP and fairly present in all material respects the financial position of the entities described in such financial statements as of the respective dates thereof and the results of operations and cash flows 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. No such financial statement fails to disclose any material: Guarantee Obligations, contingent liabilities or 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, required to be reflected therein.

8. **Security Interests**

8.1 As of the Fifth Amendment Effective Date, save in respect of any Excluded Subsidiary or Excluded Project (in respect of which (save for any Excluded Project located on the Cotai Site and assets comprised therein or connected thereto) it is acknowledged that no Senior Secured Creditors have any Lien) and except for the obtaining of any consents or approvals, recording, filing, registration, giving of notice or other similar action as described in the definition of "Required Filings" in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and paragraph 15 of Part A of Schedule 5 (*Covenants*) (in the case of Schedule 2 (*Conditions Precedent*) which Permits, consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or made and are in full force and effect):

- (a) the security interests granted or purported to be granted to the Senior Secured Creditors pursuant to the Security Documents in the Project Security (notwithstanding, without limitation, the Substitution) constitute as to Properties included in the Project Security existing on the date on which this representation is made or deemed to be made or repeated and, with respect to subsequently acquired Properties included in the Project Security, will constitute, a perfected security interest under all applicable law and/or the UCC and grant the Senior Secured Creditors superior priority and rights in respect of the full amount of the Obligations over the rights of any 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;
- (b) all such action as is necessary has been taken to establish, perfect and maintain the Senior Secured Creditors' rights in and to the Project Security, including any obtaining of consents or approvals, recording, filing, registration, giving of notice or other similar action; and
- (c) each of the Security Documents is effective to create a legal, valid, binding and enforceable security interest in the Project Security described therein and proceeds and products thereof.

Each of the Obligors has properly delivered or caused to be delivered to the Security Agent all Project Security that requires perfection of the Lien and security interest described above by possession.

8.2 As of the Fifth Amendment Effective Date, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (a) the pledge or grant by the Obligors of the Liens purported to be created in favour of the Secured Parties pursuant to any of the Security Documents, or (b) the exercise by the Security Agent, or any of 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 registrations,

filings, giving of notices or recordings contemplated by paragraph 8.1 of this Schedule 4 or as described in definition of "Required Filings" in Clause 1.1 (*Definitions*) or Schedule 2 (*Conditions Precedent*).

8.3 As of the Fifth Amendment Effective Date, except such as may have been filed in favour of the Security Agent as contemplated by paragraph 8.1 of this Schedule 4 or as set forth in Schedule 2 (*Conditions Precedent*), 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 in the United States of America or elsewhere.

9. **No Existing Defaults**

9.1 No Event of Default has occurred which is continuing.

9.2 None of the Obligors, or, to the Company's knowledge, the Performance Bond Provider or any other Major Project Participant is in default under or with respect to any of its material Contractual Obligations under any of the Transaction Documents to which it is a party, which default (in the case only of a Major Project Participant other than an Obligor) could reasonably be expected to have a Material Adverse Effect.

10. **Taxes**

10.1 Each of the Obligors has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it (taking into account any grace periods granted in respect thereof) in any jurisdiction and all such tax and informational returns are correct and complete in all material respects. Each of the Obligors 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 (a) those taxes that it is contesting in good faith and by appropriate proceedings and (b) those taxes not yet due, *provided* that with respect to each of sub-paragraph (a) and (b) of this paragraph 10.1, it has established reserves therefor in amounts that are adequate for the payment thereof and are required by applicable GAAP.

10.2 None of the Obligors has incurred any material tax liability in connection with Wynn Macau or the Cotai Project or the other transactions contemplated by the Transaction Documents which has not been disclosed in writing to the Intercreditor Agent, including as disclosed in the financial statements delivered to the Intercreditor Agent under this Agreement.

10.3 There are no Liens for Taxes on any of the Properties of any of the Obligors other than Liens permitted pursuant to paragraph 3(a) of Part B of Schedule 5 (*Covenants*) hereto.

10.4 The Company is resident only in its jurisdiction of incorporation for Tax purposes.

10.5 It is not required to make any Tax Deduction from any payment it may make under any Senior Finance Document to a Senior Secured Creditor.

11. **Business, Debt, Etc.**

The Obligors have not conducted any business other than a Permitted Business and the Substitution. The Obligors have no place of business outside the Macau SAR except (in the case of the Company) as otherwise permitted under Part B of Schedule 5 (*Covenants*) or, in the case of any other Obligor, outside its jurisdiction of incorporation. No Obligor has any outstanding Financial Indebtedness other than (in the case of the Company) Permitted Financial Indebtedness or (in the case of any other Obligor) as permitted by the Senior Finance Documents to which it is a party.

12. **Environmental Laws**

12.1 Each Obligor is in compliance with all applicable material Environmental Laws in all material respects and, so far as it is aware, there are no circumstances that could at any time be reasonably expected to prevent or interfere with such compliance.

12.2 No Environmental Claim has been made which has not been fully discharged, released, satisfied or withdrawn, except for any Environmental Claim that would not have, or would not reasonably be expected to have, a Material Adverse Effect.

12.3 As at the Fifth Amendment Effective Date:

(a) each Obligor has obtained all Environmental Licences required for the carrying on of its business as currently conducted and has complied with the terms and conditions of such Environmental Licences except where, in each case, the failure to have so obtained or complied would not constitute a Material Adverse Effect; and

(b) there are no past or present acts, omissions, events or circumstances that would form, or are reasonably likely to form, the basis of any Environmental Claim against any Obligor that in either case would have, or would reasonably be expected to have, a Material Adverse Effect.

12.4 There are, to its knowledge, no circumstances that may prevent or interfere in any material respect with the compliance of

each Obligor with the terms and conditions of all Environmental Licenses required for the carrying on of that Obligor's business.

13. [Not Used]

14. [Not used]

15. **Sufficiency of Funds**

As of the first day of each Fiscal Quarter of the Company and as of each Advance Date, the Company has sufficient Funds to operate its business as it is then conducted and pay its debts when due.

16. **Sufficiency of Interests and Major Project Documents**

16.1 The Company (or, prior to a Permitted Cotai Reorganisation and in the case of the Cotai Site, Palo) is the sole legal and beneficial owner of, and has good title to, or has a valid leasehold interest in, the land comprised in the Site and the Cotai Site, and each Obligor has good and valid title to, or a valid license or leasehold interest in, and all appropriate authorisations to use all its Property necessary to conduct its business. None of the Pledged Stock is subject to any Lien except for Permitted Liens.

16.2 Each Major Project Document (excluding any Resort Management Agreements) 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 and except for any such Major Project Document that has expired by its terms.

17. **Intellectual Property**

Each Obligor owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. The use by the Company of the Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name does not infringe on the rights of any Person. The use by the Company of Intellectual Property other than Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name, does not infringe on the rights of any Person, except where such infringement, individually or collectively, would not reasonably be expected to have a Material Adverse Effect.

18. [Not Used]

19. **Fees and Enforcement**

Other than amounts that have been paid in full or will have been paid in full by the Fifth Amendment Effective Date, no fees or taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of any of the Transaction Documents then in effect.

20. **ERISA**

(a) There are no Plans.

(b) Assuming that the sources of funds for any credit extended hereunder does not constitute "plan assets" (within the meaning of section 3(42) of ERISA) of any employee benefit plan subject to Title I of ERISA or any plan subject to Section 4975 of the Code, neither the execution of the Transaction Documents nor the consummation of the transactions contemplated thereby will involve a "prohibited transaction" with respect to any such plans within the meaning of section 406 of ERISA or section 4975(c) of the Code which is not exempt under section 408 of ERISA or under section 4975(d) of the Code.

21. **Subsidiaries and Beneficial Interest**

21.1 *The Company*

(a) As of the Fifth Amendment Effective Date, the Executive Director legally and beneficially owns 20,010 Class A Shares (as defined in the Governing Documents of the Company), representing 10% of the total issued share capital and 10% of the Voting Stock of the Company;

(b) As of the Fifth Amendment Effective Date, Wynn HK, a company incorporated in the Hong Kong SAR, legally and beneficially owns 102,000 Class B Shares (as defined in the Governing Documents of the Company), representing 51% of the total issued share capital and 51% of the Voting Stock of the Company; and

(c) As of the Fifth Amendment Effective Date, Wynn International, a company incorporated in the Isle of Man, legally and beneficially owns 78,000 Class C Shares (as defined in the Governing Documents of the Company), representing 39% of the total issued share capital and 39% of the Voting Stock of the Company.

21.2 *Wynn HK*

As of the Fifth Amendment Effective Date, Wynn Holdings, a company incorporated in the Isle of Man, legally and beneficially owns 99% and beneficially owns 1%, and Wynn International, as nominee of Wynn Holdings, legally owns 1%, of the total issued share capital of Wynn HK.

21.3 *Wynn Holdings*

As of the Fifth Amendment Effective Date, Wynn International legally and beneficially owns 100% of Wynn Holdings.

21.4 *Wynn International*

As of the Fifth Amendment Effective Date, Wynn Asia 2, a company incorporated in the Cayman Islands, legally and beneficially owns 100% of the total issued share capital of Wynn International.

21.5 *Palo*

As of the Fifth Amendment Effective Date, the Company legally and beneficially owns 99.8%, and Wynn International and Wynn HK each legally and beneficially own 0.1%, of the total issued share capital of Palo.

21.6 Save as provided by the Security Documents or the Executive Director Option Agreement or as otherwise permitted by the Senior Finance Documents, 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 issued by any Obligor (other than any Capital Stock in Wynn Asia 2). No Obligor has issued, or authorized the issuance of, any Disqualified Stock.

22. **Labour Disputes and Acts of God**

22.1 There are no strikes, lockouts, stoppages, slowdowns or other labour disputes against any Obligor pending or, to the knowledge of each Obligor, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect.

23. **Liens**

Except for Permitted Liens, none of the Obligors have secured or agreed to secure any Financial Indebtedness by any Lien upon any of their present or future revenues or other Properties or Capital Stock. None of the Obligors have outstanding any Lien or obligation to create Liens on or with respect to any of their Properties (including, without limitation, revenues), other than Permitted Liens and as provided in the Security Documents.

24. **Title**

Save, in the case of any such Property which, pursuant to the Security Documents, is expressed to be subject only to the floating charge granted pursuant to the Floating Charge, to the extent such floating charge has not been consolidated and the absence of such title could not reasonably be expected to have a Material Adverse Effect, each of the Obligors owns and has good, legal and beneficial title to the Property upon which it purports to grant Liens pursuant to the Security Documents, free and clear of all Liens, except Permitted Liens.

25. [Not Used]

26. **Location of Accounts and Records**

The Company's (and each of its Subsidiaries') books of accounts and records are located at the Company's principal place of business in the Macau SAR.

27. **Solvency**

Each Obligor is, and after giving effect to:

- (a) the incurrence of all Financial Indebtedness;
- (b) the use of the proceeds of such Financial Indebtedness (including, in the case of the Company, the use of proceeds of Advances made under the Senior Finance Documents); and
- (c) obligations being incurred in connection with the Transaction Documents,

will be and will continue to be Solvent.

28. [Not Used]

29. **No subsidiaries**

Save as permitted hereunder, other than Palo, the Company has no subsidiaries and does not legally or beneficially own any Capital Stock in any Person.

30. **Pari Passu**

The payment obligations under the Senior Finance Documents of each of the Obligors rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.

31. **Insurance**

As at the Fifth Amendment Effective Date:

- (a) the Company and Palo are each insured by insurers of recognised financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are each engaged;
- (b) there is no outstanding insured loss or liability incurred by either the Company or Palo which is US\$10,000,000 (or its equivalent) or more which is not expected to be covered to the full extent of that loss or liability;
- (c) there has been no non-disclosure, misrepresentation or breach of any term of any material Insurance which would entitle any insurer of that Insurance to repudiate, rescind or cancel it or to treat it as avoided in whole or in part or otherwise decline any valid claim under it by or on behalf of any Obligor or member of the Group; and
- (d) the Company is not aware of any insurer of any material Insurance being in run-off or having entered into any insolvency proceedings which are still pending or current.

32. **Fiscal Year**

The fiscal year of each of the Obligors ends on 31 December of each calendar year.

33. **Accuracy of Information, etc.**

As of the Fifth Amendment Signing Date, or, in the case of the Information Memorandum, the date thereof, no statement or information contained in any document, certificate or written statement furnished to any Senior Secured Creditor, by or on behalf of any Obligor for use in connection with the transactions contemplated by any of the Senior Finance Documents, contained (when, in the case of any such document, certificate or written statement, read as a whole with all such documents, certificates and written statements furnished on or prior to the Fifth Amendment Signing Date to such Senior Secured Creditor) 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. As of the Fifth Amendment Signing Date, or, in the case of the Information Memorandum, the date thereof, the projections and pro forma financial information contained in the materials referenced above (including the Projections) are based upon good faith estimates and assumptions believed by management of the Obligors to be reasonable at the time made, it being recognized by the Senior Secured Creditors 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. As of the Fifth Amendment Signing Date, there are no facts known to any Obligor that could, individually or collectively, reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed in the Senior Finance Documents or in any other documents, certificates and written statements furnished to the Senior Secured Creditors for use in connection with the transactions contemplated by the Senior Finance Documents.

34. **Site and Site Easements**

The Site, the material Site Easements and the current use thereof comply in all material respects with all applicable Legal Requirements, except where the failure to comply would not reasonably be expected to have a Material Adverse Effect.

35. **Affiliate Agreements**

On the Fifth Amendment Effective Date, each Affiliate Agreement in effect as of the Fifth Amendment Effective Date has been entered into on arm's length terms and for full market value (or better, for the relevant Obligor), in compliance with the Concession Contract and all other applicable Legal Requirements and otherwise in compliance with the terms hereof.

36. **Wynn Asia 2**

As of the Fifth Amendment Effective Date, Wynn Asia 2 has not carried on any business other than holding shares in Wynn International, entering into the Senior Finance Documents as a Wynn Obligor, entering into all agreements that are necessary or desirable for the purpose of (i) maintaining its corporate status (including without limitation agreements for the

appointment of lawyers and auditors), (ii) the Substitution and (iii) complying with its obligations under the Finance Documents (as defined in the Deed of Appointment and Priority) (including without limitation the appointment of process agents).

37. [Not Used]

38. [Not Used]

39. [Not Used]

40. **Development Account**

As of the date of each withdrawal from a Development Account, the Company (and/or Palo, as the case may be) has incurred costs or expended funds on the development of the Cotai Project (or will immediately upon the making of such withdrawal, have expended funds on the development of the Cotai Project) in an amount at least equal to the aggregate amount of all withdrawals from the Development Accounts (other than a withdrawal of funds for the immediate transfer of those funds to another Development Account). For the purposes of this paragraph 40, costs incurred or funds expended on the development of the Cotai Project include, but are not limited to, costs and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest.

**Schedule 5
COVENANTS**

**Part A
Affirmative Covenants**

The Company shall:

1. **Financial Statements** - Furnish to the Intercreditor Agent:

- (a) not later than 90 days after the end of each Fiscal Year, a copy of the audited balance sheets (on a consolidated basis) of the Company prepared in accordance with IFRS, as at the end of such Fiscal Year and the related audited 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 the Auditors and prepared (in the case of the Company) for the Restricted Group only and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary; and
- (b) not later than 45 days after the end of each Fiscal Quarter of each Fiscal Year, the unaudited (on a consolidated basis) balance sheets of the Company prepared in accordance with IFRS, as at the end of such quarter and the related unaudited 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 and prepared (in the case of the Company) for the Restricted Group only and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary.

All such financial statements shall be fair in all material respects (in the case of financial statements delivered pursuant to sub-paragraph (b) of this paragraph 1, subject to normal year-end audit adjustments) and were prepared in accordance with applicable GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such Auditors or Responsible Officer, as the case may be, and disclosed therein).

2. **Certificates; Other Information** - Furnish to the Intercreditor Agent:

- (a) concurrently with the delivery of any financial statements pursuant to paragraph 1 of this Part A:
 - (i) a certificate of a Responsible Officer of the Company certifying that the statement is fair in all material respects (subject, where relevant, to normal year-end audit adjustments);
 - (ii) a certificate of a Responsible Officer of the Company stating that, to the best of each such Responsible Officer's knowledge, the Company during such period has observed or performed all of its material covenants and other agreements, and that such Responsible Officer has obtained no actual knowledge of any Default except as specified in such certificate;

(iii) when applicable, in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Obligors with the provisions of this Agreement as of the last day of the applicable Fiscal Quarter or Fiscal Year, as the case may be; and

(iv) in the case of the Company, a list of each of its Accounts; and

(b) for each calendar month during the period up to and including the first calendar month in which the Cotai Opening Date has occurred, deliver to the Facility Agents and the Intercreditor Agent, within 45 days following the end of the relevant calendar month, a status report for the Cotai Project in reasonable detail.

(c) no later than March 1 of each Fiscal Year, projections (the "**Projections**") of the Company and the Restricted Group for such Fiscal Year, including a projected balance sheet of the Company as of the end of such Fiscal Year and the related statements of projected cash flow and profit and loss and the assumptions supporting such Projections and prepared on a consolidated basis for the Restricted Group and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary and, no less frequently than quarterly, significant revisions, if any, of such Projections with respect to such Fiscal Year, which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Company 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 and which such Projections shall demonstrate compliance with paragraph 1 of Part B of this Schedule (and, where applicable pursuant to the other terms of this Agreement, including or, as the case may be, taking into account any Contribution as further contemplated by (and as set out in) paragraph (d) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*));

(d) promptly, and in any event within ten Business Days after any Major Project Document is terminated (save upon expiration in accordance with its terms) or amended (save in respect of amendments of a purely administrative or mechanical nature which do not, in each case, adversely affect the interests of any of the Secured Parties) or any new Major Project Document is entered into (other than, in each case, any Resort Management Agreement), or upon becoming aware of any material default by any Person or the occurrence of any event under a Major Project Document (other than, in each case, any Resort Management Agreement) which, with the expiry of any grace period, the giving of notice or the making of any determination provided thereunder, or any combination of the foregoing, would give rise to a right to terminate (a "**Termination Event**"), a written statement describing such event with copies of such amendments or new Major Project Document and, with respect to any such terminations or material defaults, an explanation of any actions being taken by the Company with respect thereto;

(e) promptly, and in any event within 30 days of the end of each Fiscal Year, deliver to the Intercreditor Agent a certificate certifying that the insurance requirements of paragraph 10 or Part A of Schedule 5 (*Covenants*) have been implemented and are being complied with;

(f) [Not used];

(g) a copy of each written notice which is given under or pursuant to the Concession Contract, the Land Concession Contract or the Cotai Land Concession Contract by the Macau SAR to the Company (other than any administrative or routine notice which could not reasonably be expected to be prejudicial to the interests of the Secured Parties) promptly upon receipt of such notice;

(h) at the same time as the giving of any written notice under or pursuant to the Concession Contract, the Land Concession Contract or the Cotai Land Concession Contract by the Company to the Macau SAR (other than any administrative or routine notice which could not reasonably be expected to be prejudicial to the interests of the Secured Parties), a copy of such notice; and

(i) promptly, such additional financial and other information as the Intercreditor Agent may from time to time reasonably request.

3. [Not used]

4. [Not used]

5. [Not used]

6. **Management Letters** - Deliver to the Intercreditor Agent a copy of any "management letter" or other similar communication received by the Company or any other Obligor from the Auditors in relation to the Company's or any other Obligor's financial, accounting and other systems, management or accounts.

7. [Not used]

8. **Payment of Obligations** - To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy (and ensure each other Obligor shall 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 (under the circumstances) proceedings and reserves in conformity with applicable GAAP with respect thereto have been provided on the books of the Company (and, where relevant, such other Obligor).
9. **Conduct of Business and Maintenance of Existence, etc.**
- (a) Preserve, renew and keep in full force and effect (and ensure each other Obligor shall preserve, renew and keep in full force and effect) its corporate or limited liability company existence and remain a Subsidiary of Wynn Resorts;
 - (b) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary (and ensure each other Obligor shall take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary) in the normal conduct of its business, except to the extent that failure to do so could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect; and
 - (c) engage only in the businesses which are Permitted Businesses.
10. **Insurance and Property**
- 10.1 Keep (and ensure each other Obligor shall keep) all material Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.
- 10.2 Ensure (and, where applicable, ensure Palo shall ensure) that its or their Insurances:
- (a) are materially consistent with the Insurances in place as at the Fifth Amendment Effective Date, *provided* that such Insurances may be modified consistent with the availability of coverage in the international insurance market on reasonable commercial terms;
 - (b) cover all risks that are required to be insured against under any applicable law or regulation; and
 - (c) cover all risks which a prudent owner would insure against (as reasonably determined by the Company).
- 10.3 Ensure (and, where applicable, procure that Palo will ensure) that the Insurances are with, or it (or, where applicable or as the case may be, Palo) has ultimate recourse in respect of all insured losses under the Insurances to, an insurance company or underwriter which is of international standing and is not a captive insurer which is a member of the Restricted Group or an Obligor.
- 10.4 Ensure (and procure that each member of the Restricted Group will ensure) that its (and, where applicable, Palo's Insurances):
- (d) insure every tangible asset for its full replacement value (less any deductibles in accordance with the terms of the Insurances); and
 - (e) in the case of any other asset or risk, provide cover up to a limit which a prudent owner would buy (as reasonably determined by the Company).
- 10.5 Ensure (and, where applicable, procure that Palo will ensure) that the Insurances taken out in respect of Wynn Macau and the Cotai Project comply with the following requirements:
- (a) the Company (and, if appropriate or applicable, Palo) must each be insured for its own insurable interest or, where appropriate, jointly insured, and separately from any other insured party, on a basis that:
 - (i) any non-disclosure, misrepresentation or breach by or on behalf of any one insured party will not prejudice the cover of any other insured party; and
 - (ii) insurers waive any and all rights of subrogation against the Company, any Obligor and any Secured Party;
 - (b) the Company and, if appropriate or applicable, Palo must each be entitled to claim directly for any insured loss suffered by it;
 - (c) the Company and, if appropriate or applicable, Palo must use reasonable endeavours to ensure that (at each applicable time) its insurance broker delivers a broker's letter of undertaking (substantially in the form delivered to the Intercreditor Agent by the Company prior to the Fifth Amendment Effective Date) on or before the expiry of the previously delivered broker's letter of undertaking, in substantially the same form as that previously delivered;

- (d) the Company and, if appropriate or applicable, Palo must each be free to assign all amounts payable to it under each of its or their Insurances and all its or their rights in connection with those amounts in favour of the Security Agent as agent and trustee for the Secured Parties; and
- (e) no limits of cover purchased under any Insurance are to be capable of being eroded below the limits which a prudent owner would maintain by reason of claims from Persons who are not Palo or the Company.

10.6 Ensure that it will (and, if appropriate or applicable, procure that Palo will):

- (a) promptly pay (or procure payment of) all premiums and do anything which is necessary to keep each of its Insurances in full force and effect for the term of the Insurances;
- (b) not do or allow anything to be done which may (and promptly notify the Intercreditor Agent of any event or circumstance which does or is reasonably likely to) entitle any insurer of any of its Insurances to repudiate, rescind or cancel it or to treat it as avoided in whole or in part or otherwise decline any valid claim under it by or on behalf of the Company or, as the case may be, Palo;
- (c) promptly notify the Intercreditor Agent of any event or occurrence giving rise to any aggregate loss or liability in excess of US\$10,000,000 (or its equivalent) in respect of which any member of the Restricted Group is entitled to make one or more claim under any Insurance;
- (d) keep the Intercreditor Agent advised of the progress of any such claim; and
- (e) not compromise or settle any claim for less than the amount claimed without the prior consent of the Intercreditor Agent where the aggregate loss or liability in respect of the event or occurrence concerned is more than US\$50,000,000 (or its equivalent).

10.7 Ensure (and, if appropriate or applicable, shall ensure Palo will ensure) that each of the Direct Insurers grants an assignment in favour of the Security Agent on behalf of the Secured Parties, over all of its rights, title and interest in any Reinsurance held from time to time and/or the Reinsurance proceeds (other than relating to any public liability, third party liability or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company or Palo). Each assignment shall at all times be in the form of the Assignment of Reinsurances dated on or about the date of this Agreement unless otherwise agreed by the Security Agent (acting on the instructions of the Intercreditor Agent).

10.8 Ensure that each such Direct Insurer gives notice to each Reinsurer with whom it has effected such Reinsurance in the form set out in Part 1 of Schedule 2 to the Assignment of Reinsurances and shall procure an acknowledgement from each such Reinsurer in the form set out in Part 2 of Schedule 2 to the Assignment of Reinsurances or such other form reasonably acceptable to the Security Agent.

10.9 For the purposes of this paragraph 10, if the Company or, where applicable, Palo (as the case may be) fails to maintain any contract of insurance which it is required to maintain under this Agreement in respect of Wynn Macau and the Cotai Project, the Intercreditor Agent may purchase the requisite insurance on its behalf. The Company or, where applicable, Palo (as the case may be) must immediately pay the costs and expenses of the Intercreditor Agent or any of its agents incurred in the purchase of that insurance.

10.10 For the purposes of this paragraph 10:

- (a) a "**prudent owner**" means a prudent owner and operator of any business, and of assets of a type and size, similar in all cases to those owned and operated by (in respect of Wynn Macau) the Company and (in respect of the Cotai Project) the Company and (prior to any Permitted Cotai Reorganisation) Palo in a similar location;
- (b) "**replacement value**" means the cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs; and
- (c) Insurance (the "**new Insurance**") shall be on reasonable commercial terms if (without prejudice to any other terms that may be commercially reasonable) the premium payable in respect of the new Insurance is not more than 125 per cent. of the premium paid by the Company or Palo (as the case may be) for the Insurance covering the same risks as the new Insurance in the immediately preceding year.

11. **Inspection of Property; Books and Records; Discussions**

- (f) Keep (and ensure each other Obligor shall keep) proper books of records and account in which full, true and correct entries in conformity with applicable GAAP and all Legal Requirements.
- (g) Subject to any Macau Gaming Laws, data protection laws or other applicable Legal Requirements restricting such actions and, where no Event of Default has occurred which is continuing, prior reasonable request and notice, procure (and ensure each other Obligor procures) that each of the Agents or their respective nominees (for purposes

of this paragraph (b), each a "**Relevant Person**") be allowed reasonable rights of inspection and access during normal business hours to the Site, the Cotai Site, the Cotai Project, the Auditors and other Company and Obligor officers, the Company's and each other Obligor's accounting books and records and any other documents relating to the Company or Palo (or their respective businesses or assets) as they may reasonably require, and so as not unreasonably to interfere with the operations of the Company and to take copies of any documents inspected. Any information and documents made available for inspection by a Relevant Person pursuant to this paragraph (b) shall be made available subject to customary confidentiality undertakings being executed by such Relevant Person.

- (h) For all expenditures with respect to which Advances under the Term Loan Facilities are made, the Company shall retain, until at least three years after delivery of the last report specified in paragraph 2(b) of this Part A for the Fiscal Year in which the last Advance was made under the Term Loan Facilities, all records and other documents evidencing such expenditures as are required hereunder to be attached to an Advance Request made in respect of any Term Loan Facility.

12. **Notices** - Promptly give notice to the Intercreditor Agent of:

- (a) the occurrence of any Default;
- (b) unless already notified pursuant to paragraph 2(d) of this Part A, any notice of termination (other than expiration in accordance with the terms thereof), any notice of default sent or received by an Obligor or any Termination Event, in each case under any Major Project Document;
- (c) (i) any fact, circumstance, condition or occurrence at, on, or arising from, any of the Site or the Site Easements that results in non-compliance with any Environmental Law that has resulted or could reasonably be expected to result in a Material Adverse Effect or result in any liability for any Senior Secured Creditor, and (ii) any Environmental Claim pending or, to the Company's or any other Obligor's knowledge, threatened against the Company or any other Obligor or, to the Company's or any other Obligor's knowledge, pending or threatened against any contractor or any subcontractor arising in connection with its occupying or conducting operations on or in respect of Wynn Macau, the Cotai Project, the Site or the Site Easements which, in connection with any of the forgoing matters specified in this sub-paragraph (c)(ii), could reasonably be expected to have a Material Adverse Effect or result in any liability for any Senior Secured Creditor;
- (d) any change in the Responsible Officers of the Company or any other Obligor, and such notice shall include a certified specimen signature of any new officer so appointed and, if requested by any Facility Agent or the Intercreditor Agent, evidence of the authority of such new Responsible Officer;
- (e) [Not used]
- (f) [Not used]
- (g) [Not used]
- (h) any (i) default or event of default (or alleged default) by the Company or any other Obligor under any Major Project Document or (ii) litigation, investigation or proceeding which may exist at any time between the Company or any other Obligor and any Governmental Authority, that in either case, could reasonably be expected to have a Material Adverse Effect;
- (i)
 - (i) within twenty days after the Company receives actual notice of a Proceeding or Proceedings instigated or threatened in writing involving an alleged liability of, or claims against or affecting, the Company, Wynn HK, Wynn International, Wynn Asia 2 or any other Obligor where any such Proceeding has, or may reasonably be expected to have, a Material Adverse Effect; or
 - (ii) upon any officer of the Company or any other Obligor obtaining knowledge thereof, the instigation or written threat of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting the Company or any other Obligor, or any Property of the Company or any other Obligor (collectively, "**Proceedings**") not previously disclosed in writing by the Company to the Lenders (including pursuant to paragraph (i)(i) above) that, in any case (i) is reasonably likely to give rise to a Material Adverse Effect or (ii) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions under the Transaction Documents, or any material development in any such Proceeding;
- (j) [Not used]
- (k) [Not used]; and

(l) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this paragraph shall be accompanied by a statement of a Responsible Officer of the Company setting forth reasonable details of the occurrence referred to therein and stating what action the Company and/or the relevant Obligor proposes to take with respect thereto.

13. Environmental Laws; Permits

13.1 [Not used]

13.2 Comply (and ensure each other Obligor complies) with all applicable Environmental Laws and Environmental Licences (save for any failure to comply that could not reasonably be expected to have a Material Adverse Effect).

13.3 Provide copies of any notices from any Governmental Agency of non-compliance with any material Environmental Law or Environmental Licence and any notices of any material Environmental Claims to the Intercreditor Agent.

13.4 Deliver to the Intercreditor Agent with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Intercreditor Agent in relation to any matters disclosed pursuant to this paragraph 13.

14. Hedging

Comply with the Hedging Arrangements and not enter (and ensure no other Obligor enters into) into any other Swap Agreement or derivative transaction other than any Permitted Swap Transaction and the Hedging Arrangements.

15. Additional Collateral, Discharge of Liens, etc.

15.3 With respect to any Property acquired by the Company or any other Obligor after the Fifth Amendment Signing Date as to which the Senior Secured Creditors do not have a perfected security interest, subject to compliance with applicable Macau Gaming Laws and restrictions on the grant of Liens permitted pursuant to paragraph 3 of Part B of this Schedule, promptly:

- (a) execute and deliver (and ensure each other Obligor executes and delivers) to the Intercreditor Agent such amendments to the Security Documents or execute and deliver such other documents as the Intercreditor Agent, acting reasonably, deems necessary or advisable to grant to the Senior Secured Creditors a security interest in such Property; and
- (b) take all actions necessary or advisable to grant to the Senior Secured Creditors a perfected first priority security interest in such Property (subject to Permitted Liens).

In addition to the foregoing, in the event any such Property acquired after the Fifth Amendment Signing Date consists of land or other Property with respect to which a recording or registration in the real property or other records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within 30 days following the date of such acquisition):

- (i) execute and deliver (and ensure each other Obligor executes and delivers) a mortgage, substantially in the form of the Mortgage (with such modifications, if any, as are necessary to comply with Legal Requirements that the Security Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Security Agent for recording a supplement to the Mortgage, in either case pursuant to which the Company or other Obligor grants to the Senior Secured Creditors a Lien on such Property subject only to Permitted Liens; and
- (ii) execute and/or deliver (and ensure each other Obligor executes and/or delivers) such other documents or provide such other information in furtherance thereof as the Security Agent may reasonably request, including delivering documents and taking such other actions which would have been required pursuant to Clause 2 (*Conditions Precedent*) if such Property were part of the Project Security at the CP Satisfaction Date.

15.4 Notwithstanding anything to the contrary in this paragraph 15, sub-paragraph 15.1 shall not apply to:

- (i) any Property created or acquired after the Fifth Amendment Signing Date, as applicable, as to which the Intercreditor Agent has reasonably determined that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining or maintaining a perfected security interest therein;
- (ii) any Subconcession proceeds or any Property purchased with Subconcession proceeds (which is neither comprised in Wynn Macau or the Cotai Project nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company);
- (iii) any works of art, antiquities, precious stones, precious metals or other similar assets (which are not of a type that

will become affixed to the Site or, as the case may be, the Cotai Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of Wynn Macau or, as the case may be, the Cotai Project);

- (iv) any Property comprised in or derived from Resort Management Agreements (which is neither comprised in Wynn Macau or the Cotai Project nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company save for amounts received by the Company or another Obligor in respect of any Excluded Project located on the Cotai Site and the entry into or performance of obligations under, any Cotai Resort Management Agreement); or
- (v) stock or other ownership interests in Excluded Subsidiaries and Excluded Projects.

15.5 Notwithstanding anything to the contrary in this paragraph 15 or the Senior Finance Documents, (unless otherwise agreed by the Company and the Intercreditor Agent or the Security Agent) neither the Company nor Palo shall at any time be required to grant any Lien over its rights under any contract for the design, development, construction, operation or maintenance of the Cotai Project entered into between a contractor (or an equipment supplier or a service provider) and the Company or Palo, as the case may be.

15.6 Notwithstanding anything to the contrary in this paragraph 15 or the Senior Finance Documents, the Company shall not (and no Obligor shall) at any time be required to grant, create, incur or assume any Lien over any Property or assets described in and set forth in paragraph 15.2 above.

16. Use of Proceeds and Revenues

16.1 Use the proceeds of each of the Facilities only for the purposes specified or allowed in this Agreement and the Facility Agreement relating to such Facility.

16.2 Ensure that all of its funds and those of any other Obligor and all other amounts received by it or any other Obligor (other than (i) any Subconcession proceeds or amounts received by the Company or another Obligor in respect of any Excluded Subsidiaries or Excluded Projects or its entry into, or performance of its obligations under, any Resort Management Agreement (but including amounts received by the Company or another Obligor in respect of any Excluded Project located on the Cotai Site and the entry into, or performance of obligations under, any Cotai Resort Management Agreement) and (ii) any Excluded Amounts paid into an Excluded Account) are deposited into any Account or combination of Accounts and otherwise in accordance with the provisions of this Agreement and that it and each other Obligor otherwise complies with Schedule 6 (*Accounts*).

17. Compliance with Laws, Major Project Documents, etc.; Permits

17.1 Comply (and ensure that each Obligor, each member of the Group and each Excluded Subsidiary complies) in all material respects with all material Legal Requirements (including, without limitation, all Anti-Terrorism Laws, Money Laundering Laws and Anti-Bribery Laws), and its Governing Documents.

17.2 Comply (and ensure each other Obligor complies), duly and promptly, in all material respects with its material obligations and enforce all of its material rights under all Major Project Documents, except in the case of any Resort Management Agreement, where the failure to comply could not reasonably be expected to threaten the Concession Contract, the Cotai Land Concession Contract or the Land Concession Contract.

17.3 From time to time obtain, maintain, retain, observe, keep in full force and effect and comply (and ensure that each other Obligor and each other member of the Restricted Group complies) in all material respects with the terms, conditions and provisions of all Permits made or issued by or with a Governmental Authority as shall now or hereafter be necessary under applicable laws.

17.4 Comply (and ensure each Obligor complies) with all Legal Requirements related to the Land Concession Contract, the Cotai Land Concession Contract and the Concession Contract.

18. **Pari Passu Ranking** - Procure that the obligations of the Company and each other Obligor under the Senior Finance Documents do and shall rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.

19. **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 any of the Intercreditor Agent or the Security Agent may reasonably request, for the purposes of implementing or effectuating the provisions of the Senior Finance Documents, or of more fully perfecting or renewing the rights of the Senior Secured Creditors 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 acquired after the date of the Senior Finance Documents by the Company or any other Obligor which may be deemed to be part of the Project Security) pursuant to the Senior Finance Documents. Upon the exercise by the Intercreditor Agent, the

Security Agent or any other Senior Secured Creditor of any power, right, privilege or remedy pursuant to any of the Senior Finance Documents which requires any consent, approval, notification, registration or authorisation of any Governmental Authority, the Company shall execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Intercreditor Agent, the Security Agent or such Senior Secured Creditor may reasonably be required to obtain from the Company or any other Obligor for such governmental consent, approval, notification, registration or authorisation.

20. [Not used]

21. [Not used]

22. **Preserving Project Security** - Undertake and cause the other Obligors to undertake, all actions which are necessary or appropriate in the reasonable judgment of the Intercreditor Agent to:

- (a) maintain the Senior Secured Creditors' respective security interests under the Security Documents in the Project Security in full force and effect at all times (including the priority thereof); and
- (b) preserve and protect the Project Security and protect and enforce the Company's or, as the case may be, other Obligor's rights and title and the respective rights of the Senior Secured Creditor to the Project Security,

including the making or delivery of all filings and registrations, 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 Senior Secured Creditors to and under the Project Security and the publication or other delivery of notice to third parties.

23. [Not used]

24. **Termination of Concession Contract** - Notify the Intercreditor Agent promptly upon receiving:

- (a) notice of any formal consultations with the Macau SAR as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement in relation to any termination and cessation of the Concession Contract (but for the avoidance of doubt not including consultations relating to the potential extension of the Concession Contract);
- (b) notice of any formal consultations with the Macau SAR (i) as contemplated by paragraph C1 of the Land Concession Consent Agreement in relation to any termination or rescission of the Land Concession Contract or (ii) in relation to any termination or rescission of the Cotai Land Concession Contract (but for the avoidance of doubt not including consultations relating to the potential extension of the Land Concession Contract or the Cotai Land Concession Contract);
- (c) any notice from the Macau SAR pursuant to clause 3 of article 80 of the Concession Contract; or
- (d) any notice from the Macau SAR pursuant to clause 4 of article 80 of the Concession Contract,

and keep the Intercreditor Agent fully apprised thereof.

25. [Not used]

26. **Sufficiency of Funds**

Ensure that it together with each other Obligor has, at all times, sufficient Funds to operate its business as it is then conducted and pay its debts when due.

27. **Additional Obligors**

27.1 Notwithstanding any other provision to the contrary in this Agreement or the other Senior Finance Documents, promptly (and in any case within 30 days of such formation, creation or acquisition) shall ensure that any newly formed, created or acquired (directly or indirectly) Subsidiary (other than any Excluded Subsidiary) of the Company or any other Obligor, agrees to be subject to the obligations under the terms of the Senior Finance Documents and to grant such Liens in respect of its Property as may be required by the terms of the Senior Finance Documents by:

- (a) giving not less than 5 Business Days prior written notice to the Intercreditor Agent (which shall promptly notify the Lenders) of such formation, creation or acquisition;
- (b) the Company confirming that no Default is continuing or would occur as a result of the formation, creation or acquisition of such proposed Subsidiary or as a result of such proposed Subsidiary becoming an Obligor; and
- (c) delivering to the Intercreditor Agent all of the documents and other evidence required by it in relation to the relevant

Subsidiary (in form and substance reasonably satisfactory to the Intercreditor Agent), including (without limitation):

- (i) accession by the relevant Subsidiary to the Subordination Deed and the Guarantee; and
- (ii) any other documentation and evidence reasonably required by the Intercreditor Agent to ensure that the relevant Subsidiary makes such representations and warranties and is subject to such obligations under the terms of the Senior Finance Documents and grants such Liens in respect of its Property,

in each case on such terms and by such instrument or combination of instruments as the Intercreditor Agent reasonably deems necessary or desirable; and *provided* that the Intercreditor Agent shall have informed the Company of all such documents and evidence to be required by the Intercreditor Agent within a reasonable time after receiving the notice set forth in paragraph 27.1(a).

27.2 The Intercreditor Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance reasonably satisfactory to it) all the documents and other evidence referred to in paragraph 27.1(c) above.

27.3 Following the giving of any notice pursuant to paragraph 27.2 above, if the accession of such additional Obligor obliges the Intercreditor Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, promptly upon the request of the Intercreditor Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Intercreditor Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Intercreditor Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an additional Obligor.

28. **Cotai Site Excluded Project**

28.1 Ensure that to the extent any Excluded Project located on a portion of the Cotai Site is funded by the proceeds of any Advance, such funding is applied solely towards the financing or refinancing of the development costs incurred in relation to such Excluded Project (it being agreed that such development costs include, but are not limited to, costs and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest).

28.2 Ensure that prior to the earlier of the entry into of any contract for and the commencement of the construction of an Excluded Project on a portion of the Cotai Site, the conditions set out in paragraphs (i) to (iii) (inclusive) of the definition of "Excluded Project" in Clause 1.1 (*Definitions*) are met and that such conditions continue to be met for the duration of the period during which such Excluded Project remains located on a portion of the Cotai Site.

29. **Executive Director Substitutions**

Procure that each of the steps set out in paragraphs (a) to (d) (inclusive) of the definition of "Executive Director Substitution" in Clause 1.1 (*Definitions*) occurs in relation to any Disposition by an Executive Director of any or all of the Executive Director Shares and that any cancellation of the Existing Executive Director Shares only occurs in connection with an Executive Director Substitution and the issuance of New Executive Director Shares to a New Executive Director.

30. **Wynn Macau and the Cotai Project**

Ensure that the Company continues to own and operate Wynn Macau and, after its construction, Palo, (or following a Permitted Cotai Reorganisation, the Company), continues to own and Palo and/or the Company continues to operate the Cotai Project, in each case, as integrated casino resorts.

31. **OFAC**

31.1 Ensure that it (and each other Obligor and each member of the Group):

- (a) is not the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or any other Sanctions;
- (b) is not located, organised or residing in any Designated Jurisdiction, or participating in or facilitating a transaction or business in a Designated Jurisdiction or, subject to the proviso in sub-paragraph (i) below, involving any Person who is the subject of Sanctions; and
- (c) subject to the proviso in sub-paragraph (ii) below, on the Fifth Amendment Effective Date, none of its directors, officers, agents, employees or affiliates (as defined in Rule 405 under the U.S. Securities Act of 1933, as amended) (a "**relevant OFAC person**") are the subject of any U.S. sanctions administered by OFAC or any other Sanctions,

provided that the Company will not (and no other Obligor will) be in breach of:

- (i) the relevant part of paragraph 31.1(b) above, if the relevant Obligor does not have knowledge or reason to believe that the relevant Person is the subject of Sanctions; or
- (ii) paragraph 31.1(c) above, if the relevant Obligor does not have knowledge or reason to believe that the relevant OFAC person is the subject of U.S. sanctions administered by OFAC or any other Sanctions on the Fifth Amendment Effective Date.

31.2 Ensure that it shall not (and no other Obligor or member of the Group or any Excluded Subsidiary shall) directly or indirectly use the proceeds of the Facilities, or lend, contribute or otherwise make available such proceeds to any other Person, for the purpose of financing the activities of any Person that, at the time of such financing, is the subject of any U.S. sanctions administered by OFAC or any other Sanctions, or in any Designated Jurisdiction.

31.3 Without prejudice to paragraph 31.2 above, ensure that none of its funds or assets (and none of the funds or assets of any other Obligor, any member of the Group or any member of the Excluded Group) which are used to pay any amount due pursuant to this Agreement or any other Senior Finance Document shall constitute funds knowingly obtained from transactions with or relating to Designated Persons or Designated Jurisdiction.

31.4 Ensure that it (and each other Obligor and each member of the Group):

- (a) has in place customary procedures designed to identify if any of its (or any other Obligor's or any member of the Group's) directors, officers and agents, at the time of its engagement with or appointment of such relevant OFAC persons, is the subject of any U.S. sanctions administered by OFAC or any other Sanctions; and
- (b) will terminate its engagement with or appointment of any of its relevant OFAC person promptly upon it or any other Obligor or any member of the Group having knowledge of such relevant OFAC person being the subject of any U.S. sanctions administered by OFAC or any other Sanctions.

32. **FCPA**

32.1 Ensure that it (and each other Obligor and each member of the Group):

- (a) does not; and
- (b) subject the proviso at the end of this paragraph, none of its (and each other Obligor's and each member of the Group's) directors, officers, agents, employees or other Persons associated with or acting on behalf of any member of the Group (a "**relevant FCPA person**") shall,

use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; make any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violate any provision of the U.S. Foreign Corrupt Practices Act of 1977 (the "**FCPA**") or make any bribe, rebate, payoff, influence payment, kickback or other unlawful payment prohibited under any applicable law or regulation equivalent to the FCPA (such law or regulation, together with the FCPA, being "**Anti-Bribery Laws**"), *provided* that (in the case of paragraph (b) above) an Obligor or member of the Group will not be in breach of this paragraph 32.1 if the relevant Obligor or member of the Group does not have knowledge or reason to believe that the relevant FCPA person is engaged in any of the activities set out in this paragraph 32.1.

32.2 Ensure that it (and each other Obligor and each member of the Group):

- (a) has in place customary procedures designed to monitor the engagement by its (and each other Obligor's and each member of the Group's) directors, officers and employees in any of the activities set out in paragraph 32.1 above; and
- (b) will terminate or, if prohibited under applicable law from so terminating, take appropriate remedial or disciplinary action (including, without limitation, promptly relieving such relevant FCPA person of his or her duties and other responsibilities) and commence the termination of (and diligently pursue such action and termination) its (and each other Obligor's and each member of the Group's) engagement with or appointment of any of its (and each other Obligor's and each member of the Group's) relevant FCPA person promptly upon it or any other Obligor or any member of the Group having knowledge that that relevant FCPA person has engaged in any of the activities set out in paragraph 32.1 above.

33. **Money Laundering Laws**

33.1 Ensure that:

- (c) it (and each other Obligor and each member of the Group) is in material compliance with all applicable anti-money laundering laws (including but not limited to applicable financial record keeping and reporting requirements and

money laundering statutes in Macau, and, to the best of its (and each other Obligor's and each member of the Group's) knowledge and belief, all jurisdictions in which it, each Obligor and each member of the Group conducts business or which are otherwise applicable to it, each other Obligor and each member of the Group) and all applicable rules, regulations and guidelines issued, administered or enforced by any Governmental Authority pursuant to such laws (collectively, "**Money Laundering Laws**");

- (d) on the Fifth Amendment Effective Date, no action, suit or proceeding by or before any court or Governmental Agency, authority or body or any arbitrator involving any Obligor or any member of the Group with respect to Money Laundering Laws is pending and, subject to the proviso at the end of this paragraph 33.1, no such actions, suits or proceedings are threatened or contemplated; and
- (e) on the date of each Advance Request, there is no such action, suit or proceeding pending which may reasonably be expected to have a Material Adverse Effect.

No Obligor or member of the Group will be in breach of paragraph 33.1(b) in respect of the actions, suits or proceedings referred to therein if the relevant Obligor or member of the Group does not have knowledge of the relevant actions, suits or proceedings on the Fifth Amendment Effective Date.

33.2 Ensure that it (and each other Obligor and member of the Group) is in material compliance with the U.S. International Money Laundering Abatement and the U.S. Terrorism Financing Act of 2001.

34. **Anti-Terrorism Laws**

34.1 Subject to the proviso at the end of this paragraph 34.1, it shall ensure that neither it nor any other Obligor or any member of the Group, nor any of its or their respective brokers or other agents acting or benefiting in any capacity in connection with any Advance:

- (c) is in violation of any Anti-Terrorism Law;
- (d) is a Designated Person; or
- (e) is dealing in any property or interest in property blocked pursuant to any Anti-Terrorism Law,

provided that Obligor or any member of the Group will not be in breach of this paragraph 34.1 in respect of the circumstances or activities of any brokers or agents of any Obligor or any member of the Group which are restricted under paragraphs 34.1(a) to 34.1(c) above (inclusive) if that Obligor or member of the Group does not have knowledge of the relevant circumstances or activities.

34.2 Ensure that it (and each other Obligor and member of the Group):

- (a) has in place customary procedures designed to identify, at the time of engagement with or appointment of its (and each other Obligor's and member of the Group's) broker or agent acting or benefiting in any capacity in connection with any Advances, if any of the circumstances or activities that are restricted under paragraphs 34.1(a) to 34.1(c) above (inclusive) applies to or is undertaken by such broker or agent; and
- (b) terminates its (and each other Obligor's and member of the Group's) engagement with or appointment of any such broker or agent promptly upon it, any other Obligor or any member of the Group having knowledge that any of the circumstances or activities that are restricted under paragraphs 34.1(a) to 34.1(c) above (inclusive) applies to or is undertaken by that broker or agent.

PART B **Negative Covenants**

The Company shall not directly or indirectly:

1. **Financial Condition Covenants**

- (a) *Leverage Ratio* - Permit the Leverage Ratio as at the last day of any period of four full consecutive Fiscal Quarters ending on any Quarterly Date in any Fiscal Year set forth below to exceed the ratio set forth below opposite such Fiscal Year:

Fiscal Year

Leverage Ratio

2015

5.25:1

2016	5.50:1
2017	5.25:1
2018	4.75:1
2019 and thereafter	4.25:1

provided that, for purposes of calculating EBITDA pursuant to this paragraph 1(a) for any period which is less than four full Fiscal Quarters, EBITDA shall be calculated on an annualised basis commencing on the first day following the first full quarter after all conditions precedent set forth in Schedule 1 (*Conditions Precedent*) to the Common Terms Agreement Fifth Amendment Agreement have been satisfied and the first Advance has been made under the Term Facility.

- (b) *Interest Coverage Ratio* - Permit the Interest Coverage Ratio for each period of four full consecutive Fiscal Quarters ending on each Quarterly Date in any Fiscal Year to be less than 2.0:1 at any time.

2. **Limitation on Financial Indebtedness**

2.1 Create, incur, assume or allow to remain outstanding (or permit any other Obligor to create, incur, assume or allow to remain outstanding) any Financial Indebtedness, except:

- (a) Financial Indebtedness of the Company or Palo created under any Senior Finance Document (other than an Additional Lender Facility Agreement), the Performance Bond Facility, any Shareholder Loan, any Subordinated Debt or any Guarantee Obligations represented by the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract or clause 7 of the Cotai Land Concession Contract;
- (b) Financial Indebtedness of the Company or Palo (including Capital Lease Obligations) secured by Liens permitted by paragraph 3(l) of this Part B *provided* that any recourse in respect of such Financial Indebtedness is limited solely to the Property secured by such Liens;
- (c) Financial Indebtedness of the Company or Palo in an aggregate principal amount not to exceed USD50,000,000 or its equivalent at any time *provided* that the provider (or providers) of such Financial Indebtedness do not (in respect of such Financial Indebtedness) have the benefit of any Lien over or in respect of the Project Security (or any part thereof) (save for a Lien referred to in paragraph 3(i) of Part B of Schedule 5 (*Covenants*)) to the extent that such attachment or judgment Lien arises in respect of that Financial Indebtedness above or a Lien referred to in paragraph 3(m) of Part B of Schedule 5 (*Covenants*));
- (d) Financial Indebtedness of the Company or Palo incurred for the purpose of repaying the balance of the principal amount owing to all Lenders *provided* the Intercreditor Agent is satisfied that upon the incurrence of such Financial Indebtedness or immediately thereafter the Release Date (without reference to paragraph (b) of the definition of "Release Date" in Clause 1.1 (*Definitions*)) will occur;
- (e) Financial Indebtedness of the Company or Palo *provided* that the Leverage Ratio as at the most recent Quarterly Date, if determined on a *pro forma* basis after giving effect to the creation, assumption or sufferance to exist of such Financial Indebtedness (when taken together with all such other Financial Indebtedness of the Company permitted pursuant to this paragraph 2.1(e) but, for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)), would not exceed the ratio set forth opposite that Quarterly Date in paragraph 1(a) and *further provided* that the provider (or providers) of such Financial Indebtedness do not (in respect of such Financial Indebtedness) have the benefit of any Lien over or in respect of the Project Security (or any part thereof) (save for a Lien referred to in paragraph 3(i) of Part B of Schedule 5 (*Covenants*)) to the extent that such attachment or judgment Lien arises in respect of that Financial Indebtedness above or a Lien referred to in paragraph 3(m) of Part B of Schedule 5 (*Covenants*));
- (f) Financial Indebtedness of the Company, pursuant to one or more Additional Lender Facility Agreements:
- (i) in an aggregate principal amount not to exceed USD1,000,000,000 or its equivalent;
- (ii) on terms no more favourable to any creditor to which such Financial Indebtedness is owed than those to which (i) the Revolving Credit Facility made available pursuant to the Revolving Credit Facility Agreement referred to in paragraph (a) of the definition of "Revolving Credit Facility Agreement" in Clause 1.1

(Definitions) of this Agreement are subject (in respect of any Additional Lender Facility that is a revolving credit facility) or (ii) the Term Facility is subject (in respect of any Additional Lender Facility that is a term loan facility) *provided that* such Financial Indebtedness will be tranching as agreed between the Company and all such creditors (A) between US dollars and Hong Kong dollars and (B) further tranching (if required) to address any requirements of any creditor for its participations thereunder to be applied solely to finance costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming);

- (iii) *provided* (x) each such creditor has executed and delivered to the Intercreditor Agent a duly completed Additional Lender's Accession Deed and Finance Party Accession Undertaking (also executed, in the case of the latter, by the Intercreditor Agent and all parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent), whereupon, provided the other conditions of this paragraph 2.1(f) have also been satisfied, such creditor shall become a party hereto as an Additional Lender and that creditor and each of the other parties hereto shall assume obligations towards, and acquire rights against, one another accordingly or (y) the Financial Indebtedness is otherwise on terms satisfactory to the Intercreditor Agent concerning the relationship between each creditor and the Senior Secured Creditors, including the exercise of rights against the Company and any other Obligor and the sharing and enforcement of the Security and any other liens over Property of the Company or any other Obligor; and

further provided that it shall be a condition to the making of any Advance under an Additional Lender Facility Agreement that the Company shall, prior to the making of such Advance, procure that (1) evidence that the Macau SAR government has (a) consented to the increase in the Company's financial indebtedness contemplated by the proposed Additional Lender Facility Agreement and (b) confirmed that the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (as amended, consolidated, supplemented, novated or replaced from time to time prior to the proposed date of such Additional Lender Facility Agreement) continue to apply with respect to such financial indebtedness, together with a legal opinion of the Macanese legal adviser to the Senior Secured Creditors, in respect thereof and in respect of the validity, enforceability, effectiveness and ranking of the Mortgage (as well as confirming the Secured Obligations thereunder also cover such Additional Lender Facility) is provided to the Intercreditor Agent (in each case in form and substance satisfactory to the Intercreditor Agent, acting reasonably) and (2) if the evidence contemplated by sub-clause (1)(b) above is not provided, all documents and other evidence listed in paragraphs 2 to 8 (inclusive) of Part H of Schedule 2 (*Conditions Precedent*) have been provided to the Intercreditor Agent, in each case in form and substance satisfactory to it (and as if references in those paragraphs to "Upsize Advance" were deemed to be references to the "Advance under the Additional Lender Facility");

- (g) Financial Indebtedness of a Wholly Owned Subsidiary of the Company which is an Obligor (a "**Subsidiary Obligor**") to any other Subsidiary Obligor or to the Company;
- (h) Financial Indebtedness of the Company to any Subsidiary Obligor;
- (i) Guarantee Obligations of the Company or any Obligor incurred, assumed or allowed to remain outstanding with respect to any WML Debt *provided that* (i) such WML Debt is not secured by any Lien granted by any Obligor or any member of the Group, (ii) such WML Debt does not have any scheduled amortisation prior to the Final Repayment Date of any Facility (as determined: (A) in respect of the Term Facility, as of the Fifth Amendment Effective Date; and (B) in respect of any Additional Lender Facility which provides for a Term Loan Facility, as of the date of that Additional Lender Facility Agreement), (iii) such WML Debt has a stated maturity that extends beyond the later of (A) the Revolving Credit Facility Termination Date (as determined as of the Fifth Amendment Effective Date), (B) the Final Repayment Date of the Term Facility (as determined as of the Fifth Amendment Effective Date), (C) the Final Repayment Date of any Additional Lender Facility which provides for a Term Loan Facility (as determined as of the date of the Additional Lender Facility Agreement); and (D) the final repayment date of any Additional Lender Facility which provides for a revolving credit facility (as determined as of the date of the Additional Lender Facility Agreement), (iv) no Default has occurred and is continuing or could reasonably be expected to occur as a result of incurring, assuming or allowing to remain outstanding such Guarantee Obligations, (v) incurring, assuming or allowing to remain outstanding such Guarantee Obligations does not and could not otherwise reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Finance Documents and (vi) any event of default (howsoever described) in respect of the WML Debt which references or concerns in any way the First Ranking Liabilities (as defined in the Deed of Appointment and Priority), or any part thereof, will only occur on (in respect of non-payment of any of the First Ranking Liabilities) such non-payment event of default occurring as contemplated by Schedule 10 (*Events of Default*) of this Agreement and (in respect of any other events or circumstances described in Schedule 10 (*Events of Default*) of this Agreement) will only occur upon the Intercreditor Agent issuing written notice to the Company pursuant to (or taking steps contemplated by) Clause 19.2 (*Remedies following an Event of Default*) of this Agreement; and

(j) other Financial Indebtedness approved in writing by the Intercreditor Agent,

(together, "**Permitted Financial Indebtedness**").

3. **Limitation on Liens**

Create, incur, assume or permit to subsist (or permit any other Obligor to create, incur, assume or permit to subsist) 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 Company and the relevant Obligor in conformity with applicable 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 Project Security on account of such Lien);
- (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation *provided* that if such pledges are being contested, appropriate reserves (determined in accordance with the applicable GAAP are maintained on the books of the Company and the relevant Obligor);
- (d) deposits by or on behalf of the Company (or the Obligor) 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;
- (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, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Company (or the Obligor);
- (f) Liens created pursuant to paragraph 15.2 of Part A of this Schedule 5;
- (g) Liens created pursuant to the Security Documents;
- (h) licenses of patents, trademarks and other intellectual property rights granted by the Company (or the Obligor) in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of the Company (or the Obligor);
- (i) any attachment or judgment Lien not constituting an Event of Default;
- (j) Liens in favour 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 Site and Site Easements or the Cotai Site and Cotai Site Easements;
- (l) Liens securing Financial Indebtedness of the Company or Palo incurred pursuant to paragraph 2.1(b) of this Part B 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 Financial 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 Financial Indebtedness; and
 - (iii) the Property financed by such Financial Indebtedness is not of a type that will become affixed to the Site (and/or all or any part of the buildings therein) or the Cotai Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of Wynn Macau or the Cotai Project;
- (m) Liens on cash deposited with, or held for the account of, the Company or Palo securing reimbursement obligations owing by the Company or Palo and permitted to be incurred by it pursuant to paragraph 2.1(c) above under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments or the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract or clause 7 of the Cotai Land Concession Contracts, granted in favour 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 Permitted Investments only (to the extent the Company or Palo has the right to direct the investment thereof) and is segregated from the Company's or Palo's general cash accounts so that such Liens attach only to such cash and Permitted Investments and (ii) the amount of cash and/or Permitted Investments secured by such Liens does not exceed 110% of the amount of the Financial 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);

- (n) without prejudice to Schedule 6 (*Accounts*), Liens arising by reason of any netting or set-off arrangements entered into by the Company or any other Obligor in the normal course of its banking arrangements and the standard account operating procedures of the bank for the purpose of netting debit and credit balances;
- (o) Liens arising under title transfer or retention of title arrangements entered into by the Company or any other Obligor in the normal course of its trading activities on the counterparty's standard or usual terms *provided* that such arrangements shall be limited to Property of an aggregate value not exceeding USD1,000,000 or its equivalent; and
- (p) other Liens approved in writing by the Intercreditor Agent.

4. **Limitation on Fundamental Changes**

Enter (and ensure no other Obligor shall 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:

- (a) that each of the Company and Palo may dispose of any of its Property in accordance with paragraph 5 of this Part B; and
- (b) for any voluntary liquidation, winding up or dissolution of, or similar action with respect to, Palo after a Permitted Cotai Reorganisation.

5. **Limitation on Disposition of Property**

Dispose (and ensure no other Obligor shall dispose) of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any Capital Stock to any Person, except:

- (a) the Disposition for fair market value on arm's length commercial terms in the ordinary course of business of any Property or obsolete or worn out Property or Property no longer used or useful in the business of the Company or the Obligor *provided* that such Disposition could not reasonably be expected to materially adversely affect Wynn Macau, the Cotai Project or any of the Project Security and either:
 - (i) the Net Cash Proceeds from the disposal of all such Property (excluding shares in any Obligor) do not exceed in aggregate an amount equal to USD100,000,000 or its equivalent in any Fiscal Year when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year; or
 - (ii) where such Net Cash Proceeds referred to in sub-paragraph (i) above exceed in aggregate an amount equal to USD100,000,000 or its equivalent in any Fiscal Year (when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year), such Net Cash Proceeds are reinvested within 12 months of receipt in assets used by the Company or any other Obligor in the conduct of its Permitted Business at Wynn Macau and/or the Cotai Project (and pending such reinvestment are deposited and retained in an Account) and, if such Net Cash Proceeds are not so reinvested within 12 months of receipt, are applied in mandatory prepayment of the Advances pursuant to paragraph 2 of Schedule 9 (*Mandatory Prepayment*);
- (b) the Disposition of cash (in each case in transactions otherwise permitted under this Agreement), Investments permitted pursuant to paragraph 8 of this Part B, inventory (in the ordinary course of business), receivables (in connection with the collection thereof and otherwise as customary in business activities of the type conducted by the Company) and cash or non-cash prizes and other complimentary items for customers customary in business activities of the type conducted by the Company;
- (c) the sale or issuance of the Company's or any other Obligor's Capital Stock (other than Disqualified Stock) to its direct Shareholders *provided* that such Capital Stock is fully paid upon such issuance (or, as the case may be, sale) and is subject to the Liens created under the Company Share Pledge or such other Liens created under the Senior Finance Documents with regard to such other Obligor's Capital Stock;
- (d) the entry into of any leases or licences with respect to any space on or within the Site or the Cotai Site Facilities where the entry into of such leases or licences is not otherwise prohibited by the terms of the Senior Finance

Documents or the cancellation of the Existing Executive Director Shares in connection with an Executive Director Substitution and the issuance of New Executive Director Shares to a New Executive Director;

- (e) any Property purchased using the Company's Subconcession proceeds (which is neither comprised in Wynn Macau or the Cotai Project nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company);
- (f) any Property associated with an Excluded Subsidiary or Excluded Project (which is neither comprised in Wynn Macau or the Cotai Project (other than, in the case of an Excluded Project on the Cotai Site, the grant of any right or interest to use the Cotai Site pursuant to a Cotai Resort Management Agreement) nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company);
- (g) any Property associated with Resort Management Agreements (which is neither comprised in Wynn Macau or the Cotai Project (other than, in the case of an Excluded Project on the Cotai Site, the grant of any right or interest to use the Cotai Site pursuant to a Cotai Resort Management Agreement) nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company);
- (h) the incurrence of Liens permitted under paragraph 3 of this Part B;
- (i) any Event of Eminent Domain *provided* that the requirements of Schedule 9 (*Mandatory Prepayment*) are complied with in connection therewith;
- (j) subject to compliance with paragraph 17 of this Part B, the Company may enter into Subconcessions;
- (k) any Disposition by the Company to a Subsidiary Obligor or by a Subsidiary Obligor to the Company *provided* that the requirements of paragraph 15 of Part A of this Schedule 5 are satisfied with respect to the acquisition by the transferee of the Disposed Property;
- (l) the Disposition by Palo to the Company of Palo's interest in the Cotai Site (whether by assignment, novation, transfer or replacement of the Cotai Land Concession Contract or otherwise) and/or Palo's ownership of, or interest in, other assets relating to the Cotai Site and/or the Cotai Project pursuant to a Permitted Cotai Reorganisation *provided* that the conditions in the proviso in the definition of "Permitted Cotai Reorganisation" in Clause 1.1 (*Definitions*) are satisfied with respect to the same; or
- (m) any Disposition not falling within any of the preceding sub-paragraphs of this paragraph 5 made with the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld).

6. Limitation on Restricted Payments

6.1

- (a) Declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund (and ensure each other Obligor which is a Subsidiary of the Company shall not declare or pay any 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 the Company (including any Equity) or such other Obligor, 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 the Company or such other Obligor;
- (a) enter (and ensure each other Obligor which is a Subsidiary of the Company shall not enter) into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "**Derivatives Counterparty**") obligating the Company or such other Obligor to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock;
- (b) make any repayment of, or pay any interest on or other amount in respect of (and ensure each other Obligor shall not make any repayment of, or pay any interest on or other amount in respect of) the Performance Bond Facility or any other Subordinated Debt (including any Equity) or any WML Debt;
- (c) make any payment of IP Fees;
- (d) make any payment of Corporate Administrative Fees; or
- (e) take any action or make any payment permitted pursuant to, or in connection with any transaction permitted pursuant to, paragraph 10 of this Part B,

(collectively, "**Restricted Payments**") except (i) to the extent constituting payment of any Restricted Payment by any Subsidiary Obligor to the Company or (ii) the Company and each Obligor may;

- (i) pay dividends, distributions or other payments if (A) permitted under paragraphs 6.2 or 17(d) of this Part B or (B) made using any amounts derived from or under (i) any Resort Management Agreement or (ii) any Excluded Project or Excluded Subsidiary;
- (ii) make payments permitted in accordance with the Deed of Appointment and Priority;
- (iii) pay Approved IP Fees and Approved Corporate Administrative Fees *provided* that, in each case, no Event of Default has occurred and is continuing or would result from such payment;
- (iv) pay to any of its Affiliates the direct cost incurred by that Affiliate (excluding any internal administration charges, internal handling fees, internal mark-ups or any other internal fees, costs, charges or impositions of a similar nature levied, imposed or charged by that Affiliate) for the acquisition of any assets, or the procurement or any services, to be used by the Company or such Obligor in its Permitted Business at or directly related to Wynn Macau and/or the Cotai Project;
- (v) make dividends, distributions or other payments (including loans or advances), directly or indirectly, for the purpose of paying any amount with respect to WML Debt *provided* that (i) such payment would not cause the aggregate amount of such payments made pursuant to this paragraph (v) to exceed USD150,000,000 in any Fiscal Year and (ii) had the WML Debt (and any Guarantee Obligations of the Company or Obligors in connection therewith) been incurred immediately prior to the last Quarterly Date to occur before the incurrence of such WML Debt, the Company would, as at that Quarterly Date, still have been in compliance with paragraph 1 of Part B of this Schedule 5 (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)); and
- (vi) without prejudice to paragraph 6.2, make any payment (other than a payment permitted pursuant to any of sub-paragraphs (i) to (v) (inclusive) above) pursuant to, or in connection with any transaction permitted pursuant to, paragraph 10 of Part B of this Schedule 5 subject to compliance with applicable Legal Requirements and *provided* that (A) no Event of Default has occurred and is continuing or would otherwise result from the making of such payment and (B) had such payment been made immediately prior to the most recent Quarterly Date, the Company would, as at that Quarterly Date, still have been in compliance with paragraph 1 of Part B of this Schedule 5 (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)).

6.2 At any time after the first Quarterly Date, the Company and each Subsidiary Obligor may declare and/or pay (other than a declaration or payment permitted pursuant to paragraphs 6.1(i)(B), 6.1(ii), 6.1(iii), 6.1(iv) or 6.1(v)) at the times set out in paragraph 6.3 of this Part B by way of dividend or other distribution or make other Restricted Payments, subject to compliance with applicable Legal Requirements and *provided* that all of the following conditions have been satisfied:

- (i) no Event of Default has occurred and is continuing or might reasonably be expected to occur as a result of the declaration and/or payment of such dividend or other distribution or Restricted Payment; and
- (ii) had such declaration, payment, distribution or other Restricted Payment been made immediately prior to the most recent Quarterly Date, the Company would, as at that Quarterly Date, still have been in compliance with paragraph 1 of Part B of this Schedule 5 (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)).

6.3 Any payment or making of dividends or other distribution or Restricted Payment under paragraph 6.2 of this Part B may be made once in each Fiscal Quarter (or such other date or with such other frequency as may be agreed by the Intercreditor Agent) *provided that* where such payment or making of dividends or other distributions or Restricted Payments is proposed to be made in the Fiscal Quarter immediately following the end of the previous Fiscal Year, that payment or making of dividends or other distributions or Restricted Payments shall be made after the date of prepayment of Advances under the Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*).

6.4 The financial ratios set out in paragraph 6.2 of this Part B shall be tested by reference to the financial statements of the Company delivered pursuant to paragraph 1(a) of Part A of this Schedule 5 and/or each Compliance Certificate delivered pursuant to paragraph 2(a) of Part A of this Schedule 5.

7. **[Not used]**

8. **Limitation on Investments**

Make (and ensure that no other Obligor shall make) any advance, loan, extension of credit (by way of guarantee 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) Investments by the Company in any of its Wholly Owned Subsidiaries (other than any Excluded Subsidiary) which is an Obligor;
- (b) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of Wynn Macau or the Cotai Project casino and gaming operations consistent with ordinary course gaming operations) *provided* that such extensions are in compliance with all Legal Requirements;
- (c) Permitted Investments;
- (d) Investments made using any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary;
- (e) Investments in any Excluded Subsidiary or Excluded Project or any third party whose primary business is the development, construction, ownership and operation of hotel resorts and casinos, *provided* that such Investments are made using amounts which are not required to be applied for any other purpose under or in connection with the Senior Finance Documents;
- (f) loans and advances to employees of the Company or Palo in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount not to exceed USD5,000,000 or its equivalent at any one time outstanding;
- (g) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to the Company or in satisfaction of judgments;
- (h) acquisition of Advances in connection with a Permitted Loan Repurchase;
- (i) loans and advances permitted under paragraph 6.1(v) of this Part B;
- (j) in addition to Investments otherwise expressly permitted by this paragraph 8, so long as no 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 Company or any other Obligor in an aggregate amount (valued at cost) not to exceed USD50,000,000 or its equivalent at any one time outstanding;
- (k) Guaranteed Obligations of the Company or any Obligor incurred or assumed or allowed to remain outstanding (in accordance with paragraph 2.1(i) of this Part B with respect to any WML Debt; and
- (l) any Specified Equity Contributions made by way of equity as contemplated by (and, to the extent, and in the manner permitted by) the definition thereof and the definition of "Specified Equity Contributions Conditions", each as set out in Clause 1.1 (*Definitions*).

9. **Limitation on Optional Payments and Modifications of Governing Documents**

- (a) Make or offer to make (and ensure no other Obligor makes or offers to make) any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Financial 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 the Company to make payments to such Derivatives Counterparty as a result of any change in market value of such Financial Indebtedness, other than (i) the prepayment of (A) Financial Indebtedness incurred under the Senior Finance Documents in accordance with the terms of the Senior Finance Documents, (B) Permitted Financial Indebtedness (excluding any Subordinated Debt) or (ii) Permitted Loan Repurchases or (C) any Subordinated Debt in accordance with the terms of the Subordination Deed; or
- (b) amend or modify, or permit the amendment or modification of (and ensure no other Subsidiary Obligor amends, modifies or permits the amendment or modification of) its Governing Documents in any manner adverse to any of the Secured Parties (other than where such amendment or modification could not reasonably be expected to have a Material Adverse Effect).

10. **Limitation on Transactions with Affiliates**

Enter (and ensure that no other Obligor shall enter) into any single transaction, or series of transactions, whether related or not (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, the entry into of any contract or the amendment, novation, supplementation, extension or restatement of any existing contract) with any Affiliate of the Company unless:

- (a) the relevant transaction is:
 - (i) a genuine commercial transaction on terms that are not less favourable to the Company or applicable Obligor

than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of the Company; and

(ii) is not prohibited by the Listing Rules, or

(b) the relevant transaction is between the Company and its Wholly Owned Subsidiary (other than any Excluded Subsidiary) which is an Obligor.

11. Limitation on Sales and Leasebacks

Save as permitted pursuant to paragraph 5 of this Part B, enter (and ensure that no other Obligor shall enter) into any arrangement with any Person providing for the leasing by the Company or such other Obligor as lessee of Property which has been or is to be sold or transferred by the Company or such other Obligor 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 the Company or such other Obligor.

12. Limitation on Changes in Fiscal Periods

Permit the Fiscal Year of the Company or any other Obligor to end on a day other than December 31 or change the Company's or any other Obligor's method of determining Fiscal Quarters.

13. Limitation on Negative Pledge Clauses

Enter into any agreement that prohibits or limits the ability (and ensure that no other Obligor enters into any agreement that prohibits or limits the ability) of the Company or any other Obligor to create, incur or assume any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations other than:

(a) the Senior Finance Documents;

(b) the Concession Contract;

(c) 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);

(d) in connection with WML Debt (*provided* that the terms of such WML Debt shall not prohibit the creation, incurrence, assumption or subsistence of any Lien in favour of the Secured Parties existing or contemplated under the Senior Finance Documents as such documents are in effect at the time such WML Debt is incurred); and

(e) as required by applicable Legal Requirements.

14. Limitation on Lines of Business

(a) Enter (and ensure that no other Obligor enters) into any business activities, whether directly or indirectly, other than Permitted Businesses.

(b) Establish (and ensure that no other Obligor establishes) any representative office other than (in the case of the Company) marketing offices or other place of business in a jurisdiction outside the Macau SAR or its place of incorporation unless (in the case of the Company) such office or place of business has been notified to the Intercreditor Agent, the requirements of paragraph 15 of Part A of this Schedule 5 have been satisfied in respect of any Property of the Company which may at any time be located in such jurisdiction within 30 days of such establishment and the Company has taken all such steps as may be required in such jurisdiction to perfect, maintain and protect the Security.

15. Restrictions on Changes

15.1 Concession Contract, Land Concession Contract, Cotai Land Concession Contract, the Performance Bond Facility Agreement and the Concession Contract Performance Bond

Agree to any amendment to or termination of, or assign, transfer, cancel or waive any of its rights under the Concession Contract, the Land Concession Contract, the Cotai Land Concession Contract, the Performance Bond Facility Agreement or the Concession Contract Performance Bond without obtaining the prior written consent of the Intercreditor Agent (other than: (i) in relation to the Cotai Land Concession Contract, to increase the gross construction area and/or the contract premium payable thereunder *provided that*, where such increase is contemplated in connection with an Excluded Project located or to be located on the Cotai Site, the entire Cotai Site must remain part of the Project Security and subject to the Cotai Mortgage and there shall be no adverse effect on the validity or enforceability of, or the effectiveness or ranking of any Security as a result of the Excluded Project being located on the Cotai Site and *further provided*, in each case, that such

increase is in accordance with the applicable Macau SAR Legal Requirements and could not reasonably be expected to be prejudicial to the interests of any of the Secured Parties, (ii) any mechanical or administrative amendments or any amendments required by any Macau SAR Governmental Authority of which reasonable prior notice has been given and which could not reasonably be expected to be prejudicial to the interests of any of the Secured Parties, (iii) in relation to the Cotai Land Concession Contract, in connection with a Permitted Cotai Reorganisation and (iv) in relation to the Land Concession Contract, to increase the gross construction area and/or the contract premium payable thereunder *provided*, in each case, that such increase is in accordance with the applicable Macau SAR Legal Requirements and could not reasonably be expected to be prejudicial to the interests of any of the Secured Parties).

15.2 Other Contracts

- (a) Agree to any amendment to (or variation or supplement of) or waive any of its rights under the IP Agreement where such amendment or waiver changes or has (or could reasonably be expected to have) the effect of changing any of the percentages used in the calculation of the IP Fees in a manner that would increase such IP Fees.
- (b) Directly or indirectly enter into, amend, modify, terminate, supplement or waive a right or permit or consent to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or give any consent or exercise any other discretion under (and ensure that no other Obligor directly or indirectly enters into, amends, modifies, terminates, supplements or waives a right or permits or consents to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or gives any consent or exercises any other discretion under) any Resort Management Agreement unless each claim, interest, liability and right of recourse of any kind of any counterparty to that Resort Management Agreement against or in the Company, Palo or any other member of the Restricted Group or any of their respective assets (including, without limitation, Wynn Macau and the Cotai Project) is and remains at all times limited to an aggregate amount equal to all revenues derived by the Company (or, as the case may be, Palo) in respect of that Excluded Project and any other assets of the Company (or, as the case may be Palo) comprised in that Excluded Project (and which do not form part of and are not necessary to ensure to the Restricted Group the full benefit of Wynn Macau or the Cotai Project).

16. Limitation on Formation and Acquisition of Subsidiaries

Without the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld), form, create or acquire (and ensure that no other Obligor forms, creates or acquires) any direct or indirect Subsidiary other than any Obligor or (in the case of the Company and the Company's Subsidiaries) any Excluded Subsidiary.

17. Limitation on Subconcessions

Grant or enter into any Subconcession unless:

- (a) no breach of the Concession Contract shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession;
- (b) no Event of Default shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession (or immediately after any renewal or extension thereof at the option of the Company);
- (c) such Subconcession and any business or other activities carried out pursuant thereto shall be self-contained and shall not adversely affect the operation of Wynn Macau or the Cotai Project (excluding the ability of the Company to grant further Subconcessions), no breach or termination thereof shall result in a breach or an entitlement to terminate the Concession Contract, the Company shall have no responsibility nor any liability, actual or contingent, for the performance by the subconcessionaire of its obligations under or in respect of the Subconcession and, subject to receipt by the Intercreditor Agent of evidence reasonably satisfactory to it, neither the Subconcession nor any business or other activities carried out pursuant thereto could otherwise reasonably be expected to materially interfere with, impair or detract from the operation of Wynn Macau or the Cotai Project or otherwise have a Material Adverse Effect; and
- (d) if any cash or cash proceeds are paid or received in respect of the grant or entry into such Subconcession, it shall first be deposited into an Account and, after deduction and payment therefrom of all Taxes, costs and expenses incurred in connection with such payment, receipt, grant or entry, may thereafter be used, applied, divided or otherwise distributed by the Company and applied in its discretion (including, subject to compliance with applicable Legal Requirements, to make Restricted Payments) *provided* that no Default has occurred and is continuing. Notwithstanding any provisions contained in the Senior Finance Documents to the contrary, upon receipt of any funds distributed by the Company in accordance with this paragraph 17 by any Wynn Obligor, such Wynn Obligor shall also be entitled to use, apply, dividend or otherwise distribute such funds in its discretion (subject to compliance with applicable Legal Requirements).

18. **Limitation on Sale or Discount of Receivables**

Except as permitted pursuant to paragraph 5(b) of this Part B, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof (and ensure that no other Obligor, directly or indirectly, sells with recourse, or discounts or otherwise sells 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.

19. **Compliance**

Use or permit the use of Wynn Macau or the Cotai Project in any manner that could result in such use becoming a non-conforming use under any applicable land use law, rule or regulation that is a Legal Requirement.

20. **[Not used]**

21. **Amendment to Transaction Documents**

Enter (and ensure that no other Obligor enters) into any agreement (other than the Senior Finance Documents) restricting its ability to amend any of the Transaction Documents where such entry could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Finance Documents

22. **No Other Powers of Attorney**

Execute or deliver (and ensure that no other Obligor executes or delivers) any agreement creating any powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Transaction Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Security Documents or are required to be executed or delivered in the Company's or such other Obligor's ordinary course of business.

23. **[Not used]**

25. **Casino and Gaming Zone Areas**

Solely with respect to Wynn Macau (and not the Cotai Project or any Excluded Project), designate any area as a casino or gaming zone unless such designation would not cause the aggregate area which is classified as casino or gaming zones by the Macau SAR to exceed 40,000m².

26. **Junkets**

Enter into or permit to subsist any arrangement with any gaming junket-tour promoters, directors or cooperators unless such Persons and any such arrangement are in compliance with the requirements of the Concession Contract and all other applicable Legal Requirements and the Company shall monitor the activities of such Persons in regard to such arrangements and shall take all necessary or appropriate reasonable measures to ensure such compliance.

27. **[Not used]**

**Schedule 6
ACCOUNTS**

1. **Accounts**

1.3 Accounts

(a) The members of the Restricted Group may (but shall not be required to) maintain in accordance with the requirements of this Schedule 6 and the Senior Finance Documents, operating, disbursement and other accounts (which as of the Fifth Amendment Signing Date comprise of the following bank accounts maintained by the Company):

- (i) an account denominated in US dollars opened in Macau and designated "Term Facility USD Disbursement Account";
- (ii) an account denominated in HK dollars opened in Macau and designated "Term Facility HKD Disbursement Account";
- (iii) an account denominated in US dollars opened in Macau and designated "Project Facility USD Disbursement Account";

- (iv) an account denominated in HK dollars opened in Macau and designated "Project Facility HKD Disbursement Account";
- (v) an account denominated in US dollars opened in Macau and designated "USD Operating Account";
- (vi) an account denominated in HK dollars opened in Macau and designated "HKD Operating Account";
- (vii) an account denominated in Patacas opened in Macau and designated "MOP Operating Account";
- (viii) an account denominated in US dollars opened in Macau and designated "USD Debt Service Account";
- (ix) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Account";
- (x) an account denominated in US dollars opened in Macau and designated "USD Debt Service Reserve Account";
- (xi) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Reserve Account";
- (xii) an account denominated in Patacas opened in Macau and designated "Special Gaming Tax Account";
- (xiii) an account denominated in Patacas opened in Macau (being the account referred to in paragraph B6 of the Gaming Concession Consent Agreement) and an account denominated in US dollars opened in Macau, together designated "Compensation Proceeds Account";
- (xiv) an account opened in Macau and designated "Upfront Premium Account"; and
- (xv) an account denominated in HK dollars and an account denominated in Patacas each opened in Macau and designated "Construction Disbursement Account"),

in each case, subject to Security under the relevant Senior Finance Documents and each, for the purposes of the Senior Finance Documents, also an Account.

- (b) Notwithstanding the provisions of paragraph (a) above, each Obligor and each member of the Restricted Group shall comply with the provisions of paragraphs 1.1(b) and (c), and paragraphs 1.2 to 3.7 (inclusive) of this Schedule 6 (*Accounts*) and the provisions of the Facility Agreements in respect of the operation of each Development Account, including (without limitation) any withdrawal therefrom.
- (c) Any member of the Restricted Group may open one or more additional operating, disbursement or other accounts *provided* that such accounts satisfy the requirements of the definition of "Account" in Clause 1.1 (*Definitions*).

1.4 Maintenance of Accounts

The Accounts shall, save as otherwise provided by the Charges over Accounts, the Account Bank Notices and Acknowledgements or herein, be maintained by the relevant member of the Restricted Group with the relevant Account Bank in accordance with the Account Bank's usual practice and may from time to time be sub-divided into such sub-accounts as that member of the Restricted Group may reasonably request.

1.5 Restrictions

Each member of the Restricted Group shall maintain each of its Accounts (and shall procure that each other Account is maintained) as a separate account with the relevant Account Bank and:

- (a) none of the restrictions contained in this Schedule on the withdrawal of funds from Accounts shall affect the obligations of any Obligor to make any payments of any nature required to be made to the Senior Secured Creditors on the due date for payment thereof in accordance with any of the Senior Finance Documents; and
- (b) no withdrawal shall be made from any Account if it would cause such account to become overdrawn.

1.6 Credits to Accounts

Save as otherwise provided in any of the Security Documents after enforcement thereof, each member of the Restricted Group shall credit, and shall procure that there is credited, to the Accounts all such amounts as are provided for in this Agreement and ensure that such other credits are made thereto as are required to be made pursuant to any other provision of any other Senior Finance Document.

1.7 Interest

Each amount from time to time standing to the credit of each Account (for the avoidance of doubt excluding amounts for the time being applied in acquiring Permitted Investments) shall bear interest at such rate as may from time to time be agreed between the relevant member of the Restricted Group and the relevant Account Bank, and the relevant member of the Restricted Group shall ensure that such interest is credited to such account at such time or times as may be agreed from time to time between that member of the Restricted Group and the Account Bank or, failing agreement, in arrears on 31 December.

1.8 Payments

Save as otherwise provided in this Agreement or pursuant to the Charges over Accounts, the Account Bank Notices and Acknowledgements or any other relevant Security Document, no party shall be entitled to require any Account Bank to make any payment out of the amount standing to the credit of any Account maintained with it.

1.9 Other Accounts

No member of the Restricted Group will open or maintain any accounts other than:

- (i) the Accounts;
- (ii) any account opened by the Company for the deposit of any amounts derived from or under (i) subject to paragraph 17 of Part B of Schedule 5 (*Covenants*), the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary; and
- (iii) any Excluded Accounts,

except with the prior approval of the Intercreditor Agent.

2. Permitted Investments

2.1 Power of Investment

The Company may require, subject as provided in this Agreement, that such part of the amounts outstanding to the credit of any Account as it considers prudent shall be invested from time to time in Permitted Investments in accordance with this paragraph 2.

2.2 Procedure for Investment

2.2.1 Unless held for the account of the Company or other member of the Restricted Group and secured by first ranking fixed charge in favour of the Security Agent pursuant to a Charge over Accounts, the Company shall ensure that all Permitted Investments are made in the name of the Company and secured by a first ranking fixed lien in favour of the Security Agent in such form and on such terms as the Intercreditor Agent may reasonably require.

2.2.2 The Company will at all times seek to match the maturities of the Permitted Investments made out of moneys standing to the credit of an Account having regard to the availability of Permitted Investments which are readily marketable, and shall liquidate (or procure that there are liquidated) Permitted Investments to the extent necessary for the purposes of payment of any amount due under the Senior Finance Documents.

2.2.3 The Company shall ensure that all documents of title or other documentary evidence of ownership with respect to Permitted Investments made out of any Account are held in the possession of or for the benefit of the Security Agent and, if any such document or other evidence comes into the possession or control of the Company or any other Obligor, it shall procure that the same is delivered immediately to the Security Agent.

2.3 Realisation

2.3.1 The Company shall ensure that, whenever any Investment Proceeds or Investment Income is received in respect of a Permitted Investment made from amounts standing to the credit of an Account the Investment Proceeds and the Investment Income are:

- (a) reinvested in further Permitted Investments; or
- (b) paid into the relevant Account from which the Permitted Investment derives

2.3.2 The Company shall give (and shall ensure that each other Obligor gives) directions to the relevant Account Bank

under paragraph 2.3.1 of this Schedule 6 and otherwise exercise its rights hereunder in such manner as will ensure compliance with the applicable provisions of the Senior Finance Documents with respect to Accounts, Permitted Investments, Investment Proceeds and Investment Income.

2.4 Non-qualifying criteria

If any Permitted Investment ceases to be a Permitted Investment, the Company will upon becoming aware thereof procure that the relevant investment is replaced by a Permitted Investment or by cash.

2.5 Accounts include Permitted Investments

2.5.1 Subject to sub-paragraph 2.5.2 of this Schedule 6, any reference herein to the balance standing to the credit of one of the Accounts will be deemed to include a reference to the Permitted Investments in which all or part of such balance is for the time being invested. In the event of any dispute as to the value of the credit of an Account pursuant to this paragraph 2.5, that value shall be determined in good faith by the Intercreditor Agent. If the Company so requests, the Intercreditor Agent will give the Company details of the basis and method of that determination.

2.5.2 If the amount standing to the credit of any Account (excluding for this purpose any amount deemed to be included pursuant to sub-paragraph 2.5.1 of this Schedule 6) is insufficient to make a payment under the Senior Finance Documents when due out of such Account, the Security Agent is authorised, in its discretion and without any liability for loss or damage thereby incurred by the Company or any other Obligor, to require the relevant Account Bank or, as the case may be, the Company to sell or otherwise realise, or to enter into any exchange transaction with respect to, (or, as the case may be, to require the Company to ensure any other Obligor so sells or otherwise releases or enters into any exchange transaction) any Permitted Investment concerned with that Account to the extent that the same is, in the opinion of the Intercreditor Agent, necessary for the payment of any amount due under the Senior Finance Documents which could not otherwise be paid out of the cash balance standing to the credit of the relevant Account.

2.6 Information

Commencing with the quarter in which a Permitted Investment is first made on behalf of the Company or any other Obligor, the Company shall, together with any other statement to be provided under this Schedule, ensure the delivery to the Security Agent of a schedule of the investments made, realised or liquidated during the quarter in respect of each Account, in such detail as the Intercreditor Agent may reasonably require.

2.7 No Responsibility

No Senior Secured Creditor will be responsible for any loss, cost or expense suffered by any Obligor in respect of any of its actions or those of any Account Bank in relation to the acquisition, disposal, deposit or delivery of Permitted Investments pursuant to this Agreement save for any such loss, cost or expense directly caused by its gross negligence or wilful misconduct. The Account Banks shall be acting solely for and on behalf of the Company (or the relevant other Obligor) in acquiring, holding or disposing of any Permitted Investment.

3. General Account Provisions

3.1 Transfers/Withdrawals

Save as otherwise agreed in writing with the Intercreditor Agent, the Company shall ensure that where this Schedule expressly provides for the making of payments to, or withdrawals or transfers from any Account, no other payments to, or, as the case may be, other withdrawals or transfers from, such Account shall be made except as expressly permitted under this Schedule or under the Security Documents.

3.2 Application of Amounts

The Company shall ensure that all amounts withdrawn or transferred from any Account for application in or towards making a specific payment or meeting a specific liability shall be applied in or towards making that payment or meeting that liability, and for no other purpose.

3.3 Default

3.3.1 Notwithstanding any other provisions of this Schedule, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to give notice to any Account Bank and the relevant member of the Restricted Group in whose name the Account has been opened instructing the Account Bank not to act on the instructions or requests of that member of the Restricted Group in relation to any sums at any such time standing to the credit of any of the Accounts and the Company and that member of the Restricted Group shall procure that the

Account Bank shall, in accordance with the Charges over Accounts and the Account Bank Notices and Acknowledgements, not so act and the Company or, as the case may be, any other member of the Restricted Group shall not be entitled (and the Company shall ensure such other member of the Restricted Group is not entitled) to give or make any further such instructions or requests.

3.3.2 Notwithstanding the other provisions of this Agreement, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to:

- (i) give written notice to any Account Bank (with a copy to the relevant member of the Restricted Group in whose name the Account has been opened) that the Security Agent shall be the sole signatory in relation to the Accounts;
- (ii) apply the credit balances in the Accounts in or towards repayment of the Facilities and such other liabilities of the Obligors as the Intercreditor Agent may elect; and
- (iii) generally use amounts standing to the credit of the Accounts at its discretion in order to discharge the Obligors' obligations under the Transaction Documents,

and, pursuant to the Charges over Accounts and the Account Bank Notices and Acknowledgements, the Company and the relevant member of the Restricted Group in whose name the Account has been opened shall procure that the Account Bank so acts and makes such payments accordingly.

3.4 Review of Accounts

The Company and each other member of the Restricted Group irrevocably grants, solely for the purposes of its role as agent of the Senior Secured Creditors hereunder, (and the Company shall ensure each such other member of the Restricted Group shall so grant) the Security Agent or any of its appointed representatives access to review the books and records of the Accounts (and shall irrevocably authorise (and the Company shall ensure each other member of the Restricted Group authorises) each Account Bank to disclose the same to the Security Agent and its appointed representatives) and irrevocably waives (and the Company shall ensure each other member of the Restricted Group so waives) any right of confidentiality which may exist in respect of such books and records solely to the extent necessary to allow disclosure of such books and records to any Senior Secured Creditor and its advisers *provided* that, to the extent any such right of confidentiality does exist and the information comprised in such books and records is not otherwise in the public domain or required to be notified by the Company or any other member of the Restricted Group or the Account Bank to any of the Senior Secured Creditors and subject to any requirement to disclose any such information pursuant to any Legal Requirement or any other regulatory or stock exchange requirement, any Senior Secured Creditor or adviser to whom such disclosure is made shall undertake to the Company to keep the information comprised therein confidential.

3.5 Statements

The Company and each other member of the Restricted Group shall arrange (and the Company shall ensure each such member of the Restricted Group so arranges) for each Account Bank to provide to the Security Agent, at the latter's request:

- (a) a list of all Accounts maintained with it;
- (b) upon the reasonable request of the Security Agent, in respect of each calendar month, a statement of the balance of and each payment into and from each of the Accounts and the global amount of interest earned on each such Account during the preceding three month period or, if less, since the opening of the relevant Account; and
- (c) such other information concerning the Accounts as the Security Agent may require.

3.6 Waiver of Rights

3.6.1 Waiver of rights by the Company

Save as provided in this Agreement, the Company and each other member of the Restricted Group agrees not to (and the Company shall ensure each other member of Restricted Group does not) exercise any right which it (or such other member of the Restricted Group) may have under any applicable law to direct the transfer of any amount standing to the credit of an Account to the Company or any other member of the Restricted Group or its order or to direct the transfer of any Permitted Investment to the Company or any other member of the Restricted Group or to its order.

3.6.2 Waiver of rights by Account Banks

The Company and each other member of the Restricted Group shall procure (and the Company shall ensure each such other member of the Restricted Group procures) that each Account Bank acknowledges and agrees that each Account and Permitted Investment is the subject of a Lien in favour of the Senior Secured Creditors collectively and acknowledges and agrees that (save, in the case of the Performance Bond Provider, as permitted pursuant to (i) section 2.6 of the Performance Bond Facility Agreement prior to the issuance of an Enforcement Notice) it is not entitled to, and shall undertake not to, claim or exercise any lien, right of set-off, combination of accounts or other right, remedy or security with respect to:

- (a) moneys standing to the credit of such Account or in the course of being credited to it or any earnings; or
- (b) any Permitted Investment.

3.7 Closing of Accounts

The Company and each other member of the Restricted Group may close any Account and instruct each Account Bank to transfer any credit balances on any Account maintained with it *provided that* all balances standing to the credit of any such Account are transferred before the closure of such Account to another account or combination of accounts *provided that* each such account satisfies the requirements of the definition of "Account" in Clause 1.1 (*Definitions*).

Schedule 7 INSURANCE

[NOT USED]

Schedule 8 HEDGING ARRANGEMENTS

1. The Company shall, no later than 180 days after the Fifth Amendment Effective Date, enter into agreements to the extent necessary to ensure that an amount equal to the higher of:
 - (b) at least 30% of the aggregate amount then drawn under the Term Loan Facilities; and
 - (c) an equivalent amount of USD750,000,000,is subject, through interest rate swaps, caps, collars or other products agreed with the Intercreditor Agent, to either a fixed interest rate or interest rate protection for such period as reflects the repayment schedule for such Facility and with a final maturity date of not earlier than 31 July 2017.
2. No Obligor may enter into any derivative transaction, other than:
 - (a) prior to 31 July 2017, Hedging Agreements as contemplated by paragraph 1 above; and
 - (b) on and after 31 July 2017, any Permitted Swap Transaction *provided that* no counterparty to any such Permitted Swap Transaction shall have any Liens or any right to share in the Security or any interest in the Project Security.
3. Only a Lender or an Affiliate of a Lender may act as a Hedging Counterparty in respect of the Hedging Arrangements required by paragraph 1 above.
4. The Hedging Agreements are to be on the terms of the 1992 standard International Swap & Dealers Association, Inc. Master Agreement (the "**ISDA Master Agreement**") and the ISDA Schedule, together with such amendments as are acceptable to the Intercreditor Agent, acting reasonably. All Hedging Agreements for swap transactions will provide for full two way payments (with the Company being a Fixed Rate Payer (as defined in the 2000 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc. (the "**2000 Definitions**"))) and the Hedging Counterparty being a Floating Rate Payer (as defined in the 2000 Definitions)) and the payment measure and payment method for such swap transactions in the event of early termination, whether upon a "Termination Event" or an "Event of Default", shall be "Second Method" and "Market Quotation" respectively. Terms in quotations in this paragraph 4 shall have the meaning ascribed in the ISDA Master Agreement.
5. The Hedging Counterparties in respect of the Hedging Agreements required pursuant to paragraph 1 above shall have equal security over the assets of the Company with the Senior Secured Creditors in accordance with the terms of this Agreement and the Deed of Appointment and Priority.
6. [Not used]

7. In paragraph 8 and paragraph 11 below, "**Realised Hedge Loss**" means, in relation to a Hedging Counterparty at any time, the amount (if any) payable (but unpaid) by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is a party (but excluding any default interest) upon an early termination of any transaction or transactions thereunder which has been terminated in accordance with paragraph 9 below. The amount is to be calculated on a net basis across the transactions under such Hedging Agreement in accordance with the terms of the applicable Hedging Agreement.
8. Payments due from the Company under the Hedging Agreements, including any Realised Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall (save for any such amounts paid by another Obligor) be a Financing Cost.
9. Except with the prior consent of the Intercreditor Agent acting reasonably, no amendments may be made to a Hedging Agreement to an extent that might reasonably be expected to result in:
- (a) any payment under the Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in the Hedging Agreement;
 - (b) the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of the Hedging Agreement; or
 - (c) the Company becoming liable to make any payment under the Hedging Agreement in any currency other than in the currency provided for under the original provisions of the Hedging Agreement.
- 10.
- (a) The Company may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement and with the approval of the Intercreditor Agent acting reasonably *provided* that the approval of the Intercreditor Agent shall not be required in the case of any termination by reason of illegality when the requirements of paragraph 1 above are met following such termination.
 - (b) A Hedging Counterparty may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement.
 - (c) Unless a Hedging Counterparty has already exercised such rights in accordance with sub-paragraph (b) above, the Intercreditor Agent may require a Hedging Counterparty to terminate transactions under a Hedging Agreement where a declaration has been made by the Intercreditor Agent pursuant to Clause 19.2.2 (*Remedies following an Event of Default*).
 - (d)
 - (i) If at any time the aggregate amount of the "**Notional Amounts**" (as defined in the 2000 Definitions) of all Hedging Agreements and Permitted Swap Transactions at such time are greater than 125% of the principal amounts outstanding under the Term Loan Facilities, the Company shall immediately unwind in order of maturity (unless otherwise agreed by the Intercreditor Agent) sufficient transactions under the Hedging Agreements and Permitted Swap Transactions and pay associated breakage costs on:
 - (A) the first Payment Date (as defined in the 2000 Definitions); or
 - (B) where the Overhedging Date falls within 5 Business Days (as defined in the relevant Hedging Agreement or Permitted Swap Transaction) prior to such first Payment Date, the second Payment Date,in respect of such transaction immediately succeeding the Overhedging Date, such that the Intercreditor Agent is satisfied that, following such terminations, the aggregate Notional Amounts of all transactions under all Hedging Agreements and Permitted Swap Transactions is not less than 30% and not more than 125% of the principal amounts outstanding under the Term Loan Facilities.
 - (ii) For the purposes of the above paragraph, the "**Overhedging Date**" means any date on which the aggregate Notional Amounts of all Hedging Agreements and Permitted Swap Transactions are greater than 125% of the principal amounts outstanding under the Term Loan Facilities.
11. In the event that a Hedging Agreement is terminated and the Company fails to pay any Realised Hedge Loss, such Realised Hedge Loss shall comprise an Unpaid Sum and interest shall accrue in respect thereof accordingly.

APPENDIX 1

FORM OF HEDGING COUNTERPARTY'S DEED OF ACCESSION

THIS DEED dated [] is supplemental to (i) a common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. as Company and the Senior Secured Creditors (as defined therein) and (ii) each of the Security Documents as defined in the Common Terms Agreement to which the Senior Secured Creditors are expressed to be party (the "**Security Documents**").

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[*name of new Hedging Counterparty*] (the "**New Hedging Counterparty**") of [*address*] hereby agrees with each other Person who is or who becomes a party to the Common Terms Agreement that with effect on and from the date of this Deed it shall be bound by the Common Terms Agreement and be entitled to exercise rights and be subject to obligations thereunder as a Hedging Counterparty.

The New Hedging Counterparty hereto agrees with each other Person who is or who becomes a party to the Security Documents that with effect on and from the date of this Deed it shall be bound by each of the Security Documents and be entitled to exercise rights and be subject to obligations thereunder as a Senior Secured Creditor.

The initial telephone number, fax number, address and person designated by the New Hedging Counterparty for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by ()

[*insert name of New Hedging*)

Counterparty and execution)

clause appropriate thereto)

and to manner of execution])

Schedule 9 **MANDATORY PREPAYMENT**

2. To the extent that any Equity Issuance Proceeds are received by (or paid to the order of) the Company or any other Obligor, the Company shall ensure that an amount equal to the amount of such Equity Issuance Proceeds (excluding any such Equity Issuance Proceeds derived from any Equity to the extent such Equity is required or permitted under this Agreement to fund the design, development, construction, ownership, operation, maintenance or refurbishment of Wynn Macau or the Cotai Project or, for the avoidance of doubt, any Specified Equity Contributions) shall be applied on the next Interest Payment Date after such receipt (or payment) towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and, pending such application, shall be deposited and retained in an Account.
3. With respect to the Net Cash Proceeds from any Asset Sale (where such Net Cash Proceeds exceed in aggregate an amount equal to USD100,000,000 or its equivalent in any Fiscal Year when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year) made by the Company or any other Obligor as to which the Company or any other Obligor has not re-invested such Net Cash Proceeds within 12 months of receipt in assets used by the Company or any other Obligor in the conduct of its Permitted Business at Wynn Macau and/or the Cotai Project, such Net Cash Proceeds shall be applied on the next Interest Payment Date after the date falling 12 months from the date of receipt towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and, pending such application, shall be deposited and retained in an Account.
4. On the next Interest Payment Date following the date on which the Company or any other Obligor receives:
 - (a) any Termination Proceeds; or
 - (b) any Eminent Domain Proceeds which, when taken together with all other Eminent Domain Proceeds received, exceed, in aggregate, USD1,000,000 or its equivalent,

the Company shall ensure that such proceeds are applied towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and, pending such application, shall be deposited and retained in an Account.

5. If, for any Fiscal Year for which any payment in respect of Excess Cash Flow is required to be made and for which there shall be Excess Cash Flow, the Company shall apply the ECF Percentage of such Excess Cash Flow towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*). Each such prepayment shall be made on the next Interest Payment Date following the earlier of:
- (a) the date on which the financial statements of the Company referred to in paragraph 1 of Part A of Schedule 5 (*Covenants*), for the Fiscal Year with respect to which such prepayment is made, are required to be delivered to the Lenders; and
 - (b) the date such financial statements are actually delivered,
- and, pending such application, shall be deposited and retained in an Account.

6. An amount equal to any Insurance Proceeds (other than those received by the Company or any other Obligor for any single loss or series of related losses not in excess of USD50,000,000 or its equivalent) shall be applied to the prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) on the next Interest Payment Date falling not less than 30 days after the Company's or Obligor's receipt of such Insurance Proceeds, unless each of the following conditions are satisfied or waived by the Intercreditor Agent within such 30 day period, in which event such amounts shall be applied to the repair or restoration of Wynn Macau or the Cotai Project, as appropriate:
- (a) the damage or destruction does not constitute the destruction of all or substantially all of Wynn Macau or the Cotai Project, as the case may be;
 - (b) an Event of Default has not occurred and is continuing (other than an Event of Default resulting solely from such damage or destruction) and after giving effect to any proposed repair and restoration, no Event of Default will result from such damage or destruction or proposed repair and restoration;
 - (c) the Company certifies that repair or restoration of Wynn Macau or the Cotai Project, as the case may be, to a condition substantially similar to its condition immediately prior to the event or events to which the relevant Insurance Proceeds relate, is technically and economically feasible within a 12 month period;
 - (d) the Company delivers to the Intercreditor Agent a plan (the "**Repair Plan**") describing the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith; and
 - (e) the Company certifies that (A) the Company has sufficient funds to achieve construction completion of Wynn Macau or the Cotai Project, as the case may be, to operate its business as it is then conducted and pay its debts when due and (B) a sufficient amount of funds is or will be available to the Company to make all payments on Financial Indebtedness which will become due during and following the repair period and, in any event, to maintain compliance with the covenants set forth in paragraph 1 of Part B of Schedule 5 (*Covenants*) during such repair period (and including or, as the case may be, taking into account any Contribution as further contemplated by (and as set out in) paragraph (d) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)),

and, pending such application, such amount shall be deposited and retained in an Account.

The Company shall procure that all such repair and restoration of Wynn Macau or the Cotai Project (as the case may be):

- (a) is diligently pursued and promptly completed; and
- (b) does not materially prejudice or adversely affect the interests of the Senior Secured Creditors hereunder or under the applicable Project Security or the Security.

After Insurance Proceeds have been applied to the repair or restoration of Wynn Macau or the Cotai Project, as the case may be, as provided in this Agreement, any excess Insurance Proceeds shall be applied on the next Interest Payment Date thereafter to the prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*).

7. [Not used.]

8. If all or substantially all of Wynn Macau or the Cotai Project is lost, damaged or destroyed or declared by any relevant Insurer to be a constructive total loss, the Company shall prepay and cancel the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and prepay all other amounts outstanding under the Senior Finance Documents within 90 days or, if earlier, upon receipt of Insurance Proceeds in respect of such loss, damage, destruction or declaration.
9. On the next Interest Payment Date following the date on which the Company or any other Obligor receives any Claim Proceeds in relation to a Major Project Document (other than a Resort Management Agreement that is not a Cotai Resort Management Agreement), the Company shall apply an amount equal to such proceeds towards prepayment and cancellation

of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and, pending such application, shall deposit and retain such proceeds in an Account.

Schedule 10 EVENTS OF DEFAULT

- (a)
 - (i) The Company shall have failed to pay any principal of any Advance when due in accordance with the terms of the relevant Facility Agreement; or
 - (i) the Company shall have failed to pay any interest on any Advance within 5 days after any such interest becomes due in accordance with the terms of the relevant Senior Finance Document; or
 - (ii) any other Obligor or a Wynn Non-Obligor Subordination Deed Party shall have failed to pay any other amount payable under any Senior Finance Document within 10 days after any such other amount becomes due in accordance with the terms of the relevant Senior Finance Document or in the event that any such other amount becomes due without a notice being given to the relevant Obligor, 10 days after notice to the relevant Obligor of the non-payment of such amount.
- (b) Any representation or warranty made or deemed made by any Obligor or a Wynn Non Obligor Subordination Deed Party in any Senior Finance Document to which it is a party 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 Senior Finance Document shall prove to have been incorrect in any material respect (or, in the case of the representations and warranties set out in paragraphs 21.1, 21.2 and 21.3 of Schedule 4 (*Representations and Warranties*), in any respect) on or as of the date made or deemed made, and, in the case of an Obligor (other than the Company or a Wynn Obligor) or a Wynn Non-Obligor Subordination Deed Party, such event, could reasonably be expected to give rise to a Material Adverse Effect, *provided* that no Event of Default under this paragraph (b) will occur if the misrepresentation is capable of remedy and remedied within 30 days of the earlier to occur of (i) the Intercreditor Agent giving notice of such misrepresentation to the relevant Obligor or Wynn Non Obligor Subordination Deed Party (as the case may be) and (ii) the relevant Obligor or Wynn Non Obligor Subordination Deed Party (as the case may be) becoming aware of such misrepresentation.
- (c) The Company shall default in the observance or performance of:
 - (i) paragraph 12(a) of Part A of Schedule 5 (*Covenants*) and, other than in respect of a Default arising by reason of paragraphs (v), (w) or (z) of Schedule 10 (*Events of Default*), such default shall continue unremedied for a period of 30 days;
 - (ii) paragraph 12(b) of Part A of Schedule 5 (*Covenants*) in so far as it relates to the Concession Contract or the Land Concession Contract;
 - (iii) paragraph 24 of Part A of Schedule 5 (*Covenants*);
 - (iv) paragraph 1 of Part B of Schedule 5 (*Covenants*) and such default shall continue unremedied for a period of 5 days; or
 - (v) [Not used].
- (d) Any Obligor or the Performance Bond Provider (or a Wynn Non-Obligor Subordination Deed Party) shall default in the observance or performance of any other covenant or agreement contained in any Senior Finance Document to which it is a party (other than as provided in paragraphs (a) through (c) of this Schedule), and such default shall continue unremedied for a period of 30 days or, *provided* the relevant Obligor or the Performance Bond Provider (or Wynn Non-Obligor Subordination Deed Party) is diligently pursuing action to remedy the default and it is of a nature that it is capable of being remedied, 60 days after the earlier of:
 - (i) the Company or such Obligor (or such Wynn Non-Obligor Subordination Deed Party) becoming aware of such default; and
 - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such default.
- (e) Save where paragraph (a) of this Schedule applies, the Company or any other Obligor (or, in relation to any Financial Indebtedness that is Guaranteed WML Debt, WML or any Obligor that has incurred, assumed or allowed to remain outstanding any Guarantee Obligation with respect to such Guaranteed WML Debt) shall:
 - (i) default in making any payment of any principal of any Financial Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Advances) on the scheduled due date with respect thereto;

- (ii) default in making any payment of any interest on any such Financial Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Financial Indebtedness was created; or
- (iii) default in the observance or performance of any other agreement or condition relating to any such Financial 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 (or any declaration by the holder of such Financial Indebtedness by reason thereof) is to cause immediately such Financial Indebtedness to become due prior to its stated maturity or (in the case of any such Financial Indebtedness constituting a Guarantee Obligation) to become payable,

provided that a default event or condition described in sub-paragraphs (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute a Default or Event of Default unless, at such time, the aggregate amount of the default in the principal payment in the case of sub-paragraph (i), the default in the interest payment in the case of sub-paragraph (ii) and the amount accelerated in the case of sub-paragraph (iii) of this paragraph (e) exceeds USD25,000,000 or its equivalent in the case of the Company and the other Obligor taken as a whole (or, where such default event or condition relates to Financial Indebtedness that is Guaranteed WML Debt, WML and any Obligor that have incurred, assumed or allowed to remain outstanding any Guarantee Obligation with respect to such Guaranteed WML Debt taken as a whole).

- (f) (i) Any Obligor or the Performance Bond Provider 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, (x) seeking to have an order for relief entered with respect to itself, or seeking to adjudicate itself a bankrupt or insolvent, or (y) seeking reorganization, administration, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to itself or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for itself or for all or any substantial part of its assets, or any Obligor or the Performance Bond Provider shall make a general assignment for the benefit of its creditors, but excluding in the case of sub-paragraph (A)(y) any voluntary liquidation, winding-up or dissolution of, or similar action with respect to, Palo after a Permitted Cotai Reorganisation;
- (i) there shall be commenced against any Obligor or the Performance Bond Provider any case, proceeding or other action of a nature referred to in sub-paragraph (i) above that (A) results in the entry of an order for relief as specified in sub-paragraph (i)(A) or (i)(B) above or any such adjudication or appointment and (B) where such order, adjudication or appointment may under applicable law be dismissed, discharged or bonded, remains undismissed, undischarged or unbonded for a period of 60 days (or such shorter period as may be specified pursuant to any applicable law);
- (ii) there shall be commenced against any Obligor or the Performance Bond Provider 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 and such order shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;
- (iii) any Obligor or the Performance Bond Provider shall consent to, approve, or acquiesce in, any of the acts set forth in sub-paragraphs (i), (ii) or (iii) above; or
- (iv) any Obligor or the Performance Bond Provider shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due,

provided that no Event of Default shall be deemed to have occurred under this paragraph (f) as a result of any such action, event of condition by, against or concerning the Performance Bond Provider if:

- (v) immediately upon (and, in any event, no more than five Business Days after) becoming aware or receiving notice thereof, the Company gives notice to the Intercreditor Agent of its intention to replace the Performance Bond Provider; and
- (vi) within 60 days (or such shorter period as may be required pursuant to the Concession Contract) after such action, event or condition has occurred, the Company shall have made application to the Macau SAR for a replacement Performance Bond Provider who is acceptable to the Intercreditor Agent, acting reasonably.

(g) [Not used]

(h) One or more judgments or decrees shall be entered against the Company or any other Obligor involving for the Company and the other Obligor taken as a whole a liability (not paid or covered by insurance) of USD50,000,000 or its equivalent or more, and all such judgments or decrees, in either case, shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof.

(i) Any of the Senior Finance Documents shall cease, for any reason (other than pursuant to the terms thereof or, in respect of any Palo Security Document, as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation*);

Release of Palo Security) of this Agreement following a Permitted Cotai Reorganisation), to be in full force and effect, or any Obligor (or a Wynn Non Obligor Subordination Deed Party, in respect of the Subordination Deed only) shall in writing to any Senior Secured Creditor in the event that any Senior Secured Creditor is seeking to exercise its rights or in any Proceedings so assert, or any Lien created or acknowledged by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created or acknowledged thereby.

(j) The Company or any other Obligor shall breach or default under in any material respect any material term, condition, provision, covenant, representation or warranty contained in any Major Project Document (other than as set forth in the proviso at the end of this paragraph (j)) and such breach or default shall continue unremedied for 30 or, save in the case of any payment default, provided the Company or such Obligor is diligently pursuing action to remedy the default and it is of a nature that is capable of being remedied, 60 days after the earlier of:

- (i) the Company or such Obligor becoming aware of such breach or default; and
- (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default,

provided that:

(A) in respect of a Resort Management Agreement, this paragraph (j) shall only apply to any such breach or default under such Resort Management Agreement where such breach or default has not been remedied as set forth above and such breach of default could reasonably be expected to prejudice:

- (i) the Concession Contract (or any rights, benefits or interests arising thereunder);
- (ii) the Land Concession Contract (or any rights, benefits or interests arising thereunder); or
- (iii) the Cotai Land Concession Contract (or any rights, benefits or interests arising thereunder) and such prejudice could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents; and

(B) in respect of the Cotai Land Concession Contract, this paragraph (j) shall only apply to such breach or default under the Cotai Land Concession Contract where such breach or default has not been remedied as set forth above and such breach of default could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents).

(k) Any party (other than the Company) shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Major Project Document (other than as set forth in the proviso at the end of this paragraph (k)) and such breach or default shall continue unremedied for 90 days after the earlier of:

- (i) the Company or any other Obligor becoming aware of such breach or default; and
- (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default,

and such breach or default could reasonably be expected to have a Material Adverse Effect,

provided that:

(A) in respect of a Resort Management Agreement, this paragraph (k) shall only apply to any such breach or default under such Resort Management Agreement where such breach or default has not been remedied as set forth above and such breach of default could reasonably be expected to prejudice:

- (i) the Concession Contract (or any rights, benefits or interests arising thereunder);
- (ii) the Land Concession Contract (or any rights, benefits or interests arising thereunder); or
- (iii) the Cotai Land Concession Contract (or any rights, benefits or interests arising thereunder) and such prejudice could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents; and

(B) in respect of the Cotai Land Concession Contract, this paragraph (k) shall only apply to such breach or default under the Cotai Land Concession Contract where such breach or default has not been remedied as set forth above and such breach of default could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents).

(l) Any of the Transaction Documents shall terminate or be terminated or cancelled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date (other than any such termination, cancellation, invalidity, illegality or other ceasing to be in full force and effect prior to its stated expiration date in respect of any Palo

Security Document as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation) *provided* that the occurrence of any of the foregoing events with respect to the Cotai Land Concession Contract shall constitute an Event of Default under this paragraph (l) only if the same could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents and *provided* further that the occurrence of any of the foregoing events with respect to any Major Project Document (other than the Concession Contract, the Land Concession Contract, the Cotai Land Concession Contract or the IP Agreement) shall constitute an Event of Default under this paragraph (l) only if the same could reasonably be expected to result in a Material Adverse Effect and the same shall continue unremedied for 90 days after the earlier of:

- (i) the Company or any other Obligor becoming aware of such occurrence; and
- (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such occurrence,

provided that in the case of any such Major Project Document (other than the Concession Contract, the Land Concession Contract, the Cotai Land Concession Contract or the IP Agreement), if the occurrence is not the result of the breach or default by an Obligor in any material respect of any material term, condition, provision, covenant, representation or warranty, then no Event of Default shall be deemed to have occurred as a result thereof under this paragraph (l) if the Company provides written notice to the Intercreditor Agent immediately upon (but in no event more than 10 Business Days after) the Company or such other Obligor becoming aware of such occurrence that it intends to replace such Major Project Document and:

- (A) the Company obtains a replacement obligor or obligors for the affected party;
- (B) the Company or such other Obligor enters into a replacement Major Project Document on terms no less beneficial to the Company or such other Obligor and the Senior Secured Creditors in any material respect than the Major Project Document being replaced within 60 days of such occurrence, *provided* that the replacement Major Project Document may require the Company or such other Obligor to pay amounts under the replacement Major Project Document in excess of those that would have been payable under the replaced Major Project Document; and
- (C) in the reasonable opinion of the Intercreditor Agent, such occurrence, after considering any replacement obligor and replacement Major 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.

- (m) A Change of Control shall occur.
- (n) Any Subordinated Debt or the Performance Bond Facility Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Obligors as provided in the Senior Finance Documents and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be.
- (o) [Not used]
- (p) [Not used]
- (q) [Not used]
- (r) (i) The Company shall abandon Wynn Macau or (ii) Palo (or, following a Permitted Cotai Reorganisation, the Company) shall abandon the Cotai Project or otherwise cease to pursue it (development of the Cotai Project having ceased for a period of at least ninety days) where such abandonment or cessation could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Finance Documents.
- (s) Any call or drawing made by the Macau SAR under the Concession Contract Performance Bond unless the Concession Contract Performance Bond is fully reinstated within 30 days thereof in accordance with the Concession Contract, no other Event of Default has occurred or will result from such reinstatement.
- (t) [Not used]
- (u) The authority or ability of the Company or any other Obligor to conduct its business or operations as currently conducted and as proposed to be conducted, or a material part thereof, is wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any Governmental Authority.
- (v) Any temporary administrative intervention is made by the Macau SAR pursuant to article 79 of the Concession Contract.
- (w) The Macau SAR takes any formal measure seeking the unilateral dissolution of the Concession Contract pursuant to article 80 thereof or the Macau SAR gives notice pursuant to article 80(3) of the Concession Contract and the Company fails to comply with the terms thereof within the grace period specified therein.

(x) [Not used]

(y) [Not used]

(z) The Land Concession Contract or the Cotai Land Concession Contract is terminated or rescinded or the Macau SAR takes any formal measure seeking any termination of (i) the Land Concession Contract pursuant to Clause 15 thereof or any rescission pursuant to Clause 16 thereof or (ii) the Cotai Land Concession Contract pursuant to Clause 14 thereof or any rescission pursuant to Clause 15 thereof, *provided* that, the occurrence of the foregoing events with respect to the Cotai Land Concession Contract shall constitute an Event of Default under this paragraph (z), only if the same could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents.

(aa) [Not used]

(bb) A Material Adverse Effect has occurred which is continuing.

Schedule 11
TRANSFERS AND ACCESSION

Part A

Form of Agent's Deed of Accession

THIS DEED dated [] is supplemental to each of the Senior Finance Documents as defined in a common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the Senior Secured Creditors (as defined therein) to which [*name of existing Agent*] is expressed to be a party (the "**Senior Finance Documents**").

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[*name of new Agent*] (the "**New Agent**") of [*address*] hereby agrees with each other Person who is or who becomes a party to the Senior Finance Documents that with effect on and from the date of this Deed it shall be bound by the Senior Finance Documents and be entitled to exercise rights and be subject to obligations thereunder as [*specify Agent*].

The Facility Office of the New Agent is located at [].

The initial telephone number, fax number, address and Person designated by the New Agent for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by ()

[*insert name of new Agent and*)

execution clause appropriate)

thereto and to manner of)

execution])

Part B

Form of Novation Certificate

To: [] as Intercreditor Agent

NOVATION CERTIFICATE

relating to [description of the relevant Facility Agreement] (the "**Facility Agreement**") dated [date of the relevant Facility Agreement] between Wynn Resorts (Macau) S.A. (the "**Company**") and [list other parties] and the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between the Company and the Senior Secured Creditors (as defined therein).

1. Terms defined in the Common Terms Agreement shall, subject to any contrary indication, have the same meanings herein and the principles of construction and rules of interpretation set out therein shall also apply. The terms Lender, Transferee, Proposed Transfer Date, Lender's Participation and Amount Transferred are defined in the schedule hereto.
2. The Lender confirms that the Lender's Participation is an accurate summary of its participation in the Facility Agreement and requests the Transferee to accept and procure the transfer by novation to the Transferee of a percentage of the Lender's Participation (equal to the percentage that the Amount Transferred is of the aggregate of the component amounts (as set out in the schedule hereto) of the Lender's Participation the "**Transferred Percentage**") by counter-signing and delivering this Novation Certificate to the Intercreditor Agent at its address for the service of notices specified in the Common Terms Agreement, in accordance with Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement. The Lender assigns, subject to the aforementioned acceptance by the Transferee, a proportion of the rights and benefits held by the Lender (in its capacity as such) under or in connection with the Senior Finance Documents which proportion shall be equal to the Transferred Percentage.
3. The Transferee hereby requests the Intercreditor Agent to accept this Novation Certificate as being delivered to the Intercreditor Agent pursuant to and for the purposes of Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement so as to take effect in accordance with the terms thereof on the Proposed Transfer Date or on such later date as may be determined in accordance with the terms thereof.
4. The Transferee confirms that it has received a copy of each of the Senior Finance Documents together with such other information as it has required in connection with this transaction and that it has not relied and shall not hereafter rely on the Lender to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and shall not rely on the Lender to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Obligors, Wynn Macau or the Cotai Project.
5. The Transferee hereby undertakes with the Lender and each of the other parties to the Facility Agreement that it shall perform in accordance with their terms all those

obligations which by the terms of the Facility Agreement shall be assumed by it after delivery of this Novation Certificate to the Intercreditor Agent and satisfaction of the conditions (if any) subject to which this Novation Certificate is expressed to take effect.

6. The Transferee also agrees that, with effect from the Proposed Transfer Date or such later date as may be determined in accordance with Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement, it shall be bound by the terms of:
 - (e) the Common Terms Agreement as if it had been a party to such agreement in the capacity of a [*specify Lender*]; and
 - (f) each of the Security Documents to which the Lenders are party as if it had been a party to those documents in the capacity of a Lender thereunder.
7. The Lender makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Senior Finance Documents or any document relating thereto and assumes no responsibility for the financial condition of the Obligors or for the performance and observance by the Obligors of any of their obligations under the Senior Finance Documents or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.
8. The Lender hereby gives notice that nothing herein or in the Senior Finance Documents (or any document relating thereto) shall oblige the Lender to (a) accept a re-transfer from the Transferee of the whole or any part of its rights, benefits and/or obligations under the Senior Finance Documents transferred pursuant hereto or (b) support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever including the non-performance by any of the Obligors or any other party to the Senior Finance Documents (or any document relating thereto) of its obligations under any such document. The Transferee hereby acknowledges the absence of any such obligation as is referred to in (a) or (b).
9. This Novation Certificate and the rights, benefits and obligations of the parties hereunder shall be governed by and construed in accordance with English law.

THE SCHEDULE

1. Lender:
2. Transferee:
3. Proposed Transfer Date:
4. Lender's Participation:

Lender's undrawn Available Commitment*

Lender's Portion of each Advance

5. Amount Transferred:

[Lender] [Transferee]

By: By:

Date: Date:

[]

as Intercreditor Agent

By:

Date:

Administrative Details of Transferee

Address:

Contact Name:

Account for Payments:

Standing Payment Instruction:

Fax:

Telex:

Telephone:

* Details of the Lender's undrawn Available Commitment should not be completed after the last day of the Availability Period.

Part C

Form of Confidentiality Undertaking

To: *[Insert name of potential Transferee/participant]*

[Date]

Dear Sirs,

We understand that you are considering [acquiring an interest (the "**Acquisition**") in/accepting an appointment as facility agent under *[description of the relevant Facility Agreement]* (the "**Facility Agreement**")/accepting an appointment as intercreditor agent under the Senior Finance Documents (the "**Appointment**")] in relation to the design, development, construction, ownership, operation and maintenance of the Wynn Macau hotel, retail and destination gaming resort project ("**Wynn Macau**") and the Wynn Palace hotel, retail and destination gaming resort

project (the "**Cotai Project**"). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. *Confidentiality Undertaking* You undertake (a) to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, (b) to use the Confidential Information only for the Permitted Purpose, (c) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(c) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it, and (d) not to make enquiries of any of the Obligors or any of their officers, directors, employees or professional advisers relating directly or indirectly to the [Acquisition/Appointment].
2. *Permitted Disclosure* We agree that you may disclose Confidential Information:
 - (f) to members of the [Purchaser/Appointee] Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the [Purchaser/Appointee] Group;
 - (g) [subject to the requirements of the Senior Finance Documents, to any person to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of the rights, benefits and obligations which you may acquire under the Facility Agreement or with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Senior Finance Documents or any of the Obligors so long as that person has delivered a letter to you in equivalent form to this letter;] and
 - (h) (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the [Purchaser/Appointee] Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the [Purchaser/Appointee] Group.
3. *Notification of Required or Unauthorised Disclosure* You agree (to the extent permitted by law) to inform us of the full circumstances of any disclosure under paragraph 2[(c)/(b)] or upon becoming aware that Confidential Information has been disclosed in breach of this letter.
4. *Return of Copies* If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental,

supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2[(c)/(b)] above.

5. *Continuing Obligations* The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party to [or otherwise acquire (by assignment or sub-participation) an interest, direct or indirect, in] the [Facility Agreement/Senior Finance Documents] or (b) twelve months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).
6. *No Representation; Consequences of Breach, etc* You acknowledge and agree that:
 - (a) neither we nor any Obligor nor any of our or their respective officers, employees or advisers (each a "**Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and
 - (b) we or any Obligor may be irreparably harmed by the breach of the terms hereof and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.
7. *No Waiver; Amendments, etc* This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges hereunder. The terms of this letter and your obligations hereunder may only be amended or modified by written agreement between us.
8. *Inside Information* You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and you undertake not to use any Confidential Information for any unlawful purpose.
9. *Nature of Undertakings* The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of each Obligor.

10. *Third party rights*

- (a) Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this letter.
- (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- (c) The parties to this letter do not require the consent of the Relevant Persons to rescind or vary this letter at any time.

11. *Governing Law and Jurisdiction* This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.

12. *Definitions* In this letter (including the acknowledgement set out below) terms defined in or by reference to the Facility Agreement shall, unless the context otherwise requires, have the same meaning, the principles of construction and rules of interpretation referred to therein shall also apply and:

"**Confidential Information**" means any information relating to Wynn Macau, the Cotai Project, any Obligor, the Transaction Documents, any agreement relating to the [Facility Agreement/Senior Finance Documents] and/or the [Acquisition/Appointment] provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you thereafter, other than from a source which is connected with the Obligors and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

"**Obligors**" means Wynn Resorts (Macau) S.A. and certain other persons, as defined in the Senior Finance Documents, who have a direct or indirect interest in its share capital.

"**Permitted Purpose**" means considering and evaluating whether to [enter into/accept] the [Acquisition/Appointment].

"**Project Documents**" means the documents entered into by Wynn Resorts (Macau) S.A. and its contractors or subcontractors in connection with Wynn Macau.

"**[Purchaser/Appointee] Group**" means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 1985).

"**Senior Finance Documents**" means the Facility Agreement, the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and certain financial institutions and other Senior Finance Documents as defined in such Common Terms Agreement.

"**Transaction Documents**" means the Senior Finance Documents and the Project Documents.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of

[Insert name of Lender/Agent]

To: [Lender/Agent]

The Obligors

We acknowledge and agree to the above:

.....

For and on behalf of

[Potential Transferee/participant/appointee]

Date:

**Schedule 12
[NOT USED]**

**Schedule 13
[NOT USED]**

**Schedule 14
FORM OF ADDITIONAL LENDER'S ACCESSION DEED**

THIS DEED dated [] is supplemental to a common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the Senior Secured Creditors (as defined therein).

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[name of Additional Lender] (the "**New Additional Lender**") of *[address]* hereby agrees with each other person who is or who becomes a party to the Common Terms Agreement that with effect on and from the date of this Deed it shall be bound by the Common Terms Agreement and be entitled to exercise rights and be subject to obligations thereunder as an Additional Lender.

The initial telephone number, fax number, address and person designated by the New Additional Lender for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by)

[insert name of Additional)

Lender and execution clause)

appropriate thereto and to)

manner of execution])

**Schedule 15
FORM OF COMPLIANCE CERTIFICATE**

To: [] as Intercreditor Agent

Date: []

Dear Sirs,

We refer to an agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions named therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall bear the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.

We confirm on [insert date of relevant financial statements] the following:

	Actual	Required
1. Leverage Ratio	[]	[]
2. Interest Coverage Ratio	[]	[]

3. Excess Cash Flow*	Actual	
----------------------	--------	--

—
[* *Excess Cash Flow calculation to be included only if the Leverage Ratio for the relevant period is greater than 4.5:1*]

We attach the information and calculations necessary for determining the above ratios and amounts.

We hereby confirm that no Default has occurred and is continuing.

OR

We hereby give you notice of the occurrence of the following Default which is continuing:

[].

We set out below the steps being taken to remedy such Default:

[].

Yours faithfully,

Name:
Responsible Officer
for and on behalf of
Wynn Resorts (Macau) S.A.

Schedule 16
[NOT USED]

Schedule 17
[NOT USED]

Schedule 18
[NOT USED]

Schedule 19
[NOT USED]

SIGNATURES

The Company

WYNN RESORTS (MACAU) S.A.

By: /s/ Frank Cassella

Address: Wynn Macau
Rua Cidade de Sintra
NAPE
Macau

Tel: 853 2888 9966

Fax: 853 2832 9966

Attention: Chief Financial Officer

With a copy to: Wynn Resorts (Macau) S.A.

Wynn Macau
Rua Cidade de Sintra
NAPE
Macau

Tel: 853 2888 9966

Fax: 853 2832 9966

Attention: Legal Department of Wynn Resorts (Macau) S.A.

The Hedging Counterparties

THE BANK OF NOVA SCOTIA

By: /s/ Andy Poon

Address: Suite 2401, Central Tower, 28 Queen's Road Central, Hong Kong

Fax: 852 2527 2526

Attention: Kenneth Ho / Philip Ng

DBS BANK LTD.

By: /s/ Louisa Chau

Address: 10/F, The Center, 99 Queen's Road Central, Central, Hong Kong

Fax: 852 2806 5457

Attention: Mr. Johnson Wong

With a copy to:

Address: 18/F, The Center, 99 Queen's Road Central, Hong Kong

Fax: 852 2596 0577

Attention: Mr. Colum Ting

The Outgoing Global Coordinating Lead Arrangers

STANDARD CHARTERED BANK (HONG KONG) LIMITED

By: /s/ Lewis Wong

THE ROYAL BANK OF SCOTLAND PLC, SINGAPORE BRANCH

By: /s/ Alexander Chu

The Mandated Lead Arrangers and Bookrunners

BANCO NACIONAL ULTRAMARINO, S.A.

By: /s/ Pedro Manual De Oliveira Cardoso

By: /s/ Tou Kei San

Address: No. 22, Avenida de Almeida Ribeiro, Macau

Fax: +853 2835 5653 / +853 2835 6867

Attention: Ms. Monica Wong / Ms. Violet Choi

BANK OF AMERICA, N.A.

By: /s/ Siong Ooi

Address: 55/F, Cheung Kong Centre, 2 Queen's Road Central, Central, Hong Kong

Tel: 852 3508 2094

Fax: 852 3508-2914

Email: asia.sse-hk@bankofamerica.com

Attention: Elena Ng

With a copy to:

Tel: 852 3508 6190

Fax: Fax: +852 3508-0689

Email: allen.chu@baml.com

Attention: Allen Chu

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

BNP PARIBAS HONG KONG BRANCH

By: /s/ Mary Hse

By: /s/ Charmaine Lo

Address: 63/F, Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Fax: 852 2970 0296

Attention: Joshua Lau

DBS BANK LTD.

By: /s/ Benjamin Wong

Address: DBS Bank Ltd.

Tel: 18/F, The Center, 99 Queen's Road Central, Central, Hong Kong

Fax: 852 2596 0577

Attention: Mr. Colum Ting

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (MACAU) LIMITED

By: /s/ Lui Kwok Tai

By: /s/ Zheng Zhiguo

Address: 18/F., ICBC Tower, Macau Landmark, 555 Avenida da Amizade, Macau

Fax: +853 8398 2160/ +853 2858 4496

Attention: Alex Li / Eric Chan/ Linda Chan / Selene Ren/ Stephanie Guo

THE BANK OF NOVA SCOTIA

By: /s/ Andy Poon

Address: Suite 2401, Central Tower, 28 Queen's Road Central, Hong Kong

Fax: 852 2527 2526

Attention: Kenneth Ho / Philip Ng

With a copy to:

The Bank of Nova Scotia, Singapore Branch

1 Raffles Quay, #20-01 North Tower, Singapore 048583

Fax: +65 6534 7817

Attention: Leong Soon Cheong

UNITED OVERSEAS BANK LIMITED

By: /s/ George Tung

Address: 23/F., 3 Garden Road, Central, Hong Kong

Fax: +852 2596 0113/852 2501 5738

Attention: Mr. Lawrence Cheung / Ms. Wanna So / Mr. Herman Tsong

With a copy to:

Address: Unit 11-16, 16/F Millennium City 5, 418 Kwun Tong Road, Kwun Tong, Kowloon,
Hong Kong

Fax: 852 2501 5738

Attention: Ms. Wanna So / Mr. Herman Tsong / Ms. Carrie Ng / Mr. Terry Wong

SUMITOMO MITSUI BANKING CORPORATION

By: /s/ Hideo Notsu

Address: 277 Park Avenue, New York, NY 10172

Fax: 212-224-4887

Attention: John Corrigan

The Mandated Lead Arrangers

BANK OF COMMUNICATIONS CO., LTD. MACAU BRANCH

By: /s/ Chen Junliang

Address: 15/F, AIA Tower, No. 251A-301, Avenida Comercial De Macau

Fax: 853 2828 6686

Attention: Ms. Ariel Tang / Mr. Jacky Lei

DEUTSCHE BANK AG, SINGAPORE BRANCH

By: /s/ Ananda Chakvavorty

By: /s/ Piyush Gupta

Address: One Raffles Quay, #14-00 South Tower, Singapore 048593

Fax: 65-62212306

Attention: Xuan-Ren Chen / Yvonne Choo

JPMORGAN CHASE BANK, N.A., HONG KONG BRANCH

By: /s/ Christine Chan

Address: Level 28, 8 Connaught Road Central, Hong Kong S.A.R, People's Republic of China

Fax: 91 22 6646 6865

Attention: Nimisha Kedia / Dipti Wasudeo / Asia Loan Operations

UBS AG HONG KONG BRANCH

By: /s/ Rahul Kotwal

By: /s/ Joseph Vawckus

Address: 52/F, Two International Finance Centre 8 Finance Street Central, Hong Kong

Fax: 852 3712 4979

Email: mohamed.atmani@ubs.com

Attention: Mohamed Atmani

With a copy to: 5 Temasek Boulevard #18-00 Suntec Tower Five Singapore 038985

Fax: 65 6495 8609

Email: ol-bps-singapore@ubs.com

Attention: Structured Financing Processing

The Lead Arrangers

BANCO COMERCIAL DE MACAU, S.A.

By: /s/ Tony Ho Keang Wa

By: /s/ Kenneth Chan Sou Chao

Address: Avenida da Praia Grande, No. 572, Macau

Fax: (+853) 8791 0276 / (+853) 2871 5521

Attention: Mr. Simon Chong / Mr. Alex Chou / Ms. Katrina Tang / Ms. Jessica Lam / Ms. Lillian Tang / Mr. Vincent Lai

TAI FUNG BANK LIMITED

By: /s/ Au Ieong Iu Kong

By: /s/ Kou Wa Kin

Address: 418 Alameda Dr. Carlos d'Assumpcao, Macau

Fax: 853 2875 2716

Attention: Mr. Kou Wa Kin / Ms. Cherry Leong / Mr. Edward Leong

WING LUNG BANK LIMITED MACAU BRANCH

By: /s/ Lam Weng Nin

Address: 18/F, Finance and IT Centre of Macau, Avenida Comercial de Macau

Fax: (853) 2875 0918 / 2857 5589,

Attention: Mr. Patrick Wong (Corporate loan department)/ Ms. Cherry Chan (Corporate loan department)/ Mr. Charlie Chen (credit management)

The Arrangers

CHINA CONSTRUCTION BANK CORPORATION MACAU BRANCH

By: /s/ Chai, Michael Chung-Man

By: /s/ Peng, Billy Yuanbo

Address: 5/F & 19/F, Circle Square 61 Avenida de Almeida Ribeiro Macau

Fax: +853 82911819 / 82911834 / 82911839

Attention: Ms.Carol Leong / Mr. Kenneth Lau / Mr. Michael Choi / Ms. Ivy Leong

FIRST COMMERCIAL BANK, MACAU BRANCH

By: /s/ Liao Yu Cheng

Address: Unit B-C, 16/F, Finance and IT Centre of Macau, Avenida Comercial de Macau

Fax: 853-2872-2772

Attention: Dave Lin / Wesley Liao

MORGAN STANLEY SENIOR FUNDING, INC.

By: /s/ Kelly Chin

Address: 1585 Broadway, New York, New York 10036

Fax: +852-3407-5506/+852-3742-0884

Attention: Tripp Williams / Jin Song

The Second Ranking Finance Party

BANCO NACIONAL ULTRAMARINO, S.A.

By: /s/ Pedro Manuel de Oliveira Cardoso
By: /s/ Tou Kei San
Address: No. 22, Avenida de Almeida Ribeiro, Macau
Fax: (853) 28331206 / (853) 28355653 / (853)28356867
Attention: Mr. Sam Tou / Ms. Monica Wong / Ms. Violet Choi

The Security Agent

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building

Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

With a copy to:

Address: 17/F Bank of China Building

Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: +853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

The Intercreditor Agent

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

With a copy to:

Address: 17/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: +853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

The Term Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

With a copy to:

Address: 17/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: +853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

The Revolving Credit Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

With a copy to:

Address: 17/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: +853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

The POA Agent

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

With a copy to:

Address: 17/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: +853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

The Additional Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building

Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

With a copy to:

Address: 17/F Bank of China Building

Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: +853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

The Additional Lender

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building

Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

With a copy to:

Address: 17/F Bank of China Building

Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: +853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

EXECUTION VERSION

DATED September 30, 2015

WYNN RESORTS (MACAU) S.A.
as Company

BANK OF CHINA LIMITED, MACAU BRANCH
as Term Facility Agent

and

BANK OF CHINA LIMITED, MACAU BRANCH
as Term Facility Lender

TERM FACILITY AGREEMENT
FOURTH AMENDMENT AGREEMENT

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Clause

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[SCHEDULE Amended Term Facility Agreement](#)

THIS AGREEMENT is dated September 30, 2015 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the "**Company**");
- (2) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Term Facility Agent**"); and
- (3) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Term Facility Lender**").

RECITALS:

- (A) The Company owns and operates Wynn Macau and is designing, developing and constructing the Cotai Project.
- (B) The Secured Parties have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents in connection with Wynn Macau and the Cotai Project for the refinancing of existing indebtedness, for financing the design, development and construction of the Cotai Project and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).
- (C) It has been agreed to amend the Term Facility Agreement as set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Incorporation of defined terms

1.1.1 Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.

1.1.2 The principles of construction and rules of interpretation set out or referred to in the Schedule shall have effect as if set out in this Agreement.

1.1.3 Any references in the Senior Finance Documents to the "Hotel Facility Agreement" or the "Term Facility Agreement" shall be taken to be a reference to the Term Facility Agreement as set out in the Schedule, as further amended, consolidated, supplemented, confirmed, novated or replaced from time to time.

1.2 Clauses

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Agreement.

2. AMENDMENT

With effect from the Fifth Amendment Effective Date (as defined in the Common Terms Agreement Fifth Amendment Agreement), the Term Facility Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Term Facility Agreement*).

3. CONTINUITY AND FURTHER ASSURANCE

3.1 Continuing obligations

The provisions of the Term Facility Agreement shall, save as amended by this Agreement, continue in full force and effect.

3.2 Further assurance

The Company shall, upon the written request of the Term Facility Agent and at its own expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

4. MISCELLANEOUS

4.1 Incorporation of terms

The provisions of clause 1.3 (*Third Party Rights*), clause 1.4 (*Non-recourse Liability*) and clause 18 (*Jurisdiction*) of the Schedule shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "Agreement" are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

4.2 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

5. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SIGNATURES

The Company

WYNN RESORTS (MACAU) S.A.

By: /s/ Frank Cassella

Address: Wynn Macau, Rua Cidade de Sintra, NAPE
Macau

Telephone: +853 2888 9966

Fax: +853 2832 9966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts (Macau) S.A.

Address: Wynn Macau, Rua Cidade de Sintra, NAPE
Macau

Tel: +853 2888 9966

Fax: +853 2832 9966

Attention: Legal Department of Wynn Resorts (Macau) S.A.

The Term Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Jeong

With a copy to:

Address: 17/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: 853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

The Term Facility Lender

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 17/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: 853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

With a copy to:

Address: 13/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Jeong

SCHEDULE
AMENDED TERM FACILITY AGREEMENT

DATED 14 SEPTEMBER 2004

WYNN RESORTS (MACAU) S.A.
as Company

BANK OF CHINA LIMITED, MACAU BRANCH
as Term Facility Agent

and

THE TERM FACILITY LENDERS
referred to herein

TERM FACILITY AGREEMENT

(as amended by the Hotel Facility Agreement Amendment Agreement dated 14 September 2005, the Hotel Facility Second Amendment Agreement dated 27 June 2007, the Term Facility Third Amendment Agreement dated 31 July 2012 and the Term Facility Fourth Amendment Agreement dated September 30, 2015)

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[SCHEDULE 1 THE TERM FACILITY LENDERS](#)

[SCHEDULE 2 REPAYMENT SCHEDULE](#)

THIS AGREEMENT is made on 14 September 2004

BETWEEN:

- (1) **WYNN RESORTS (MACAU) S.A.** (the "**Company**");
- (2) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Term Facility Agent**"); and
- (3) **THE TERM FACILITY LENDERS** (as defined below).

WHEREAS:

The Term Facility Lenders have agreed to make certain loan facilities available to the Company in connection with Wynn Macau and the Cotai Project for the refinancing of the Company's existing indebtedness, for financing the design, development and construction of the Cotai Project) and for general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements), in each case, upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.2 Definitions

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Common Terms Agreement shall have the same meaning herein and in addition:

"Available Commitment" means, in relation to a Term Facility Lender at any time and save as otherwise provided herein, the aggregate US dollar equivalent amount of Available Tranche A Commitment, Available Tranche B Commitment and Available Tranche C Commitment of such Term Facility Lender.

"Available Facility" means, at any time, the aggregate US dollar equivalent amount of the Available Tranche A Facility, the Available Tranche B Facility and the Available Tranche C Facility.

"Available Tranche A Commitment" means, in relation to a Term Facility Lender at any time, its Tranche A Facility Commitment **less**:

(a) the aggregate amount of its participation in any outstanding Advances (including, without limitation, the Existing Advances) under that Facility; and

(a) in relation to any Advance Request, the aggregate amount of its participation in any Tranche A Advance due to be made on or before the proposed Advance Date.

"Available Tranche B Commitment" means, in relation to a Term Facility Lender at any time, its Tranche B Facility Commitment **less**:

(a) the aggregate amount of its participation in any outstanding Advances (including, without limitation, the Existing Advances) under that Facility; and

(b) in relation to any Advance Request, the aggregate amount of its participation in any Tranche B Advance due to be made on or before the proposed Advance Date.

"Available Tranche C Commitment" means, in relation to a Term Facility Lender at any time, its Tranche C Facility Commitment **less**:

(c) the aggregate amount of its participation in any outstanding Advances (including, without limitation, the Existing Advances) under that Facility; and

(d) in relation to any Advance Request, the aggregate amount of its participation in any Tranche C Advance due to be made on or before the proposed Advance Date.

"Available Tranche A Facility" means, at any time, the aggregate amount of the Available Tranche A Commitments of all the Term Facility Lenders at such time.

"Available Tranche B Facility" means, at any time, the aggregate amount of the Available Tranche B Commitments of all the Term Facility Lenders at such time.

"Available Tranche C Facility" means, at any time, the aggregate amount of the Available Tranche C Commitments of all the Term Facility Lenders at such time.

"**Common Terms Agreement**" means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Term Facility Lenders and Revolving Credit Facility Lenders, the Term Facility Agent, the Revolving Credit Facility Agent, the Intercreditor Agent and the Security Agent, as amended and restated by the Common Terms Agreement Amendment Agreement, the Common Terms Agreement Second Amendment Agreement, the Common Terms Agreement Third Amendment Agreement, the Common Terms Agreement Fourth Amendment Agreement and the Common Terms Agreement Fifth Amendment Agreement.

"**Development Accounts**" means: (a) one or more Accounts of the Company opened and maintained solely for the disbursement of amounts borrowed by the Company under the Term Facility and the Revolving Credit Facility to finance or refinance costs incurred or funds expended on the development of the Cotai Project (and which does not, and will not, contain amounts to be applied for any other purpose other than as set forth in paragraph (b) of this definition) and; (b) one or more interest bearing demand or time deposits opened and maintained from time to time solely for the purpose of investing the amounts referred to in paragraph (a) of this definition prior to their disbursement *provided that* any such interest bearing demand or time deposit (i) meets the requirement of a Permitted Investment and (ii) is secured by a first ranking fixed Lien in favour of the Security Agent.

"**Existing Advances**" means the Tranche A Advance in an amount equal to USD243,750,000.00 and the Tranche B Advance in an amount equal to HKD3,948,750,000.00 outstanding as at the Fifth Amendment Effective Date (for the avoidance of doubt, this does not include any advances made pursuant to a Completion Request delivered on the Fifth Amendment Effective Date, as provided for in the Common Terms Agreement Fifth Amendment Agreement).

"**HIBOR**" means, in relation to any Tranche B Advance or Tranche C Advance:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for HK dollars or for the Interest Period for that Term Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Term Facility Agent at its request quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 a.m. (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Term Facility Advance (or, if such Screen Rate or arithmetic mean of rates, as the case may be, is less than zero per annum, zero per annum).

"**LIBOR**" means, in relation to any Tranche A Advance:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for US dollars or for the Interest Period for that Term Facility Advance) the arithmetic mean of the rates (rounded upwards to four

decimal places) as supplied to the Term Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

at or about 11:00 a.m. (London time) on the Quotation Day for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Term Facility Advance (or, if such Screen Rate or arithmetic mean of rates, as the case may be, is less than zero per annum, zero per annum).

"Majority Term Facility Lenders" means a Term Facility Lender or Term Facility Lenders whose US dollar equivalent participations in the Term Facility Advances then outstanding and undrawn Available Commitments amount in aggregate to more than 50% of the US dollar equivalent of the sum of all Term Facility Advances then outstanding and undrawn Available Commitments.

"Margin" means in relation to any Term Facility Advance hereunder on and from the Fifth Amendment Effective Date 1.750% per annum but, if the Leverage Ratio as at the most recent Quarterly Date thereafter (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in clause 1.1 (*Definitions*) of the Common Terms Agreement) is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the Margin) no Default has occurred and is continuing, the Margin will be the percentage per annum specified for that range:

Leverage Ratio	Margin
Less than 1.0	1.500%
Greater than or equal to 1.0 but less than 3.0	1.750%
Greater than or equal to 3.0 but less than 3.5	1.875%
Greater than or equal to 3.5 but less than 4.0	2.000%
Greater than or equal to 4.0 but less than 4.5	2.125%
4.5 or above	2.250%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions or expiry of the applicable periods specified above (or, where such Business Day falls less than five Business Days before the end of the then current Interest Period, from the commencement of the next Interest Period).

"Party" means a party to this Agreement.

"Reference Banks" means, in relation to:

(a) LIBOR, the principal London offices of Deutsche Bank AG and BNP Paribas; and

(b) HIBOR, the principal Hong Kong offices of Bank of China Limited, Hong Kong Branch and Industrial and Commercial Bank of China (Asia) Limited,

or such other bank or banks designated from time to time by the Term Facility Agent provided that the consent of the Company shall be required if such designation is made prior to an occurrence of an Event of Default which is continuing.

"**Screen Rate**" means, in relation to:

- (a) LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for US dollars for the relevant period displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters; and
- (b) HIBOR, the Hong Kong interbank offered rate administered by the Hong Kong Association of Banks (or any other person which takes over the administration of that rate) for the relevant period displayed on page HKABHIBOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays the rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters.

If the agreed page is replaced or service ceases to be available, the Term Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Term Facility Lenders.

"**Term Facility**" means the Tranche A Facility, the Tranche B Facility and the Tranche C Facility.

"**Term Facility Advance**" means, as the context may require, a Tranche A Advance, a Tranche B Advance or a Tranche C Advance and

"**Term Facility Advances**" shall mean each Tranche A Advance, Tranche B Advance, Tranche C Advance or any of them.

"**Term Facility Lender**" means a Tranche A Facility Lender, a Tranche B Facility Lender or a Tranche C Facility Lender.

"**Term Facility Finance Documents**" means:

- (a) this Agreement;
- (b) the Common Terms Agreement;
- (c) any other Senior Finance Document to which a Term Facility Lender is a party in its capacity as a Term Facility Lender; and
- (d) any other document designated as such by the Term Facility Agent and the Company.

"**Term Facility Finance Parties**" means the Term Facility Agent and the Term Facility Lenders.

"**Term Facility Loan**" means the aggregate principal amount for the time being outstanding hereunder.

"**Tranche A Advance**" means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Tranche A Facility Lenders under the Tranche A Facility.

"**Tranche A Facility**" means the US dollar term loan facility granted to the Company under Clause 3.1.1 (*Tranche A Facility*).

"**Tranche A Facility Commitment**" means

- (a) in relation to the Original Tranche A Facility Lender, the amount set opposite its name under the column entitled "Tranche A Commitment" in Schedule 1 (*The Term Facility Lenders*) and the amount of any other Tranche A Facility Commitment transferred to it under this Agreement; and
- (b) in relation to any other Tranche A Facility Lender, the amount of any Tranche A Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche A Facility Lender**" means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*The Term Facility Lenders*) as a Tranche A Facility Lender (the "**Original Tranche A Facility Lender**"); or
- (b) has become party hereto as a Tranche A Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

"**Tranche B Advance**" means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Tranche B Facility Lenders under the Tranche B Facility.

"**Tranche B Facility**" means the HK dollar term loan facility granted to the Company under Clause 3.1.2 (*Tranche B Facility*).

"**Tranche B Facility Commitment**" means

- (a) in relation to the Original Tranche B Facility Lender, the amount set opposite its name under the column entitled "Tranche B Commitment" in Schedule 1 (*The Term Facility Lenders*) and the amount of any other Tranche B Facility Commitment transferred to it under this Agreement; and

(b) in relation to any other Tranche B Facility Lender, the amount of any Tranche B Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche B Facility Lender**" means any commercial bank, financial institution or other entity which:

(a) is named in Schedule 1 (*The Term Facility Lenders*) as a Tranche B Facility Lender (the "**Original Tranche B Facility Lender**"); or

(b) has become party hereto as a Tranche B Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

"**Tranche C Advance**" means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Tranche C Facility Lenders under the Tranche C Facility.

"**Tranche C Facility**" means the HK dollar term loan facility granted to the Company under Clause 3.1.3 (*Tranche C Facility*).

"**Tranche C Facility Commitment**" means

(a) in relation to the Original Tranche C Facility Lender, the amount set opposite its name under the column entitled "Tranche C Commitment" in Schedule 1 (*The Term Facility Lenders*) and the amount of any other Tranche C Facility Commitment transferred to it under this Agreement; and

(b) in relation to any other Tranche C Facility Lender, the amount of any Tranche C Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche C Facility Lender**" means any commercial bank, financial institution or other entity which:

(c) is named in Schedule 1 (*The Term Facility Lenders*) as a Tranche C Facility Lender (the "**Original Tranche C Facility Lender**"); or

(d) has become party hereto as a Tranche C Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

"**Tranche C Facility Letter**" means a letter in the Agreed Form in respect of the Tranche C Facility issued by Industrial and Commercial Bank of China (Macau) Limited in its capacity as a Tranche C Facility Lender and countersigned by the Company.

1.3 Interpretation

In this Agreement:

1.3.1 the principles of construction contained in clause 1.2 (*Principles of Construction*) of the Common Terms Agreement and the rules of interpretation contained in clause 1.3 (*Rules of Interpretation*) of the Common Terms Agreement shall apply to the construction and interpretation of this Agreement;

1.3.2 any reference to the "**Term Facility Agent**" or "**Term Facility Lender**" shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and

1.3.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

1.4 Third Party Rights

1.4.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-recourse Liability*) but only for the benefit of the Operatives and subject always to the terms of Clause 17 (*Governing Law*) and Clause 18 (*Jurisdiction*).

1.4.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1.4.3 Save as provided by the Common Terms Agreement, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

1.5 Non-recourse Liability

Notwithstanding any provision in the Senior Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Term Facility Finance Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors and not against any assets or property of any Operative, save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of an individual holding the Executive Director Shares, his or her liability shall be limited to his or her shares in the Company.

2.COMMON TERMS AGREEMENT

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

3.THE TERM FACILITY

3.1Grant of the Term Facilities

3.1.4Tranche A Facility

The Tranche A Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a US dollar term loan facility in an aggregate amount of USD1,305,000,000.

3.1.5Tranche B Facility

The Tranche B Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar term loan facility in an aggregate amount of HKD6,208,800,000.

3.1.6Tranche C Facility

The Tranche C Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar term loan facility in an aggregate amount of HKD1,560,000,000.

4.PURPOSE

4.1.4Subject to Clause 4.1.2, the Company shall apply all amounts borrowed by it under the Term Facility to pay for the refinancing of existing indebtedness of the Company, the design, development and construction of the Cotai Project and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).

4.1.5The Company shall deposit (on the Fifth Amendment Effective Date) into:

(a)one or more Development Accounts denominated in HKD, sufficient HKD amounts borrowed by it under the Term Facility;
and

(b)one or more Development Accounts denominated in USD, sufficient USD amounts borrowed by it under the Term Facility,
such that, when the amounts referred to in paragraphs (a) and (b) of this Clause 4.1.2 are aggregated, they are equal to the Term Facility Portion (as defined in clause 3.3 (*Funding of Development Account from Revolving Credit Facility and the Term Facility*)) of the Common Terms Agreement and the Company shall only apply amounts withdrawn from the Development Accounts from time to time to finance or refinance costs incurred or funds expended on the development of the Cotai Project (including, without limitation, cost and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest) *provided* that, for the avoidance of doubt, the Company shall be entitled to transfer funds from one Development Account to another Development Account.

4.1.6It shall be a condition to the Company making the first withdrawal from a Development Account (other than a withdrawal for the transfer of funds to another Development Account) and to making subsequent withdrawals from any Development Account (other than a withdrawal for the transfer of funds to another Development Account), that the Company shall (immediately prior to making the first such withdrawal and subsequently, for so long as there are any amounts standing to the credit of any Development Account, on the first Business Day in each calendar month thereafter) certify in writing to the Intercreditor Agent and the Term Facility Agent that it (and/or Palo, as the case may be) has incurred costs or expended funds on the development of the Cotai Project (or will immediately upon the making of such withdrawal, have expended funds on the development of the Cotai Project) in an amount at least equal to the aggregate amount of all withdrawals from the Development Accounts (excluding withdrawals for the transfer of funds to another Development Account). For the purposes of this Clause [4.1.3](#) costs incurred or funds expended on the development of the Cotai Project include, but are not limited to, costs and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest.

4.1.7The Company shall notify the Intercreditor Agent and the Term Facility Agent of the details of each Development Account (including the bank with which such Development Account is held, in which currency such Development Account is

denominated and the balance from time to time) promptly upon the opening of any such Development Account and from time to time upon request of the Intercreditor Agent and the Term Facility Agent.

5.CONDITIONS PRECEDENT

The provisions of clause 2 (*Conditions Precedent*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6.AVAILABILITY OF THE TERM FACILITY

6.1Drawdown of Advances

The provisions of clause 3 (*Drawdown of Advances*) and clause 4.1 (*Term Facility Availability Period*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6.2Each Term Facility Lender's Participation

6.2.1It is acknowledged and agreed that, as at the Fifth Amendment Effective Date, the Existing Advances have been made and are outstanding hereunder.

6.2.2Each Tranche A Facility Lender will participate through its Facility Office in each Tranche A Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche A Commitment to the Available Tranche A Facility immediately prior to the making of that Tranche A Advance.

6.2.3Each Tranche B Facility Lender will participate through its Facility Office in each Tranche B Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche B Commitment to the Available Tranche B Facility immediately prior to the making of that Tranche B Advance.

6.2.4Subject to Clause 6.2.5 below, each Tranche C Facility Lender will participate through its Facility Office in each Tranche C Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche C Commitment to the Available Tranche C Facility immediately prior to the making of that Tranche C Advance.

6.2.5For so long as Industrial and Commercial Bank of China (Macau) Limited is a (or the sole) Tranche C Facility Lender, such Tranche C Facility Lender shall not be required to comply with Clause 6.2.4 above until the date on which it and the Company have each executed the Tranche C Facility Letter.

6.3Reduction of Available Commitment

If a Term Facility Lender's Available Tranche A Commitment, Available Tranche B Commitment or, as the case may be, Available Tranche C Commitment is reduced in accordance with the terms hereof or the Common Terms Agreement after the Intercreditor Agent or the Term Facility Agent has received an Advance Request for a Tranche A Advance, a Tranche B Advance or, as the case may be, a Tranche C Advance and such reduction was not taken into account in the Available Tranche A Facility, Available Tranche B Facility or, as the case may be, the Available Tranche C Facility, then the amount of that Tranche A Advance, Tranche B Advance or, as the case may be, Tranche C Advance shall be reduced accordingly.

7.REPAYMENT

7.1Repayment

Subject to Clause 7.2 (*Final maturity*), the Company shall repay the Term Facility Loans in quarterly instalments by repaying on each Repayment Date amounts equal to the percentage set out next to the relevant Repayment Date in Schedule 2 (*Repayment Schedule*) of the aggregate US dollar denominated Term Facility Advances and the aggregate HK dollar denominated Term Facility Advances outstanding as at the end of the last day of the Term Facility Availability Period.

7.2Final maturity

The Company shall repay on the Final Repayment Date all amounts outstanding or due and payable under the Term Facility on that day.

7.3No re-borrowing

The Company may not re-borrow any part of the Term Facility which is repaid.

8.PREPAYMENT AND CANCELLATION

All prepayments of Term Facility Advances and cancellation of Available Commitments shall be made in accordance with clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement.

9.INTEREST

9.1Calculation of Interest

The rate of interest on each Term Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

9.1.1the Margin; and

9.1.2LIBOR (in the case of a Tranche A Advance) or HIBOR (in the case of a Tranche B Advance or a Tranche C Advance).

9.2Payment of interest

Accrued interest on each Term Facility Advance is payable by the Company on the last day of each Interest Period relating to that Term Facility Advance.

9.3Default Interest

Default interest shall be calculated and paid in accordance with clause 9.4 (*Default Interest*) of the Common Terms Agreement.

10.INTEREST PERIODS

The duration of each Interest Period shall be determined in accordance with clause 9.3 (*Interest Periods*) of the Common Terms Agreement.

11.NOTIFICATION

11.1Advances

Promptly, and in any event, not less than 4 Business Days before the proposed Advance Date for each Term Facility Advance, the Term Facility Agent shall notify each Term Facility Lender of the proposed amount of the relevant Term Facility Advance and the aggregate principal amount of the relevant Term Facility Advance allocated to such Term Facility Lender pursuant to Clause 6.2 (*Each Term Facility Lender's Participation*) and each Term Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Term Facility Agent for the account of the Company its said portion of such Term Facility Advance.

11.2Interest rate determination

The Term Facility Agent shall promptly notify the Company and the Term Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

11.3Changes to interest rates

The Term Facility Agent shall promptly notify the Company and the Term Facility Lenders of any change to any interest rate occasioned by the operation of clause 10 (*Changes to the Calculation of Interest*) of the Common Terms Agreement.

11.4Interest payment and repayment instalments

Without prejudice to the Company's obligation to make any interest payment or to pay any repayment instalment on the due date, the Term Facility Agent shall provide to the Company and each Term Facility Lender (with a copy to the Intercreditor Agent) a notice setting out the relevant scheduled payment of interest and scheduled repayment of principal under this Agreement at least 15 Business Days before such amounts fall due for payment by the Company.

12.[NOT USED]

13.CHANGES TO THE PARTIES

13.1Transfers by the Term Facility Agent

The Term Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Term Facility Finance Documents to a replacement Term Facility Agent appointed in accordance with the terms of the Common Terms Agreement.

13.2Transfers by the Company

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Term Facility Finance Documents.

13.3Transfers by the Term Facility Lenders

A Term Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Term Facility Finance Documents in accordance with clause 21.4 (*Assignment and Transfer by Lenders*), clause 21.5 (*Assignments by Lenders*) and clause 21.6 (*Transfers by*

Lenders) of the Common Terms Agreement.

13.4 Assignment and Transfer Fees

On the date upon which an assignment takes effect pursuant to clause 21.5 (*Assignments by Lenders*) of the Common Terms Agreement or a transfer takes effect pursuant to clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreements, the relevant assignee or transferee shall pay to the Intercreditor Agent for its own account a fee in accordance with clause 21.7 (*Assignment and Transfer Fees*) of the Common Terms Agreement.

14. PAYMENTS

14.1 Payments

14.1.1 All payments under this Agreement shall be made in accordance with clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

14.1.2 Subject to clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company or a Term Facility Lender, the Company or, as the case may be, such Term Facility Lender shall make the same available to the Term Facility Agent for value on such due date and at such time and in such funds and to such account with such bank as the Term Facility Agent shall specify from time to time.

14.2 Partial Payments

14.2.1 If the Term Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Term Facility Lenders under the Term Facility Finance Documents, the Term Facility Agent shall apply that payment towards the obligations of the Company under the Term Facility Finance Documents in the following order:

- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Term Facility Lenders under clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (b) **secondly**, in or towards payment *pro rata* of all amounts paid by the Term Facility Lenders under Clause 15.3 (*Indemnity to Term Facility Agent*) but which have not been reimbursed by the Company;
- (c) **thirdly**, in or towards payment *pro rata* of all costs and expenses incurred by the Term Facility Lenders which the Company is obliged to reimburse;
- (d) **fourthly**, in or towards payment *pro rata* of all accrued but unpaid fees and commissions due to the Term Facility Lenders under the Term Facility Finance Documents;
- (e) **fifthly**, in or towards payment *pro rata* of all accrued but unpaid interest (including default interest) due to the Term Facility Lenders under the Term Facility Finance Documents;
- (f) **sixthly**, in or towards payment *pro rata* of any principal due to the Term Facility Lenders under the Term Facility Finance Documents but unpaid; and
- (g) **seventhly**, in or towards payment *pro rata* of any other sum due to the Term Facility Lenders under the Term Facility Finance Documents but unpaid.

14.2.2 The Term Facility Agent shall, if so directed by the Majority Term Facility Lenders, vary the order set out in sub-clause 14.2.1 above.

14.2.3 Sub-clause 14.2.1 above will override any appropriation made by the Company.

15. DECISION MAKING AMONGST TERM FACILITY LENDERS

15.1 Decisions

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purpose of any decision within the scope of clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement relating to this Agreement shall be the Term Facility Agent acting on the instructions of the Majority Term Facility Lenders.

15.2 Failure to Give Instructions

If the Term Facility Agent gives notice to the Term Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Term Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Term Facility Lender which fails to respond by the date and time so specified shall have its portion of the Term Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Term Facility Agent by the Majority Term Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Term Facility Advances outstanding, the Available Commitments and portion of Term Facility Advances of such Term Facility Lender shall be deducted).

15.3 Indemnity to Term Facility Agent

15.3.1 Each Term Facility Lender shall, rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Term Facility Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Term Facility Lenders (or, if all such amounts have been reduced to zero, such proportion determined immediately prior to such reduction) for the time being, indemnify the Term Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Term Facility Agent (other than by reason of the negligence or wilful misconduct of the Term Facility Agent) in acting as Term Facility Agent under any of the Senior Finance Documents (unless the Term Facility Agent has been reimbursed by the Company pursuant to a Senior Finance Document).

15.3.2 Provided that the Company is required to reimburse or indemnify the Term Facility Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Term Facility Lender, indemnify such Term Facility Lender in relation to any payment actually made by such Term Facility Lender pursuant to Clause 15.3.1 above.

16. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

17. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

18. JURISDICTION

18.1 Jurisdiction of English courts

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a "**Dispute**").

18.1.2 The parties hereto agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 is for the benefit of the Term Facility Finance Parties only. As a result, no Term Facility Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Term Facility Finance Parties may take concurrent proceedings in any number of jurisdictions.

18.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Company:

18.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

18.2.2 agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
THE TERM FACILITY LENDERS

Term Facility Lender	Tranche A Commitment (USD)	Tranche B Commitment (HKD)	Tranche C Commitment (HKD)
Bank of China Limited, Macau Branch	1,305,000,000	6,208,800,000	1,560,000,000
Total	1,305,000,000	6,208,800,000	1,560,000,000

SCHEDULE 2
REPAYMENT SCHEDULE

Repayment Date	Percentage (%)
The 13 th Quarterly Date falling after the Fifth Amendment Effective Date	2 ¹ / ₂
The 14 th Quarterly Date falling after the Fifth Amendment Effective Date	2 ¹ / ₂
The 15 th Quarterly Date falling after the Fifth Amendment Effective Date	2 ¹ / ₂
The 16 th Quarterly Date falling after the Fifth Amendment Effective Date	2 ¹ / ₂
The 17 th Quarterly Date falling after the Fifth Amendment Effective Date	4 ¹ / ₂
The 18 th Quarterly Date falling after the Fifth Amendment Effective Date	4 ¹ / ₂
The 19 th Quarterly Date falling after the Fifth Amendment Effective Date	4 ¹ / ₂
The 20 th Quarterly Date falling after the Fifth Amendment Effective Date	4 ¹ / ₂
The 21 st Quarterly Date falling after the Fifth Amendment Effective Date	7 ¹ / ₃
The 22 nd Quarterly Date falling after the Fifth Amendment Effective Date	7 ¹ / ₃
The 23 rd Quarterly Date falling after the Fifth Amendment Effective Date	7 ¹ / ₃
The 24 th Quarterly Date falling after the Fifth Amendment Effective Date or, if earlier, the Final Repayment Date	50

EXECUTION VERSION

DATED September 30, 2015

WYNN RESORTS (MACAU) S.A.
as Company

BANK OF CHINA LIMITED, MACAU BRANCH
as Revolving Credit Facility Agent

and

BANK OF CHINA LIMITED, MACAU BRANCH
as Revolving Credit Facility Lender

**REVOLVING CREDIT FACILITY AGREEMENT
AMENDMENT AGREEMENT**

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THIS AGREEMENT is dated September 30, 2015 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the "**Company**");
- (2) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Revolving Credit Facility Agent**"); and
- (3) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Revolving Credit Facility Lender**").

RECITALS:

- (A) The Company owns and operates Wynn Macau and is designing, developing and constructing the Cotai Project.
- (B) The Secured Parties have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents in connection with Wynn Macau and the Cotai Project for the refinancing of existing indebtedness, for financing the design, development and construction of the Cotai Project and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).
- (C) It has been agreed to amend the Revolving Credit Facility Agreement as set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Incorporation of defined terms

1.1.1 Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.

1.1.2 The principles of construction and rules of interpretation set out or referred to in the Schedule shall have effect as if set out in this Agreement.

1.1.3 Any references in the Senior Finance Documents to the "Revolving Credit Facility Agreement" shall be taken to be a reference to the Revolving Credit Facility Agreement as set out in the Schedule, as further amended, consolidated, supplemented, confirmed, novated or replaced from time to time.

1.2 Clauses

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Agreement.

2. AMENDMENT

With effect from the Fifth Amendment Effective Date (as defined in the Common Terms Agreement Fifth Amendment Agreement), the Revolving Credit Facility Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Revolving Credit Facility Agreement*).

3. CONTINUITY AND FURTHER ASSURANCE

3.1 Continuing obligations

The provisions of the Revolving Credit Facility Agreement shall, save as amended by this Agreement, continue in full force and effect.

3.2 Further assurance

The Company shall, upon the written request of the Revolving Credit Facility Agent and at its own expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

4. MISCELLANEOUS

4.1 Incorporation of terms

The provisions of clause 1.3 (*Third Party Rights*), clause 1.4 (*Non-recourse Liability*) and clause 18 (*Jurisdiction*) of the Schedule shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "Agreement" are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

4.2 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

5. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SIGNATURES

The Company

WYNN RESORTS (MACAU) S.A.

By: /s/ Frank Cassella

Address: Wynn Macau, Rua Cidade de Sintra, NAPE
Macau

Telephone: +853 2888 9966

Fax: +853 2832 9966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts (Macau) S.A.

Address: Wynn Macau, Rua Cidade de Sintra, NAPE
Macau

Tel: +853 2888 9966

Fax: +853 2832 9966

Attention: Legal Department of Wynn Resorts (Macau) S.A.

The Revolving Credit Facility Agent

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 13/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Ieong

With a copy to:

Address: 17/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: 853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

The Revolving Credit Facility Lender

BANK OF CHINA LIMITED, MACAU BRANCH

By: /s/ Wong, Iao Kun

Address: 17/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1623 / 8792 1706

Fax: 853 8792 1677

Attention: Ms. Wendy Sun / Mr. Jerry Chan

With a copy to:

Address: 13/F Bank of China Building
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1682

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Iris Jeong

SCHEDULE
AMENDED REVOLVING CREDIT FACILITY AGREEMENT

DATED 31 JULY 2012

WYNN RESORTS (MACAU) S.A.
as Company

BANK OF CHINA LIMITED, MACAU BRANCH
as Revolving Credit Facility Agent

and

THE REVOLVING CREDIT FACILITY LENDERS
referred to herein

REVOLVING CREDIT FACILITY AGREEMENT
(as amended by the Revolving Credit Facility Amendment Agreement dated September 30, 2015)

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THIS AGREEMENT is made on 31 July 2012

BETWEEN:

- (1) **WYNN RESORTS (MACAU) S.A. (THE "COMPANY");**
- (2) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Revolving Credit Facility Agent**"); and
- (3) **THE REVOLVING CREDIT FACILITY LENDERS** (as defined below).

WHEREAS:

The Revolving Credit Facility Lenders have agreed to make certain loan facilities available to the Company in connection with Wynn Macau and the Cotai Project for the refinancing of the Company's existing indebtedness, for financing the design, development and construction of the Cotai Project and for general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements), in each case, upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.2 Definitions

In this Agreement, unless otherwise defined herein, all terms defined or referred in the Common Terms Agreement shall have the same meaning herein and in addition:

"Advance Request" means a request for a Revolving Credit Facility Advance in substantially the form set out in Schedule 2 (*Form of Advance Request for a Revolving Credit Facility Advance*).

"Available Commitment" means, in relation to a Revolving Credit Facility Lender at any time and save as otherwise provided herein, the aggregate US dollar equivalent amount of Available Tranche A Commitment and Available Tranche B Commitment of such Revolving Credit Facility Lender.

"Available Facility" means, at any time, the aggregate US dollar equivalent amount of the Available Tranche A Facility and the Available Tranche B Facility.

"Available Tranche A Commitment" means, in relation to a Revolving Credit Facility Lender at any time, its Tranche A Facility Commitment *less*:

(a) the aggregate amount of its participation in any outstanding Tranche A Advances (including, without limitation, the Existing Advances) (other than, in relation to any proposed Tranche A Advance, such Revolving Credit Facility Lender's participation in any Tranche A Advances that are due to be repaid or prepaid on or before the proposed Advance Date); and

(a) in relation to any proposed Tranche A Advance, the aggregate amount of its participation in any Tranche A Advances that are due to be made on or before the proposed Advance Date.

"Available Tranche B Commitment" means, in relation to a Revolving Credit Facility Lender at any time, its Tranche B Facility Commitment *less*:

(a) the aggregate amount of its participation in any outstanding Tranche B Advances (including, without limitation, the Existing Advances) (other than, in relation to any proposed Tranche B Advance, such Revolving Credit Facility Lender's participation in any Tranche B Advances that are due to be repaid or prepaid on or before the proposed Advance Date); and

(b) in relation to any proposed Tranche B Advance, the aggregate amount of its participation in any Tranche B Advances that are due to be made on or before the proposed Advance Date.

"Available Tranche A Facility" means, at any time, the aggregate amount of the Available Tranche A Commitments of all the Revolving Credit Facility Lenders at such time.

"Available Tranche B Facility" means, at any time, the aggregate amount of the Available Tranche B Commitments of all the Revolving Credit Facility Lenders at such time.

"Common Terms Agreement" means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Term Facility Lenders and Revolving Credit Facility Lenders, the Term Facility Agent, the Revolving Credit Facility Agent, the Intercreditor Agent and the Security Agent, as amended and restated by the Common Terms Agreement Amendment Agreement, the Common Terms Agreement Second Amendment Agreement, the Common Terms Agreement Third Amendment Agreement, the Common Terms Agreement Fourth Amendment Agreement and the Common Terms Agreement Fifth Amendment Agreement.

"Development Accounts" means: (a) one or more Accounts of the Company opened and maintained solely for the disbursement of amounts borrowed by the Company under the Term Facility and the Revolving Credit Facility to finance or refinance costs incurred or funds expended on the development of the Cotai Project (and which does not, and will not, contain amounts to be applied for any other purpose other than as set forth in paragraph (b) of this definition) and; (b) one or more interest bearing demand or time deposits opened and maintained from time to time solely for the purpose of investing the amounts referred to in paragraph (a) of this definition prior to their disbursement provided that any such interest bearing demand or time deposit (i) meets the requirement of a Permitted Investment and (ii) is secured by a first ranking fixed Lien in favour of the Security Agent.

"Existing Advances" means the Tranche A Advance in an amount equal to USD227,229,032.26 and the Tranche B Advance in an amount equal to HKD4,561,213,548.39 outstanding as at the Fifth Amendment Effective Date (for the avoidance of doubt, this does not include any advances made pursuant to a Completion Request delivered on the Fifth Amendment Effective Date, as provided for in the Common Terms Agreement Fifth Amendment Agreement).

"Final Repayment Date" means the fifth anniversary of the Fifth Amendment Effective Date.

"HIBOR" means, in relation to any Tranche B Advance:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for HK dollars or the Interest Period of that Revolving Credit Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Revolving Credit Facility Agent at its request quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 am (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Revolving Credit Facility Advance (or, if such Screen Rate or arithmetic mean of rates, as the case may be, is less than zero per annum, zero per annum).

"Interest Period" means, in relation to a Revolving Credit Facility Advance, each period determined in accordance with Clause 10 (*Interest Periods*).

"LIBOR" means, in relation to any Tranche A Advance:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for US dollars or for the Interest Period for that Revolving Credit Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Revolving Credit Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

at or about 11:00 a.m. (London time) on the Quotation Day for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Revolving Credit Facility Advance (or, if such Screen Rate or arithmetic mean of rates, as the case may be, is less than zero per annum, zero per annum).

"Majority Revolving Credit Facility Lenders" means a Revolving Credit Facility Lender or Revolving Credit Facility Lenders whose US dollar equivalent participations in the Revolving Credit Facility Advances then outstanding and undrawn Available Commitments amount in aggregate to more than 50% of the US dollar equivalent of the sum of all Revolving Credit Facility Advances then outstanding and undrawn Available Commitments.

"Margin" means in relation to any Revolving Credit Facility Advance hereunder on and from the Fifth Amendment Effective Date 1.750% per annum but, if the Leverage Ratio as at the most recent Quarterly Date thereafter thereafter (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in clause 1.1 (*Definitions*) of the Common Terms Agreement) is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the Margin) no Default has occurred and is continuing, the Margin will be the percentage per annum specified for that range:

Leverage Ratio	Margin
Less than 1.0	1.500%
Greater than or equal to 1.0 but less than 3.0	1.750%
Greater than or equal to 3.0 but less than 3.5	1.875%
Greater than or equal to 3.5 but less than 4.0	2.000%
Greater than or equal to 4.0 but less than 4.5	2.125%
4.5 or above	2.250%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions or expiry of the applicable periods specified above (or, where such Business Day falls less than five Business Days before the end of the then current Interest Period, from the commencement of the next Interest Period).

"Reference Banks" means, in relation to:

(a) LIBOR, the principal London offices of Deutsche Bank AG and BNP Paribas; and

(b) HIBOR, the principal Hong Kong offices of Bank of China Limited, Hong Kong Branch and Industrial and Commercial Bank of China (Asia) Limited,

or such other bank or banks designated from time to time by the Revolving Credit Facility Agent provided that the consent of the Company shall be required if such designation is made prior to an occurrence of an Event of Default which is continuing.

"Revolving Credit Facility" means the Tranche A Facility or the Tranche B Facility and **"Revolving Credit Facilities"** means each of them.

"Revolving Credit Facility Advance" means, as the context may require, a Tranche A Advance or a Tranche B Advance and **"Revolving Credit Facility Advances"** shall mean each Tranche A Advance and Tranche B Advance or any of them.

"Revolving Credit Facility Finance Documents" means:

(a) this Agreement;

(b) the Common Terms Agreement;

(c) any other Senior Finance Document to which a Revolving Credit Facility Lender is a party in its capacity as a Revolving Credit Facility Lender; and

(d) any other document designated as such by the Revolving Credit Facility Agent and the Company.

"Revolving Credit Facility Lender" means a Tranche A Facility Lender or a Tranche B Facility Lender.

"Revolving Credit Finance Parties" means the Revolving Credit Facility Agent and the Revolving Credit Facility Lenders.

"Rollover Advance", in relation to a Revolving Credit Facility, means one or more Revolving Credit Facility Advances under that Revolving Credit Facility:

(a) made or to be made on the same day that a maturing Revolving Credit Facility Advance under that Revolving Credit Facility is due to be repaid;

(b) the aggregate amount of which is equal to or less than the maturing Revolving Credit Facility Advance under that Revolving Credit Facility; and

(c) made or to be made to the Company for the purpose of refinancing a maturing Revolving Credit Facility Advance under that Revolving Credit Facility.

"Screen Rate" means, in relation to:

(a) LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration

of that rate) for US dollars for the relevant period displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters; and

(b) HIBOR, the Hong Kong interbank offered rate administered by the Hong Kong Association of Banks (or any other person which takes over the administration of that rate) for the relevant period displayed on page HKABHIBOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays the rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters.

If the agreed page is replaced or service ceases to be available, the Revolving Credit Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Revolving Credit Facility Lenders.

"**Termination Date**" means the date falling one month prior to the Final Repayment Date.

"**Tranche A Advance**" means an advance made or to be made by the Tranche A Facility Lenders under the Tranche A Facility or the principal amount outstanding for the time being of that advance including a Rollover Advance.

"**Tranche A Facility**" means the US dollar revolving credit facility granted to the Company under Clause 3.1.1 (*Tranche A Facility*).

"**Tranche A Facility Commitment**" means:

- (a) in relation to the Original Tranche A Facility Lender, the amount set opposite its name under the column entitled "Tranche A Commitment" in Schedule 1 (*The Revolving Credit Facility Lenders*) and the amount of any other Tranche A Facility Commitment transferred to it under this Agreement; and
- (b) in relation to any other Tranche A Facility Lender, the amount of any Tranche A Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche A Facility Lender**" means any commercial bank, financial institution or other entity which:

(a) is named in Schedule 1 (*The Revolving Credit Facility Lenders*) as a Tranche A Facility Lender (the "**Original Tranche A Facility Lender**"); or

(b) has become party hereto as a Tranche A Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

"**Tranche B Advance**" means an advance made or to be made by the Tranche B Facility Lenders under the Tranche B Facility or the principal amount outstanding for the time being of that advance including a Rollover Advance.

"**Tranche B Facility**" means the HK dollar revolving credit facility granted to the Company under Clause 3.1.2 (*Tranche B Facility*).

"**Tranche B Facility Commitment**" means

- (a) in relation to the Original Tranche B Facility Lender, the amount set opposite its name under the column entitled "Tranche B Commitment" in Schedule 1 (*The Revolving Credit Facility Lenders*) and the amount of any other Tranche B Facility Commitment transferred to it under this Agreement; and
- (b) in relation to any other Tranche B Facility Lender, the amount of any Tranche B Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche B Facility Lender**" means any commercial bank, financial institution or other entity which:

(a) is named in Schedule 1 (*The Revolving Credit Facility Lenders*) as a Tranche B Facility Lender (the "**Original Tranche B Facility Lender**"); or

(b) has become party hereto as a Tranche B Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

1.3 Interpretation

In this Agreement:

1.3.1 the principles of construction contained in clause 1.2 (*Principles of Construction*) of the Common Terms Agreement and the rules of interpretation contained in clause 1.3 (*Rules of Interpretation*) of the Common Terms Agreement shall apply to the construction and interpretation of this Agreement;

1.3.2 any reference to the "**Revolving Credit Facility Agent**" or any "**Revolving Credit Facility Lender**" shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and

1.3.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

1.4 Third Party Rights

1.4.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-recourse liability*) but only for the benefit of the Operatives and subject always to the terms of Clause 17 (*Governing Law*) and Clause 18 (*Jurisdiction*).

1.4.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1.4.3 Save as provided by the Common Terms Agreement, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

1.5 Non-recourse Liability

Notwithstanding any provision in the Senior Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Revolving Credit Facility Lenders for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors and not against any assets or property of any Operative, save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of an individual holding the Executive Director Shares, his or her liability shall be limited to his or her shares in the Company.

2. COMMON TERMS AGREEMENT

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

3. THE REVOLVING CREDIT FACILITIES

3.1 Grant of the Revolving Credit Facilities

3.1.4 Tranche A Facility

The Tranche A Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a US dollar revolving credit facility in an aggregate amount of USD427,000,000.

3.1.5 Tranche B Facility

The Tranche B Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar revolving credit facility in an aggregate amount of HKD2,511,600,000.

4. PURPOSE

4.1.4 Subject to Clause 4.1.2, the Company shall apply all amounts borrowed by it under the Revolving Credit Facilities to pay for the refinancing of existing indebtedness of the Company, the design, development and construction of the Cotai Project and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).

4.1.5 The Company shall deposit (immediately upon utilisation of the first Advance made hereunder):

(a) one or more Development Accounts denominated in HKD, sufficient HKD amounts borrowed by it under the Revolving Credit Facility; and

(b) one or more Development Accounts denominated in USD, sufficient USD amounts borrowed by it under the Revolving Credit Facility,

such that, when the amounts referred to in paragraphs (a) and (b) of this Clause 4.1.2 are aggregated, they are equal to the RCF Portion (as defined in clause 3.3 (*Funding of Development Account from Revolving Credit Facility and the Term Facility*)) of the Common Terms Agreement and the Company shall only apply amounts withdrawn from the Development Accounts from time to time to finance or refinance costs incurred or funds expended on the development of the Cotai Project (including, without limitation, cost and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest) *provided* that, for the avoidance of doubt, the Company shall be entitled to transfer funds from one Development Account to another Development Account.

4.1.6 It shall be a condition to the Company making the first withdrawal from a Development Account (other than a withdrawal for the transfer of funds to another Development Account) and to making subsequent withdrawals from any Development Account (other than a withdrawal for the transfer of funds to another Development Account), that the Company shall (immediately prior to making the first such withdrawal and subsequently, for so long as there are any amounts standing to the credit of any Development Account, on the first Business Day in each calendar month thereafter) certify in writing to the Intercreditor Agent and the Revolving Credit Facility Agent that it (and/or Palo, as the case may be) has incurred costs or expended funds on the development of the Cotai Project (or will immediately upon the making of such withdrawal, have expended funds on the development of the Cotai Project) in an amount at least equal to the aggregate amount of all withdrawals from the Development Accounts (excluding withdrawals for the transfer of funds to another Development Account). For the purposes of this Clause [4.1.3](#) costs incurred or funds expended on the development of the Cotai Project include, but are not limited to, costs and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest.

4.1.7 The Company shall notify the Intercreditor Agent and the Revolving Credit Facility Agent of the details of each Development Account (including the bank with which such Development Account is held, in which currency such Development Account is denominated and the balance from time to time) promptly upon the opening of any such Development Account and from time to time upon request of the Intercreditor Agent and the Revolving Credit Facility Agent.

5. CONDITIONS OF UTILISATION

5.1 Conditions precedent

The provisions of clause 2 (*Conditions Precedent*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

5.2 Further conditions precedent

The obligation of each Revolving Credit Facility Lender to participate in each Revolving Credit Facility Advance under this Agreement is subject to the Company having satisfied the following conditions:

- (a) in the case of a Rollover Advance, no Event of Default shall have occurred and is continuing and, in the case of any other Revolving Credit Facility Advance, no Default shall have occurred and is continuing;
- (b) the representations and warranties contained in schedule 4 (*Representations and Warranties*) of the Common Terms Agreement which are repeated by the Company pursuant to clause 17.2 (*Timing*) of the Common Terms Agreement are true and correct in all material respects with reference to the facts and circumstances existing on the Advance Date;
- (c) receipt by the Intercreditor Agent of each of the reports, financial statements and other information if and to the extent due pursuant to paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement on or before the proposed Advance Date; and
- (d) the Company shall have paid or arranged for payment out of the requested Revolving Credit Facility Advance of all fees, expenses and other charges then due and payable by it under the Revolving Credit Facility Finance Documents.

5.3 Maximum number of Loans

The Company may not deliver an Advance Request for a Revolving Credit Facility Advance if, as a result of the proposed Revolving Credit Facility Advance, more than ten Revolving Credit Facility Advances would be outstanding.

6. AVAILABILITY OF THE REVOLVING CREDIT FACILITIES

6.1 Drawdown of Advances

The provisions of clause 3 (*Drawdown of Advances*) and clause 4.2 (*Revolving Credit Facility Availability Period*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6.2 Each Revolving Credit Facility Lender's participation

6.2.1 It is acknowledged and agreed that, as at the Fifth Amendment Effective Date, the Existing Advances have been made and are outstanding hereunder.

6.2.2 If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Tranche A Facility Lender will participate through its Facility Office in each Tranche A Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche A Commitment to the Available Tranche A Facility immediately prior to the making of that Tranche A Advance.

6.2.3 If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Tranche B Facility Lender will participate through its Facility Office in each Tranche B Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche B Commitment to the Available Tranche B Facility immediately prior to the making of that Tranche B Advance.

7. REPAYMENT

(a) The Company shall repay each Revolving Credit Facility Advance on the last day of its Interest Period.

(b) Without prejudice to the Company's obligation under paragraph (a) above, if:

- (i) one or more Revolving Credit Facility Advances are to be made available to the Company:
 - (A) on the same day that a maturing Revolving Credit Facility Advance is due to be repaid by the Company;
 - (B) in the same currency as the maturing Revolving Credit Facility Advance; and
 - (C) in whole or in part for the purpose of refinancing the maturing Revolving Credit Facility Advance; and
- (ii) the proportion borne by each Revolving Credit Facility Lender's participation in the maturing Revolving Credit Facility Advance to the amount of that maturing Revolving Credit Facility Advance is the same as the proportion borne by that Revolving Credit Facility Lender's participation in the new Revolving Credit Facility Advance to the aggregate amount of those new Revolving Credit Facility Advances,

the aggregate amount of the new Revolving Credit Facility Advances shall, unless the Company notifies the Revolving Credit Facility Agent to the contrary in the relevant Advance Request, be treated as if applied in or towards repayment of the maturing Revolving Credit Facility Loan so that:

- (A) if the amount of the maturing Revolving Credit Facility Advance exceeds the aggregate amount of the new Revolving Credit Facility Advances (1) the Company will only be required to make a payment under Clause [14.1](#) (*Payments*) in an amount in the relevant currency equal to that excess and (2) each Revolving Credit Facility Lender's participation in the new Revolving Credit Facility Advances shall be treated as having been made available and applied by the Company in or towards repayment of that Revolving Credit Facility Lender's participation in the maturing Revolving Credit Facility Advance and that Revolving Credit Facility Advance will not be required to make a payment under Clause [14.1](#) (*Payments*) in respect of its participation in the new Revolving Credit Facility Advances; and
- (c) if the amount of the maturing Revolving Credit Facility Advance is equal to or less than the aggregate amount of the new Revolving Credit Facility Advances (1) the Company will not be required to make a payment under Clause [14.1](#) (*Payments*) and (2) each Revolving Credit Facility Lender will be required to make a payment under Clause [14.1](#) (*Payments*) in respect of its participation in the new Revolving Credit Facility Advances only to the extent that its participation in the new Revolving Credit Facility Advances exceeds that Revolving Credit Facility Lender's participation in the maturing Revolving Credit Facility Loan and the remainder of that Revolving Credit Facility Lender's participation in the new Revolving Credit Facility Advances shall be treated as having been made available and applied by the Company in or towards repayment of that Revolving Credit Facility Lender's participation in the maturing Revolving Credit Facility Advance.
- (d) Subject to the other terms of this Agreement and the Common Terms Agreement, any amounts repaid (including with a Rollover Advance) under Clause [7](#)(a) above may be re-borrowed.
- (e) Any amount of any Revolving Credit Facility Advance still outstanding on the Final Repayment Date shall be repaid on the Final Repayment Date.

8. CANCELLATION

Any cancellation of Available Commitments shall be made in accordance with this Agreement and the Common Terms Agreement (including clause 8 (*Repayment, Prepayment and Cancellation*) and clause 14 (*Illegality*) of the Common Terms Agreement).

9. INTEREST

9.1 Calculation of interest

The rate of interest on each Revolving Credit Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

(a) the applicable Margin; and

(b) LIBOR (in the case of a Tranche A Advance) or HIBOR (in the case of a Tranche B Advance).

9.2 Payment of interest

The Company shall pay accrued interest on each Revolving Credit Facility Advance on the last day of each Interest Period.

9.3 Default Interest

Default interest shall be calculated and paid in accordance with clause 9.4 (*Default Interest*) of the Common Terms Agreement.

9.4 Notification of rates of interest

The Revolving Credit Facility Agent shall promptly notify the Company and the Revolving Credit Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

9.5 Changes to interest rates

The Revolving Credit Facility Agent shall promptly notify the Company and the Intercreditor Agent of any change to any interest rate occasioned by the operation of clause 10 (*Changes to the calculation of interest*) of the Common Terms Agreement.

10. INTEREST PERIODS

The duration of each Interest Period shall be determined in accordance with clause 9.3 (*Interest Periods*) of the Common Terms Agreement.

11. NOTIFICATION

Promptly, and in any event, not less than 4 Business Days before the proposed Advance Date for each Revolving Credit Facility Advance, the Revolving Credit Facility Agent shall notify each of the relevant Revolving Credit Facility Lenders of the proposed amount of the relevant Revolving Credit Facility Advance and the aggregate principal amount of the relevant Revolving Credit Facility Advance allocated to such Revolving Credit Facility Lender pursuant to Clause 6.2 (*Each Revolving Credit Facility Lender's participation*) and each Revolving Credit Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Revolving Credit Facility Agent for the account of the Company its said portion of such Revolving Credit Facility Advance.

12. COMMITMENT FEE

12.1 The Company shall pay to each Revolving Credit Facility Lender a fee computed at 0.5775% per annum but, if the Leverage Ratio as at the most recent Quarterly Date thereafter is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any

decrease in the rate set out below) no Default has occurred and is continuing, the fee will be computed at the percentage rate per annum specified for that range:

Leverage Ratio	Rate (% per annum)
Less than 1.0	0.5250%
Greater than or equal to 1.0 but less than 3.0	0.5775%
Greater than or equal to 3.0 but less than 3.5	0.6300%
Greater than or equal to 3.5 but less than 4.0	0.6825%
Greater than or equal to 4.0 but less than 4.5	0.7350%
4.5 or above	0.7875%

in each case, on that Revolving Credit Facility Lender's daily Available Commitment from the Fifth Amendment Effective Date to the end of the Revolving Credit Facility Availability Period. Any increase or decrease in such fee shall take effect from the Business Day following the satisfaction of the conditions or expiry of the applicable periods specified above.

12.2 The accrued commitment fee is payable:

12.2.1 in US dollars (or in any other currency mutually agreed between the Company and the relevant Revolving Credit Facility Lender receiving such fee) in respect of accrued commitment fee payable on a Revolving Credit Facility Lender's Available Tranche A Commitment;

12.2.2 in HK dollars (or in any other currency mutually agreed between the Company and the relevant Revolving Credit Facility Lender receiving such fee) in respect of accrued commitment fee payable on a Revolving Credit Facility Lender's Available Tranche B Commitment; and

12.2.3 on the last day of each successive period of three months which ends during the Revolving Credit Facility Availability Period, on the last day of the Revolving Credit Facility Availability Period,

and, if cancelled in full or part, on the cancelled amount of the relevant Revolving Credit Facility Lender's Available Commitment, immediately prior to the time the cancellation is effective.

13. CHANGES TO THE PARTIES

13.1 Transfers by the Revolving Credit Facility Agent

The Revolving Credit Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Revolving Credit Facility Finance Documents to a replacement Revolving Credit Facility Agent appointed in accordance with the terms of the Common Terms Agreement.

13.2 Transfers by the Company

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Revolving Credit Facility Finance Documents.

13.3 Transfers by the Revolving Credit Facility Lenders

A Revolving Credit Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Revolving Credit Facility Finance Documents in accordance with clause 21.4 (*Assignment and Transfer by Lenders*), clause 21.5 (*Assignments by Lenders*) and clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement.

13.4 Assignment and Transfer Fees

On the date upon which an assignment takes effect pursuant to clause 21.5 (*Assignments by Lenders*) of the Common Terms Agreement or a transfer takes effect pursuant to clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement, the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee in accordance with clause 21.7 (*Assignment and Transfer Fees*) of the Common Terms Agreement.

14. PAYMENTS

14.1 Payments

14.1.1 All payments under this Agreement shall be made in accordance with clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

14.1.2 Subject to clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company or a Revolving Credit Facility Lender, the Company or, as the case may be, such Revolving Credit Facility Lender, shall make the same available to the Revolving Credit Facility Agent for value on such due date and at such time and in such funds and to such account with such bank as the Revolving Credit Facility Agent shall specify from time to time.

14.2 Partial Payments

14.2.1 If the Revolving Credit Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Revolving Credit Facility Lenders under the Revolving Credit Facility Finance Documents, the Revolving Credit Facility Agent shall apply that payment towards the obligations of the Company under the Revolving Credit Facility Finance Documents in the following order:

- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Revolving Credit Facility Lenders under clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (b) **secondly**, in or towards payment *pro rata* of all amounts paid by the Revolving Credit Facility Lenders under Clause 15.3 (*Indemnity to Revolving Credit Facility Agent*) but which have not been reimbursed by the Company;
- (c) **thirdly**, in or towards payment *pro rata* of all costs and expenses incurred by the Revolving Credit Facility Lenders which the Company is obliged to reimburse;

(d)**fourthly**, in or towards payment *pro rata* of all accrued and unpaid interest (including default interest), fees and commissions due to the Revolving Credit Facility Lenders under the Revolving Credit Facility Finance Documents;

(e)**fifthly**, in or towards payment *pro rata* of any principal due to the Revolving Credit Facility Lenders under the Revolving Credit Facility Finance Documents but unpaid; and

(f)**sixthly**, in or towards payment *pro rata* of any other sum due to the Revolving Credit Facility Lenders under the Revolving Credit Facility Finance Documents but unpaid.

14.2.2 The Revolving Credit Facility Agent shall, if so directed by the Majority Revolving Credit Facility Lenders, vary the order set out in sub-clause 14.2.1 above.

14.2.3 Sub-clause 14.2.1 above will override any appropriation made by the Company.

15. DECISION MAKING AMONGST REVOLVING CREDIT FACILITY LENDERS

15.1 Decisions

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purposes of any decision within the scope of clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement relating to this Agreement shall be the Revolving Credit Facility Agent acting on the instructions of the Majority Revolving Credit Facility Lenders.

15.2 Failure to Give Instructions

If the Revolving Credit Facility Agent gives notice to the Revolving Credit Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Revolving Credit Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Revolving Credit Facility Lender which fails to respond by the date and time so specified shall have its portion of the Revolving Credit Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Revolving Credit Facility Agent by the Majority Revolving Credit Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Revolving Credit Facility Advances outstanding, the Available Commitments and portion of Revolving Credit Facility Advances of such Revolving Credit Facility Lender shall be deducted).

15.3 Indemnity to Revolving Credit Facility Agent

15.3.1 Each Revolving Credit Facility Lender shall, rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Revolving Credit Facility Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Revolving Credit Facility Lenders (or, if all such amounts have been reduced to zero, such proportion determined immediately prior to such reduction) for the time being, indemnify the Revolving Credit Facility

Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Revolving Credit Facility Agent (other than by reason of the negligence or wilful misconduct of the Revolving Credit Facility Agent) in acting as Revolving Credit Facility Agent under any of the Senior Finance Documents (unless the Revolving Credit Facility Agent has been reimbursed by the Company pursuant to a Senior Finance Document).

15.3.2 Provided that the Company is required to reimburse or indemnify the Revolving Credit Facility Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Revolving Credit Facility Lender, indemnify such Revolving Credit Facility Lender in relation to any payment actually made by such Revolving Credit Facility Lender pursuant to Clause 15.3.1 above.

16. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

17. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

18. JURISDICTION

18.1 Jurisdiction of English courts

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a "**Dispute**").

18.1.2 The parties hereto agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 (*Jurisdiction of English courts*) is for the benefit of the Revolving Credit Finance Parties only. As a result, no Revolving Credit Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Revolving Credit Facility Finance Documents, the Revolving Credit Finance Parties may take concurrent proceedings in any number of jurisdictions.

18.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Company:

(a) irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

(b) agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1
THE REVOLVING CREDIT FACILITY LENDERS**

Revolving Credit Facility Lender	Tranche A Commitment (USD)	Tranche B Commitment (HKD)
Bank of China Limited, Macau Branch	427,000,000	2,511,600,000
Total	427,000,000	2,511,600,000

**SCHEDULE 2
FORM OF ADVANCE REQUEST FOR A REVOLVING CREDIT FACILITY ADVANCE**

To: as Intercreditor Agent

as Revolving Credit Facility Agent

Date:

Dear Sirs,

Wynn Resorts (Macau) S.A. - Revolving Credit Facility Agreement dated 31 July 2012 (as amended by the Revolving Credit Facility Agreement Amendment Agreement dated 2015 (the "Agreement")

Advance Request No.

1. We refer to the Agreement and the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 (as amended from time to time) and made between, among others, Wynn Resorts (Macau) S.A. (the "**Company**"), the financial institutions defined therein as Revolving Credit Facility Lenders, the Revolving Credit Facility Agent, the Intercreditor Agent and the Security Agent. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.

2. This is an Advance Request given pursuant to Clause 3 (*Drawdown of Advances*) of the Common Terms Agreement.
3. This Advance Request is irrevocable.
4. We hereby give you notice that, upon the terms and subject to the conditions contained in the Common Terms Agreement and the Revolving Credit Facility Agreement, we wish to borrow the following Revolving Credit Facility Advance under the following Revolving Credit Facility on the following terms:
Proposed Advance Date: []
Revolving Credit Facility: [Tranche A/Tranche B] Facility
Amount: [USD][HKD][]
Interest Period: [1, 2, 3 or 6] months
5. We confirm that:
 - (a) each condition specified in Clause 5.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Advance Request;
 - (b) the Revolving Credit Facility Advance complies with the permitted use of the Revolving Credit Facilities under the Revolving Credit Facility Agreement and clause 5 (*Purpose*) of the Common Terms Agreement; and
 - (c) since the Fifth Amendment Effective Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.
6. We attach signed but undated receipts for the Revolving Credit Facility Advance requested above and hereby authorise the Revolving Credit Facility Agent to date such receipts on the date such Revolving Credit Facility Advances are made.
7. The proceeds of the above Revolving Credit Facility Advance should be credited to [].

Yours faithfully,

Name:
Responsible Officer
for and on behalf of
Wynn Resorts (Macau) S.A.

Attachments: Receipts for the Revolving Credit Facility Advance

FIRST AMENDMENT TO CREDIT AGREEMENT

This First Amendment to Credit Agreement, dated as of November 5, 2015 (this “**Agreement**”), by and among Wynn America, LLC, a Nevada limited liability company (“**Borrower**”), the Guarantors (as defined in the Amended Credit Agreement referred to below) party hereto, and Deutsche Bank AG New York Branch, as administrative agent (in such capacity, “**Administrative Agent**”) for (and on behalf of) the Lenders under the Existing Credit Agreement referred to below and, after giving effect hereto, the Amended Credit Agreement and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties (as defined under the Existing Credit Agreement and, after giving effect hereto, the Amended Credit Agreement).

RECITALS:

WHEREAS, reference is hereby made to the Credit Agreement, dated as of November 20, 2014 (as it may be amended, restated, replaced, supplemented or otherwise modified and in effect immediately prior to giving effect to the amendments contemplated by this Agreement, the “**Existing Credit Agreement**” and the Existing Credit Agreement as modified by this Agreement, the “**Amended Credit Agreement**”; capitalized terms defined in the Amended Credit Agreement and not otherwise defined herein being used herein as therein defined), among Borrower, the Guarantors party thereto, the Lenders party thereto from time to time, the L/C Lenders party thereto from time to time, Administrative Agent, Collateral Agent and the other parties thereto;

WHEREAS, the Consenting Lenders (as defined below) holding Term Facility Commitments (as defined under the Existing Credit Agreement) have agreed to extend the Term Facility Availability Period (as defined under the Existing Credit Agreement) applicable to their respective Term Facility Commitments (as defined under the Existing Credit Agreement) on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Borrower, the Guarantors, the Consenting Lenders, Administrative Agent and Collateral Agent will make certain amendments to the Existing Credit Agreement and the other Credit Documents (as defined in the Existing Credit Agreement) as set forth herein;

NOW, THEREFORE, in consideration of the premises and agreements, provisions and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

AMENDMENTS TO EXISTING CREDIT DOCUMENTS

SECTION 1. Consent of Required Lenders.

(a) Each Lender under the Existing Credit Agreement that executes and delivers a lender agreement and consent in substantially the form attached hereto as Annex I (a “**Consenting Lender Agreement**”) (each, a “**Consenting Lender**” and, together, the “**Consenting Lenders**”) thereby irrevocably agrees to the amendments to, and waives and consents under, the Existing Credit Agreement provided for herein with respect to all of such Consenting Lender’s Loans and

Commitments and, in the case of each Consenting Lender that is a Term Facility Lender, agrees that the Term Facility Availability Period with respect to such Term Facility Lender's Term Facility Commitments as in effect immediately prior to the Agreement Effective Date (as defined below) shall be as set forth in its Consenting Lender Agreement. Such agreement shall be irrevocably binding on any subsequent assignees, transferees, participants, successors and assigns with respect to such Loans and Commitments.

(b) Each Consenting Lender Agreement shall be subject to the terms and conditions of this Agreement and shall be binding upon the Lender party thereto and any successor, participant or assignee of such Lender and may not be revoked or terminated by the Lender party thereto or any such successor, participant or assignee.

SECTION 2. Amended Credit Agreement. The terms and provisions of the Existing Credit Agreement are hereby amended as set forth on Exhibit A attached hereto such that all of the newly inserted and underscored provisions and any formatting changes reflected therein shall be deemed inserted or made, as applicable, and all of the stricken provisions shall be deemed to be deleted therefrom, immediately and automatically upon the Agreement Effective Date. Annexes, Schedules and Exhibits to the Credit Agreement shall remain as in effect under the Existing Credit Agreement, except with respect to Exhibits set forth on Exhibit B attached hereto, each of which shall replace the respective Exhibit to the Existing Credit Agreement in its entirety, immediately and automatically upon the Agreement Effective Date.

ARTICLE II

REPRESENTATION AND WARRANTIES

To induce the Lenders party hereto to agree to this Agreement, the Credit Parties represent to Administrative Agent and the Lenders that, as of the Agreement Effective Date:

SECTION 1. Corporate Existence. Each Credit Party (a) is a corporation, partnership, limited liability company or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b)(i) has all requisite corporate or other power and authority, and (ii) has all governmental licenses, authorizations, consents and approvals necessary to own its Property and carry on its business as now being conducted; and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary; except, in the case of clauses (b)(ii) and (c) where the failure thereof individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

SECTION 2. Action; Enforceability. Each Credit Party has all necessary corporate or other organizational power, authority and legal right to execute, deliver and perform its obligations under this Agreement and to consummate the transactions herein contemplated; the execution, delivery and performance by each Credit Party of this Agreement and the consummation of the transactions herein contemplated have been duly authorized by all necessary corporate, partnership or other organizational action on its part; and this Agreement has been duly and validly executed and delivered by each Credit Party and constitutes its legal, valid and binding obligation, enforceable against each Credit Party in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws of general applicability from time to time in effect affecting the enforcement of creditors' rights and remedies and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 3. No Breach; No Default.

(a) None of the execution, delivery and performance by any Credit Party of this Agreement nor the consummation of the transactions herein contemplated do or will (i) conflict with or result in a breach of, or require any consent (which has not been obtained and is in full force and effect) under (x) any Organizational Document of any Credit Party or (y) subject to Section 13.13 of the Existing Credit Agreement, any applicable Requirement of Law (including, without limitation, any Gaming Law) or (z) any order, writ, injunction or decree of any Governmental Authority binding on any Credit Party, or (ii) constitute (with due notice or lapse of time or both) a default under any such Contractual Obligation or (iii) result in or require the creation or imposition of any Lien (except for the Liens created pursuant to the Security Documents and other Permitted Liens) upon any Property of any Credit Party pursuant to the terms of any such Contractual Obligation, except with respect to (i)(y), (i)(z), (ii) or (iii) which would not reasonably be expected to result in a Material Adverse Effect; and

(b) No Default or Event of Default has occurred and is continuing.

ARTICLE III

CONDITIONS TO THE AGREEMENT EFFECTIVE DATE

This Agreement and the Amended Credit Agreement shall become effective on the date (the “**Agreement Effective Date**”) on which each of the following conditions is satisfied or waived:

SECTION 1. Execution of Counterparts. Administrative Agent shall have received (a) executed counterparts of this Agreement from each Credit Party, Administrative Agent and Collateral Agent and (b) executed Consenting Lender Agreements from Lenders constituting at least the Required Lenders.

SECTION 2. Costs and Expenses. To the extent invoiced at least three (3) Business Days prior to the Agreement Effective Date, all of the reasonable and documented out-of-pocket costs and expenses (including the reasonable fees, expenses and disbursements of Cahill Gordon & Reindel LLP) incurred by Administrative Agent in connection with the negotiation, preparation, execution and delivery of this Agreement shall have been paid.

SECTION 3. No Default or Event of Default; Representations and Warranties True. Both immediately prior to and immediately after giving effect to this Agreement:

(a) no Default or Event of Default shall have occurred and be continuing; and

(b) each of the representations and warranties made by the Credit Parties in Article II hereof shall be true and correct in all material respects on and as of the Agreement Effective Date (it being understood and agreed that any such representation or warranty which by its terms is made as of an earlier date shall be required to be true and correct in all material respects only as such earlier date, and that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on the applicable date).

SECTION 4. Payment of Fees to Consenting Lenders. Borrower shall have paid to Administrative Agent, for the account of each Term Facility Lender under the Existing Credit Agreement that has executed a Consenting Lender Agreement prior to 5:00 p.m., New York time on November 5, 2015, a consent fee equal to (a) for each Term Facility Lender electing “Extension Option 1” in its Consenting Lender Agreement, 0.125% and (b) for each Term Facility Lender electing “Extension Option 2” in its Consenting Lender

Agreement, 0.250%, in each case, of the amount of such Lender's commitments under the Term Facilities as of the Agreement Effective Date.

ARTICLE IV

VALIDITY OF OBLIGATIONS AND LIENS

SECTION 1. Validity of Obligations. Each Credit Party hereby ratifies and reaffirms the validity, enforceability and binding nature of the Obligations both before and after giving effect to this Agreement and the Amended Credit Agreement (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity).

SECTION 2. Validity of Liens and Credit Documents. Each Credit Party hereby ratifies and reaffirms the validity, enforceability (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) and binding nature of the Credit Documents, and the validity, enforceability (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity) and perfection of the Liens and security interests granted to Collateral Agent for the benefit of the Secured Parties to secure any of the Secured Obligations (as defined in the Security Agreement and including after giving effect to the Amended Credit Agreement) by each Credit Party pursuant to the Credit Documents to which any Credit Party is a party, and agrees that the Liens and security interests granted pursuant to the Credit Documents shall continue to secure the Obligations under the Amended Credit Agreement, and hereby confirms and agrees that notwithstanding the effectiveness of this Agreement and the Amended Credit Agreement, and except as expressly amended by this Agreement or pursuant to the Amended Credit Agreement, each such Credit Document is, and shall continue to be, in full force and effect and each is hereby ratified and confirmed in all respects, except that, on and after the effectiveness of this Agreement and the Amended Credit Agreement, each reference in the Credit Documents to the "Credit Agreement", "thereunder", "thereof" (and each reference in the Credit Agreement to this "Agreement", "hereunder" or "hereof") or words of like import shall mean and be a reference to the Amended Credit Agreement.

ARTICLE V

MISCELLANEOUS

SECTION 1. Notice. For purposes of this Agreement, the notice address of each party hereto shall be as set forth in the Existing Credit Agreement.

SECTION 2. Amendment, Modification and Waiver. This Agreement may not be amended, modified or waived except by an instrument or instruments in writing signed and delivered on behalf of Borrower and Administrative Agent (acting at the direction of such Lenders as may be required under Section 13.04 of the Existing Credit Agreement or, after giving effect to the amendments contemplated hereby, the Amended Credit Agreement).

SECTION 3. Entire Agreement. This Agreement, the Amended Credit Agreement and the other Credit Documents and the Consenting Lender Agreements constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof.

SECTION 4. GOVERNING LAW. THIS AGREEMENT, AND ANY CLAIMS, CONTROVERSIES, DISPUTES, OR CAUSES OF ACTION (WHETHER ARISING UNDER CONTRACT LAW, TORT LAW OR OTHERWISE) BASED UPON OR RELATING TO THIS AGREEMENT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW PRINCIPLES THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

SECTION 5. SERVICE OF PROCESS. EACH PARTY HERETO AGREES THAT SECTION 13.09(b) OF THE EXISTING CREDIT AGREEMENT (OR, AFTER GIVING EFFECT TO THE AMENDMENTS CONTEMPLATED HEREBY, THE AMENDED CREDIT AGREEMENT) SHALL APPLY TO THIS AGREEMENT MUTATIS MUTANDIS.

SECTION 6. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

SECTION 7. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (including portable document format (“.pdf”) or similar format) shall be effective as delivery of a manually executed counterpart hereof.

SECTION 8. Credit Document. This Agreement shall constitute a “Credit Document” as defined in the Existing Credit Agreement.

SECTION 9. No Novation. This Agreement shall not extinguish the obligations for the payment of money outstanding under the Existing Credit Agreement or discharge or release the priority of any Credit Document (as defined in the Existing Credit Agreement) or any other security therefor. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Credit Agreement or the instruments, documents and agreements securing the same, which shall remain in full force and effect. Nothing in this Agreement shall be construed as a release or other discharge of Borrower or any Credit Party from any of its obligations and liabilities under the Existing Credit Agreement or the other Credit Documents (as defined in the Existing Credit Agreement).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first written above.

WYNN AMERICA, 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/ Stephen Cootey
Name: Stephen Cootey
Chief Financial Officer, SVP and
Title: Treasurer

GUARANTORS:

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

By: Wynn America, 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: /s/ Stephen Cootey
Name: Stephen Cootey
Chief Financial Officer, SVP and
Title: Treasurer

WYNN MA, LLC,
a Nevada limited liability company

By: Wynn America, 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: /s/ Stephen Cootey
Name: Stephen Cootey
Chief Financial Officer, SVP and
Title: Treasurer

EVERETT PROPERTY, LLC,
a Massachusetts limited liability company

By: Wynn America, 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: /s/ Stephen Cootey
Name: Stephen Cootey
Chief Financial
Officer, SVP and
Title: Treasurer

Consented to by:

DEUTSCHE BANK AG NEW YORK BRANCH

as Administrative Agent and as Collateral Agent, with the consent of the Required Lenders

By: /s/ Mary Kay Coyle

Name: Mary Kay Coyle
Title: Managing Director

By: /s/ Michael Winters

Name: Michael Winters
Title: Vice President

AMENDED CREDIT AGREEMENT

\$1,250,000,000

CREDIT AGREEMENT

Dated as of November 20, 2014

among

**WYNN AMERICA, LLC,
as Borrower,**

**THE SUBSIDIARIES OF BORROWER PARTY HERETO,
as Guarantors,**

THE LENDERS PARTY HERETO,

THE L/C LENDERS PARTY HERETO,

**DEUTSCHE BANK AG NEW YORK BRANCH,
as Administrative Agent,**

and

**DEUTSCHE BANK AG NEW YORK BRANCH,
as Collateral Agent**

**DEUTSCHE BANK SECURITIES INC.
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK
FIFTH THIRD BANK
SUNTRUST ROBINSON HUMPHREY, INC.
THE BANK OF NOVA SCOTIA
BNP PARIBAS SECURITIES CORP.
SUMITOMO MITSUI BANKING CORPORATION
and
UBS SECURITIES LLC,
as Joint Lead Arrangers and Joint Bookrunners,
MORGAN STANLEY SENIOR FUNDING, INC.
and
BANK OF CHINA, LOS ANGELES BRANCH,
as Arrangers,
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
as Documentation Agent,**

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK
FIFTH THIRD BANK
SUNTRUST BANK
and
THE BANK OF NOVA SCOTIA

as Syndication Agents

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CREDIT AGREEMENT, dated as of November 20, 2014 (this “**Agreement**”, among **WYNN AMERICA, LLC**, a Nevada limited liability company (“**Borrower**”); the **SUBSIDIARY GUARANTORS** party hereto from time to time; the **LENDERS** from time to time party hereto; the **L/C LENDERS** party hereto; **DEUTSCHE BANK AG NEW YORK BRANCH**, as administrative agent (in such capacity, together with its successors in such capacity, “**Administrative Agent**”); and **DEUTSCHE BANK AG NEW YORK BRANCH**, as collateral agent (in such capacity, together with its successors in such capacity, “**Collateral Agent**”).

WHEREAS, Borrower has requested that the Lenders provide first lien revolving credit and delayed draw term loan facilities, and the Lenders have indicated their willingness to lend, and the L/C Lender has indicated its willingness to issue letters of credit, in each case, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

ARTICLE I.

DEFINITIONS, ACCOUNTING MATTERS AND RULES OF CONSTRUCTION

SECTION 1.01 Certain Defined Terms. As used herein, the following terms shall have the following meanings:

“**ABR Loans**” shall mean Loans that bear interest at rates based upon the Alternate Base Rate.

“**Acquisition**” shall mean, with respect to any Person, any transaction or series of related transactions for the (a) acquisition of all or substantially all of the Property of any other Person, or of any business or division of any other Person (other than any then-existing Company), (b) acquisition of more than 50% of the Equity Interests of any other Person, or otherwise causing any other Person to become a Subsidiary of such Person or (c) merger or consolidation of such Person or any other combination of such Person with any other Person (other than any of the foregoing between or among any then-existing Companies).

“**Act**” has the meaning set forth in Section 13.14.

“**Act of Terrorism**” shall mean an act of any person directed towards the overthrowing or influencing of any government de jure or de facto, or the inducement of fear in or the disruption of the economic system of any society, by force or by violence, including (i) the hijacking or destruction of any conveyance (including an aircraft, vessel, or vehicle), transportation infrastructure or building, (ii) the seizing or detaining, and threatening to kill, injure, or continue to detain, or the assassination of, another individual, (iii) the use of any (a) biological agent, chemical agent, or nuclear weapon or device, or (b) explosive or firearm, with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property and (iv) a credible threat, attempt, or conspiracy to do any of the foregoing.

“**Additional Credit Party**” has the meaning set forth in Section 9.11.

“**Adjusted Maximum Amount**” has the meaning set forth in Section 6.10.

“**Administrative Agent**” has the meaning set forth in the introductory paragraph hereof.

“**Affected Classes**” has the meaning set forth in Section 13.04(b)(A).

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, “**control**” (including, with its correlative meanings, “**controlled by**” and “**under common control with**”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

“**Affiliate Lender**” shall have the meaning assigned to such term in Section 13.05(e).

“**Agent**” shall mean any of Administrative Agent, Auction Manager, Collateral Agent, Documentation Agent, Syndication Agents, Lead Arrangers and/or Arrangers, as applicable.

“**Agent Party**” has the meaning set forth in Section 13.02(e).

“**Agent Related Parties**” shall mean each Agent and any sub-agent thereof and their respective Affiliates, directors, officers, employees, agents and advisors.

“**Aggregate Payments**” has the meaning set forth in Section 6.10.

“**Agreement**” has the meaning set forth in the introductory paragraph hereof.

“**Aircraft**” means that certain 1999 Boeing 737-79U Business Jet aircraft bearing manufacturer’s serial number 29441 and United States Federal Aviation Administration Number N88WR, together with engines attached thereto, owned by a trust of which World Travel, LLC is the beneficial interest holder.

“**Aircraft Assets**” means (1) the Aircraft, together with the products and proceeds thereof, and (2) the Aircraft Note.

“**Aircraft Note**” means that certain promissory note, dated as of March 30, 2007, issued by World Travel, LLC in favor of Wynn Las Vegas in an aggregate original principal amount of \$42.0 million.

“**Allocable Overhead**” shall mean, at any time with respect to each Qualifying Project, an amount equal to (1) the amount of corporate or other organizational overhead expenses of, and actually incurred by, Wynn Resorts and its Subsidiaries calculated in good faith on a consolidated basis, after the elimination of intercompany transactions, in accordance with GAAP, divided by (2) the number of Qualifying Projects. However, amounts allocated to any Qualifying Project shall be prorated based on the period within such period that such Qualifying Project was in operation or financing therefor was obtained. With respect to any amounts payable pursuant to any agreements entered into by and among Wynn Resorts, any of its Subsidiaries and/or any of their respective Affiliates, any payment in respect of Allocable Overhead shall not include any fee, profit or similar component and shall represent only the payment or reimbursement of actual costs and expenses.

“**Alternate Base Rate**” shall mean for any day, the greatest of (i) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its “prime rate,” (ii) the Federal Funds Rate plus 0.50% *per annum* and (iii) the LIBO Rate for an Interest Period of one (1) month beginning on such day (or if such day is not a Business Day, on the immediately preceding Business Day) plus 100 basis points. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Alternate Currency**” shall mean Canadian Dollars, Euro, Pound Sterling and any other lawful currency reasonably acceptable to the applicable L/C Lender.

“**Alternative Currency Equivalent**” shall mean, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternate Currency as determined by the Administrative Agent or the applicable L/C Lender, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternate Currency with Dollars.

“**Amortization Payment**” shall mean each scheduled installment of payments on the Term Loans as set forth in Sections 3.01(b) and 3.01(c).

“**Anti-Terrorism Laws**” has the meaning set forth in Section 8.22(a).

“**Applicable Fee Percentage**” shall mean, with respect to any Unutilized R/C Commitments or unutilized Term Facility Commitments, 0.30%.

“**Applicable Lending Office**” shall mean, for each Lender and for each Type of Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) (a) that is a lender on the Closing Date, designated for such Type of Loan on Annexes A-1 or A-2 hereof, (b) set forth on such Lender’s signature page to any Refinancing Amendment for any Lender providing Credit Agreement Refinancing Indebtedness pursuant to Section 2.15, (c) set forth in the Assignment Agreement for any Person that becomes a “Lender” hereunder pursuant to an Assignment Agreement or (d) such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to Administrative Agent and Borrower as the office by which its Loans of such Type are to be made and maintained.

“**Applicable Margin**” shall mean, for each Type and Class of Loan, 1.75% *per annum*, with respect to LIBOR Loans and (ii) 0.75% *per annum*, with respect to ABR Loans.

“**Arrangers**” shall mean, collectively, Bank of China, Los Angeles Branch, a federally chartered branch of Bank of China Limited, a joint stock company incorporated in the People’s Republic of China with limited liability, and Morgan Stanley Senior Funding, Inc., in their capacities as arrangers hereunder.

“**Asset Sale**” shall mean (a) any conveyance, sale, lease, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any Property (including accounts receivable and Equity Interests of any Person owned by Borrower or any of its Restricted Subsidiaries but not any Equity Issuance) (whether owned on the Closing Date or thereafter acquired) by Borrower or any of its Restricted Subsidiaries to any Person (other than (i) with respect to any Credit Party, to any Credit Party, and (ii) with respect to any other Company, to any Company) to the extent that the aggregate value of such Property sold in any single transaction or related series of transactions is greater than or equal to \$15.0 million and (b) any issuance or sale by any Restricted Subsidiary of its Equity Interests to any Person (other than to any Company); *provided* that the following shall not constitute an “Asset Sale”: (x) any conveyance, sale, lease, transfer or other disposition of obsolete or worn out assets or assets no longer useful in the business of the Credit Parties, (y) licenses of Intellectual Property entered into in the ordinary course of business and (z) any conveyance, sale, transfer or other disposition of cash and/or Cash Equivalents.

“**Assignment Agreement**” shall mean an Assignment and Assumption Agreement substantially in the form attached as Exhibit J hereto.

“**Auction Amount**” shall have the meaning provided in Exhibit N hereto.

“**Auction Manager**” shall mean DB, or another financial institution as shall be selected by Borrower in a written notice to Administrative Agent, in each case in its capacity as Auction Manager.

“**Auction Procedures**” shall mean, collectively, the auction procedures, auction notice, return bid and Borrower Assignment Agreement in substantially the form set forth as Exhibit N hereto or such other form as is reasonably acceptable to Auction Manager and Borrower; *provided, however*, Auction Manager, with the prior written consent of Borrower, may amend or modify the procedures, notices, bids and Borrower Assignment Agreement in connection with any Borrower Loan Purchase (but excluding economic terms of a particular auction after any Lender has validly tendered Loans requested in an offer relating to such auction, other than to increase the Auction Amount or raise the Discount Range applicable to such auction); *provided, further*, that no such amendments or modifications may be implemented after 24 hours prior to the date and time return bids are due in such auction.

“**Auto-Extension Letter of Credit**” shall have the meaning provided by Section 2.03(b).

“**Available Amount**” shall mean, on any date, an amount not less than zero, equal to:

(a) the aggregate amount of Excess Cash Flow for all fiscal years ending after the Closing Date (not less than zero) (commencing with the fiscal year ending December 31, 2014) and prior to such date; *plus*

(b) in the event of (i) the Revocation of a Subsidiary that was Designated as an Unrestricted Subsidiary, (ii) the merger, consolidation or amalgamation of an Unrestricted Subsidiary with or into Borrower or a Restricted Subsidiary (where the surviving entity is Borrower or a Restricted Subsidiary) or (iii) the transfer or other conveyance of assets of an Unrestricted Subsidiary to, or liquidation of an Unrestricted Subsidiary into, Borrower or a Restricted Subsidiary, an amount equal to the sum of (x) the fair market value of the Investments deemed made by Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary at the time such Subsidiary was designated as an Unrestricted Subsidiary, *plus* (y) the amount of the Investments of Borrower and its Restricted Subsidiaries in such Unrestricted Subsidiary made after such designation and prior to the time of such Revocation, merger, consolidation, amalgamation, conveyance or transfer (or of the assets transferred or conveyed, as applicable), other than, in the case of this clause (y), to the extent such Investments funded Investments by such Unrestricted Subsidiary into a Person that, after giving effect to the transaction described in clauses (i), (ii) or (iii) above, will be an Unrestricted Subsidiary; *provided*, that clauses (x) and (y) shall not be duplicative of any reductions in the amount of such Investments pursuant to the proviso to the definition of “Investments”; *plus*

(c) the aggregate amount of any returns, received since the Closing Date and on or prior to such date (including with respect to contracts related to such Investments and including dividends, interest, distributions,

returns of principal, sale proceeds, repayments, income, payments under contracts relating to such Indebtedness and similar amounts) by Borrower or any Restricted Subsidiary in respect of any Investments pursuant to Section 10.04(l) to the extent not included in Consolidated Net Income; *plus*

(d) the aggregate fair market value of assets or Property acquired in exchange for Equity Interests (other than Disqualified Capital Stock) of Borrower after the Closing Date and on or prior to such date; *plus*

(e) following the Wynn Las Vegas Reorganization, the aggregate amount of “Restricted Payments” that Wynn Las Vegas makes pursuant to Section 4.07 of the indenture governing the Wynn Las Vegas 2022 Notes, excluding in all cases amounts used, or to be used, to make Equity Contributions until such time as Equity Contributions in the amount of the Equity Contribution Threshold have been made; *minus*

(f) the aggregate amount of any (i) Investments made pursuant to Section 10.04(l), (ii) Restricted Payments made pursuant to Section 10.06(i)(ii) and (iii) Junior Prepayments pursuant to Section 10.09(a)(ii) (in each case, in reliance on the then-outstanding Available Amount) made since the Closing Date and on or prior to such date.

“**Available Equity Amount**” shall mean, on any date, an amount not less than zero, equal to:

(a) the Pre-Closing Equity Contribution; *plus*

(b) the aggregate amount of Equity Issuance Proceeds (including upon conversion or exchange of a debt instrument into or for any Equity Interests (other than Disqualified Capital Stock)) received by Borrower after the Closing Date and on or prior to such date other than Specified Equity Issuance Proceeds; *plus*

(c) the aggregate amount of proceeds received by Borrower from the incurrence by Borrower of any Intercompany Contribution Indebtedness (other than any Intercompany Contribution Indebtedness the proceeds of which were derived from Specified Equity Issuance Proceeds) after the Closing Date and on or prior to such date; *plus*

(d) the aggregate amount of any returns, received since the Closing Date and on or prior to such date (including with respect to contracts related to such Investments and including dividends, interest, distributions, returns of principal, sale proceeds, repayments, income, payments under contracts relating to such Indebtedness and similar amounts) by Borrower or any Restricted Subsidiary in respect of any Investments pursuant to Section 10.04(y) to the extent not included in Consolidated Net Income; *minus*

(e) the aggregate amount of any (i) Investments made pursuant to Section 10.04(y), (ii) Restricted Payments made pursuant to Section 10.06(p) and (iii) Junior Prepayments pursuant to Section 10.09(l) (in each case, in reliance on the then-outstanding Available Equity Amount) made since the Closing Date and on or prior to such date; *minus*

(f) from and after December 31, 2015, the Equity Contribution Threshold less (x) any Specified Equity Issuance Proceeds and (y) all amounts distributed by the Wynn Las Vegas Entities to the Credit Parties on or after the Wynn Las Vegas Reorganization, provided, that the amount specified in this clause (f) shall in no case be less than \$0.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code entitled “Bankruptcy,” as now or hereinafter in effect, or any successor statute thereto.

“**Beneficial Owner**” has the meaning assigned to such term in Rules 13d-3 and 13d-5 under the Exchange Act. The terms “**Beneficially Owns**” and “**Beneficially Owned**” have a corresponding meaning.

“**Board of Directors**” shall mean, as to any person, the board of directors or other governing body of such person, or if such person is owned or managed by a single entity, the board of directors or other governing body of such entity. With respect to Borrower, the Board of Directors of Borrower may include the Board of Directors of any direct or indirect parent of Borrower.

“**Borrower**” has the meaning set forth in the introductory paragraph hereof.

“**Borrower Assignment Agreement**” shall mean, with respect to any assignment to Borrower or one of its Subsidiaries pursuant to Section 13.05(d) consummated pursuant to the Auction Procedures, an Assignment and Acceptance Agreement substantially in the form of Annex C to the Auction Procedures (as may be modified from time to time as set forth in the definition of Auction Procedures).

“Borrower Loan Purchase” shall mean any purchase of Term Loans or Revolving Loans by Borrower or one of its Subsidiaries pursuant to Section 13.05(d).

“Borrower Materials” has the meaning set forth in Section 9.04.

“Borrowing” shall mean Loans of the same Class and Type made, converted or continued on the same date and, in the case of LIBOR Loans, as to which a single Interest Period is in effect.

“Business Day” shall mean any day, except a Saturday or Sunday, (a) on which commercial banks are not authorized or required to close in New York and (b) if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, a continuation or conversion of or into, or an Interest Period for, a LIBOR Loan or a notice by Borrower with respect to any such borrowing, payment, prepayment, continuation, conversion or Interest Period, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

“Calculation Date” shall mean the last day of the most recent Test Period.

“Capital Expenditures” shall mean, for any period any expenditures by Borrower or its Restricted Subsidiaries for the acquisition or leasing of fixed or capital assets (including Capital Lease Obligations) that should be capitalized in accordance with GAAP and any expenditures by such Person for maintenance, repairs, restoration or refurbishment of the condition or usefulness of Property of such Person that should be capitalized in accordance with GAAP; *provided* that the following items shall not constitute Capital Expenditures: (a) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed with (x) insurance proceeds paid on account of the loss of or damage to the assets being replaced, restored or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation (or transfers in lieu thereof) of the assets being replaced; (b) the purchase price of assets purchased with the trade-in of existing assets solely to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the asset being traded in at such time; (c) the purchase of property or equipment to the extent financed with the proceeds of asset sales or other dispositions outside the ordinary course of business that are not required to be applied to prepay the Term Loans pursuant to Section 2.10(a)(iii); (d) expenditures that constitute Permitted Acquisitions or other Acquisitions not prohibited hereunder; (e) any capitalized interest expense reflected as additions to property in the consolidated balance sheet of Borrower and its Restricted Subsidiaries (including in connection with sale-leaseback transactions not prohibited hereunder); (f) any non-cash compensation or other non-cash costs reflected as additions to property in the consolidated balance sheet of Borrower and its Restricted Subsidiaries; and (g) capital expenditures relating to the construction or acquisition of any property or equipment which has been transferred to a Person other than Borrower or any of its Restricted Subsidiaries pursuant to a sale-leaseback transaction not prohibited hereunder and capital expenditures arising pursuant to sale-leaseback transactions.

“Capital Lease” as applied to any Person, shall mean any lease of any Property by that Person as lessee that, in conformity with GAAP, is required to be classified and accounted for as a capital lease on the balance sheet of that Person; *provided, however*, that for the avoidance of doubt, any lease that is accounted for by any Person as an operating lease as of the Closing Date and any similar lease entered into after the Closing Date by any Person may, in the sole discretion of Borrower, be accounted for as an operating lease and not as a Capital Lease.

“Capital Lease Obligations” shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a Capital Lease, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP; *provided, however*, that for the avoidance of doubt, any lease that is accounted for by any Person as an operating lease as of the Closing Date and any similar lease entered into after the Closing Date by any Person may, in the sole discretion of Borrower, be accounted for as an operating lease and not as a Capital Lease.

“Cash Collateralize” shall mean, in respect of an obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars or other credit support, in each case, at a location and pursuant to documentation in form and substance reasonably satisfactory to (a) Administrative Agent and (b) in the case of

obligations owing to an L/C Lender, such L/C Lender (and “Cash Collateral” and “Cash Collateralization” have corresponding meanings).

“Cash Equivalents” shall mean, for any Person: (a) direct obligations of the United States, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States, or by any agency thereof, in either case maturing not more than three years from the date of acquisition thereof by such Person; (b) time deposits, certificates of deposit or bankers’ acceptances (including eurodollar deposits) issued by (i) any bank or trust company organized under the laws of the United States or any state thereof and having capital, surplus and undivided profits of at least \$250.0 million that is assigned at least a “B” rating by Thomson Financial BankWatch or (ii) any Lender or bank holding company owning any Lender (in each case, at the time of acquisition); (c) commercial paper maturing not more than three years from the date of acquisition thereof by such Person and (i) issued by any Lender or bank holding company owning any Lender or (ii) rated at least “A-2” or the equivalent thereof by S&P or at least “P-2” or the equivalent thereof by Moody’s or at least “F-2” or the equivalent thereof by Fitch, respectively, or, if none of S&P, Moody’s nor Fitch shall be rating such securities, then from another nationally recognized rating service (in each case, at the time of acquisition); (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above or (e) below entered into with a bank meeting the qualifications described in clause (b) above (in each case, at the time of acquisition); (e) securities with maturities of three years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, or by any political subdivision or taxing authority thereof or by any foreign government, and having an investment grade rating from S&P, Moody’s or Fitch or, if none of S&P, Moody’s nor Fitch shall be rating such securities, then from another nationally recognized rating service (in each case, at the time of acquisition); (f) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) above (in each case, at the time of acquisition); (g) money market mutual funds that invest primarily in the foregoing items (determined at the time such investment in such fund is made); (h) corporate notes having an investment grade rating from S&P, Moody’s or Fitch or, if none of S&P, Moody’s nor Fitch shall be rating such notes, then from another nationally recognized rating service; provided, that at no time shall the value of Cash Equivalents under this clause (h) exceed 10% of the aggregate value of Cash and Cash Equivalents then held by Borrower and its Subsidiaries; or (i) marketable direct obligations issued by, or unconditionally guaranteed by, a country other than the United States, or issued by any agency of such country and backed by the full faith and credit of such country, so long as the indebtedness of such country has an investment grade rating from S&P, Moody’s or Fitch or, if none of S&P, Moody’s nor Fitch shall be rating such securities, then from another nationally recognized rating service (in each case, at the time of acquisition), (ii) time deposits, certificates of deposit or bankers’ acceptances issued by any commercial bank which is organized and existing under the laws of a country other than the United States or payable to a Company promptly following demand and maturing within two years of the date of acquisition and (iii) other customarily utilized high-quality or cash equivalent-type Investments in a country other than the United States.

“Cash Management Agreement” shall mean any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“Cash Management Bank” shall mean any Person that is a party to a Cash Management Agreement with Borrower and/or any of its Restricted Subsidiaries if such Person was, at the date of entering into such Cash Management Agreement, an Agent, a Lender or an Affiliate of an Agent or a Lender, and such Person executes and delivers to Administrative Agent a letter agreement in form and substance reasonably acceptable to Administrative Agent pursuant to which such Person (a) appoints Collateral Agent as its agent under the applicable Credit Documents and (b) agrees to be bound by the provisions of Section 12.03.

“Casualty Event” shall mean any loss of title or any loss of or damage to or destruction of, or any condemnation or other taking (or settlement in lieu thereof) (including by any Governmental Authority) of, any Property; *provided, however*, no such event shall constitute a Casualty Event if the proceeds thereof or other compensation in respect thereof is less than \$15.0 million. “Casualty Event” shall include, but not be limited to, any taking of all or any part of any Real Property of Borrower or any of its Restricted Subsidiaries or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Law (or settlement in lieu thereof), or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of Borrower or any of its Restricted Subsidiaries or any part thereof by any Governmental Authority, civil or military.

“**CERCLA**” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

“**CFC Holdco**” shall mean any Subsidiary that has no material assets other than Equity Interests in one or more Foreign Subsidiaries that is a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“**Change in Law**” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Change of Control**” shall be deemed to have occurred if:

(a) Wynn Resorts shall at any time fail to own, directly or indirectly, 60% or more of the voting power of the total outstanding Voting Stock of Borrower;

(b) Wynn Resorts shall at any time fail to own, directly or indirectly, 50% or more of the voting power of the total outstanding Voting Stock and 50% or more of the total economic interest of Wynn Macau; or

(c) Borrower shall at any time fail to own, directly or indirectly, 100% of the voting power of the total outstanding Voting Stock of Wynn Massachusetts and, from and after the Wynn Las Vegas Reorganization, Wynn Las Vegas.

“**Charges**” has the meaning set forth in Section 13.19.

“**Class**” has the meaning set forth in Section 1.03.

“**Closing Date**” shall mean the date of this Agreement, which date is November 20, 2014.

“**Closing Date Revolving Commitment**” shall mean a Revolving Commitment established on the Closing Date.

“**Closing Date Revolving Facility**” shall mean the credit facility comprising the Closing Date Revolving Commitments.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” shall mean all of the Pledged Collateral, the Mortgaged Real Property, all Property encumbered pursuant to Sections 9.08 and 9.11, and all other Property of a Credit Party, whether now owned or hereafter acquired, upon which a Lien securing the Obligations is granted or purported to be granted under any Security Document. “Collateral” shall not include any assets or Property that has been released (in accordance with the Credit Documents) from the Lien granted to the Collateral Agent pursuant to the Collateral Documents, unless and until such time as such assets or Property are required by the Credit Documents to again become subject to a Lien in favor of the Collateral Agent.

“**Collateral Account**” shall mean (a) a Deposit Account (as defined in the UCC) of Borrower with respect to which Collateral Agent has “control” (as defined in Section 9-104 of the UCC) or (b) a Securities Account (as defined in the UCC) of Borrower with respect to which Collateral Agent has “control” (as defined in Section 9-106 of the UCC).

“**Collateral Agent**” has the meaning set forth in the introductory paragraph hereof.

“**Commitments**” shall mean the Revolving Commitments, the Term Facility Commitments and any Other Commitments.

“**Commodity Exchange Act**” shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Companies**” shall mean Borrower and its Subsidiaries; and “**Company**” shall mean any one of them.

“**Competitor**” shall mean a Person or Affiliate of any Person (other than, subject to the other limitations set forth in this definition, an Affiliate of any Credit Party) that operates, manages or controls the operation of a Facility or controls, has entered into any agreement to control or is under common control with, in each case directly or indirectly, any entity that operates, manages or controls the operation of a Facility; *provided* that the foregoing shall not include (i) commercial or corporate banks and (ii) any funds which principally hold passive investments in commercial loans or debt securities for investment purposes in the ordinary course of business.

“**Completion Guaranty**” shall mean a completion guaranty substantially in the form of Exhibit F between Wynn Resorts and Administrative Agent, as the same may be amended in accordance with the terms thereof and hereof.

“**Consolidated Companies**” shall mean Borrower and each Subsidiary of Borrower (whether now existing or hereafter created or acquired), the financial statements of which are (or should be) consolidated with the financial statements of Borrower in accordance with GAAP.

“**Consolidated Current Assets**” means, with respect to any Person at any date, the total consolidated current assets of such Person and its Subsidiaries (other than Unrestricted Subsidiaries) that would, in accordance with GAAP, be classified as current assets on a consolidated balance sheet of such Person and its Subsidiaries (other than Unrestricted Subsidiaries), other than (x) cash and Cash Equivalents and (y) the current portion of deferred income tax assets.

“**Consolidated Current Liabilities**” means, with respect to any Person at any date, all liabilities of such Person and its Subsidiaries (other than Unrestricted Subsidiaries) at such date that would, in accordance with GAAP, be classified as current liabilities on a consolidated balance sheet of such Person and its Subsidiaries (other than Unrestricted Subsidiaries), other than (x) the current portion of any Indebtedness and (y) the current portion of deferred income taxes.

“**Consolidated EBITDA**” shall mean, for any Test Period, the sum (without duplication) of Consolidated Net Income for such Test Period; *plus*

(a) in each case to the extent deducted in calculating such Consolidated Net Income:

(i) provisions for taxes based on income or profits or capital gains, plus franchise or similar taxes, of Borrower and its Restricted Subsidiaries for such Test Period;

(ii) Consolidated Interest Expense of Borrower and its Restricted Subsidiaries for such Test Period, whether paid or accrued and whether or not capitalized;

(iii) any cost, charge, fee or expense (including discounts and commissions and including fees and charges incurred in respect of letters of credit or bankers acceptance financings) (or any amortization of any of the foregoing) associated with any issuance (or proposed issuance) of debt, or equity or any refinancing transaction (or proposed refinancing transaction) or any amendment or other modification of any debt instrument;

(iv) depreciation, amortization (including amortization of goodwill and other intangibles) and any other non-cash charges or expenses, including any write off or write downs, reducing Consolidated Net Income (excluding (x) any amortization of a prepaid cash expense that was paid in a prior Test Period and (y) any non-cash charges and expenses that result in an accrual of a reserve for cash charges in any future Test Period that Borrower elects not to add back in the current Test Period (it being understood that reserves may be charged in the current Test Period or when paid, as reasonably determined by Borrower)) of Borrower and its Restricted Subsidiaries for such Test Period; *provided* that if any such non-cash charges or expenses represent an accrual of a reserve for potential cash items in any future Test Period, the cash payment in respect thereof

in such future Test Period shall be subtracted from Consolidated EBITDA to the extent Borrower elected to previously add back such amounts to Consolidated EBITDA;

(v) any Pre-Opening Expenses;

(vi) the amount of any restructuring charges or reserve (including those relating to severance, relocation costs and one-time compensation charges), costs incurred in connection with any non-recurring strategic initiatives, other business optimization expenses (including incentive costs and expenses relating to business optimization programs and signing, retention and completion bonuses) and any unusual or non-recurring charges or items of loss or expense (including, without limitation, losses on asset sales (other than asset sales in the ordinary course of business));

(vii) any charges, fees and expenses (or any amortization thereof) (including, without limitation, all legal, accounting, advisory or other transaction-related fees, charges, costs and expenses and any bonuses or success fee payments related to the Transactions) related to the Transactions, any Permitted Acquisition or Investment (including any other Acquisition) or disposition (or any such proposed acquisition, Investment or disposition) (including amortization or write offs of debt issuance or deferred financing costs, premiums and prepayment penalties), in each case, whether or not successful;

(viii) any losses resulting from mark to market accounting of Swap Contracts or other derivative instruments; and

(ix) the aggregate amount of accrued and unpaid Management Fees and IP Licensing Fees; *provided* that the cash payment in respect of such accrued and unpaid Management Fees and IP Licensing Fees in any future Test Period shall be subtracted from Consolidated EBITDA in such Test Period to the extent Borrower elected to previously add back such amounts to Consolidated EBITDA; *minus*

(b) in each case to the extent included in calculating such Consolidated Net Income:

(i) non-cash items increasing such Consolidated Net Income for such Test Period, other than the accrual of revenue in the ordinary course of business, and other than any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges for any prior Test Period subsequent to the issue date which was not added back to Consolidated EBITDA when accrued;

(ii) the amount of any gains resulting from mark to market accounting of Swap Contracts or other derivative instruments; *plus*

(c) the amount of cost savings, operating expense reductions and synergies projected by Borrower in good faith to be realized as a result of specified actions taken or with respect to which steps have been initiated (in the good faith determination of Borrower) during such Test Period (or with respect to Specified Transactions, are reasonably expected to be initiated within fifteen (15) months of the closing date of the Specified Transaction), including in connection with any Specified Transaction (calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized during the entirety of such Test Period), net of the amount of actual benefits realized during such Test Period from such actions; *provided* that (i) a duly completed Officer's Certificate of Borrower shall be delivered to Administrative Agent together with the applicable Section 9.04 Financials, providing reasonable detail with respect to such cost savings, operating expense reductions and synergies and certifying that such savings, operating expense reductions and synergies are reasonably expected to be realized within fifteen (15) months of the taking of such specified actions and are factually supportable in the good faith judgment of Borrower, (ii) such actions are to be taken within fifteen (15) months after the consummation of such Specified Transaction, restructuring or implementation of an initiative that is expected to result in such cost savings, expense reductions or synergies, (iii) no cost savings, operating expense reductions and synergies shall be added pursuant to this clause (c) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such Test Period, and (iv) projected amounts (and not yet realized) may no longer be added in calculating Consolidated EBITDA pursuant to this clause (c) to the extent more than fifteen (15) months have elapsed after the specified action taken in order to realize such projected cost savings, operating expense reductions and synergies; *provided*, that the aggregate amount of additions made to Consolidated EBITDA for any Test Period pursuant to this clause (c) and Section 1.06(c) shall not (i) exceed 20.0% of Consolidated EBITDA for such Test Period (after giving effect to this clause (c) and Section 1.06(c)) or (ii) be duplicative of one another; *plus*

(d) to the extent not included in Consolidated Net Income, the amount of business interruption insurance proceeds received during such Test Period or after such Test Period and on or prior to the date the calculation is made with respect to such Test Period, attributable to any property which has been closed or had operations curtailed for such Test Period; *provided* that such amount of insurance proceeds shall only be included pursuant to this clause

(d) to the extent of the amount of insurance proceeds *plus* Consolidated EBITDA attributable to such property for such Test Period (without giving effect to this clause (d)) does not exceed Consolidated EBITDA attributable to such property during the most recently completed four fiscal quarters for which financial results are available that such property was fully operational (or if such property has not been fully operational for four consecutive fiscal quarters for which financial results are available prior to such closure or curtailment, the Consolidated EBITDA attributable to such property during the Test Period prior to such closure or curtailment (for which financial results are available) annualized over four fiscal quarters); *plus*

(e) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any Test Period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to paragraph (b) above for any previous Test Period and not added back.

Consolidated EBITDA shall be further adjusted:

(A) to include the Consolidated EBITDA of (i) any Person, property, business or asset (including a management agreement or similar agreement) (other than an Unrestricted Subsidiary) acquired by Borrower or any Restricted Subsidiary during such Test Period and (ii) any Unrestricted Subsidiary that is revoked and converted into a Restricted Subsidiary during such Test Period, in each case, based on the Consolidated EBITDA of such Person (or attributable to such property, business or asset) for such period (including the portion thereof occurring prior to such acquisition or Revocation), determined as if references to Borrower and its Restricted Subsidiaries in Consolidated Net Income and other defined terms therein were to such Person and its Subsidiaries;

(B) to exclude the Consolidated EBITDA of (i) any Person, property, business or asset (other than an Unrestricted Subsidiary) sold, transferred or otherwise disposed of, closed or classified as discontinued operations by Borrower or any Restricted Subsidiary during such Test Period and (ii) any Restricted Subsidiary that is designated as an Unrestricted Subsidiary during such Test Period, in each case based on the actual Consolidated EBITDA of such Person for such period (including the portion thereof occurring prior to such sale, transfer, disposition, closing, classification or conversion), determined as if references to Borrower and its Restricted Subsidiaries in Consolidated Net Income and other defined terms therein were to such Person and its Subsidiaries;

(C) for any Development Financing Initial Fiscal Quarter and each of the immediately succeeding two fiscal quarters thereafter, by multiplying the Consolidated EBITDA attributable to the applicable Expansion Capital Expenditure or Development Project (as determined by Borrower in good faith) in respect of such three fiscal quarters by: (x) 4 (with respect to the first such quarter), (y) 2 (with respect to the first two such quarters), and (z) 4/3 (with respect to the first three such quarters) and, for the avoidance of doubt, excluding Consolidated EBITDA attributable to such applicable Expansion Capital Expenditures or Development Project for the fiscal quarter immediately preceding such Development Financing Initial Fiscal Quarter when calculating Consolidated EBITDA during any such three fiscal quarters;

(D) for the fiscal quarter in which the Initial Test Date occurs and each of the immediately succeeding two fiscal quarters thereafter, by adding to Consolidated EBITDA (x) \$200.0 million (for the first such quarter), (y) \$130.0 million (for the second such quarter), and (z) \$70.0 million (for the third such quarter);

(E) in any fiscal quarter during which a purchase of property that prior to such purchase was subject to any operating lease that will be terminated in connection with such purchase shall occur and during the three (3) following fiscal quarters, by increasing Consolidated EBITDA by an amount equal to the quarterly payment in respect of such lease (as if such purchase did not occur) times (a) four (4) (in the case of the quarter in which such purchase occurs), (b) three (3) (in the case of the quarter following such purchase), (c) two (2) (in the case of the second quarter following such purchase) and (d) one (1) (in the case of the third quarter following such purchase), all as determined on a consolidated basis for Borrower and its Restricted Subsidiaries; and

(F) to exclude the Consolidated EBITDA attributable to Restricted Subsidiaries that are not Guarantors, to the extent the Consolidated EBITDA attributable to such Persons exceeds 20% of Consolidated EBITDA for Borrower and its Restricted Subsidiaries for such Test Period (calculated after giving effect to such limitation); *provided* that, with respect to any Restricted Subsidiary that is not required to become a Guarantor pursuant to this Agreement solely as a result of any applicable Gaming Laws or Gaming Approvals, such limitation shall not apply until the date that is ninety (90) days after the date such Restricted Subsidiary would have otherwise been required to become a Guarantor; *provided, further*, that from and after the Wynn Las Vegas Reorganization, and prior to the Wynn Las Vegas 2020 and 2022 Note Repayment, this clause (F) shall not apply to the Wynn Las Vegas Entities.

“Consolidated Indebtedness” shall mean, as at any date of determination, (a) the aggregate amount of all Indebtedness of Borrower and its Restricted Subsidiaries (other than (x) any such Indebtedness that has been Discharged and (y) Intercompany Contribution Indebtedness) on such date, in an amount that would be reflected on a balance sheet on such date prepared on a consolidated basis in accordance with GAAP, consisting of Indebtedness for borrowed money, obligations in respect of Capital Leases, purchase money Indebtedness, Indebtedness of the kind described in clause (d) of the definition of “Indebtedness,” Indebtedness evidenced by promissory notes and similar instruments and Contingent Obligations in respect of any of the foregoing (to be included only to the extent set forth in clause (iii) below) *minus* (b) Development Financing (excluding Development Financing to the extent proceeds thereof consist of Unrestricted Cash that was deducted from Consolidated Indebtedness for purposes of determining the Consolidated Senior Secured Net Leverage Ratio pursuant to the definitions thereof, if any); *provided* that (i) Consolidated Indebtedness shall not include (A) Indebtedness in respect of letters of credit (including Letters of Credit), except to the extent of unreimbursed amounts thereunder or (B) Indebtedness of the type described in clause (i) of the definition thereof, (ii) the amount of Consolidated Indebtedness, in the case of Indebtedness of a Restricted Subsidiary that is not a Wholly Owned Subsidiary, shall be reduced by an amount directly proportional to the amount (if any) by which Consolidated EBITDA was reduced (including through the calculation of Consolidated Net Income) (A) in respect of such non-controlling interest in such Restricted Subsidiary owned by a Person other than Borrower or any of its Restricted Subsidiaries or (B) pursuant to clause (G) of the definition of Consolidated EBITDA (*provided* that in the case of this clause (ii)(B), such Indebtedness is not guaranteed by any Credit Party), (iii) Consolidated Indebtedness shall not include Contingent Obligations, *provided, however*, that if and when any such Contingent Obligation is demanded for payment from Borrower or any of its Restricted Subsidiaries, then the amounts of such Contingent Obligation shall be included in such calculations, and (iv) the amount of Consolidated Indebtedness, in the case of Indebtedness of a Subsidiary of Borrower that is not a Guarantor and which Indebtedness is not guaranteed by any Credit Party, shall be reduced by an amount directly proportional to the amount by which Consolidated EBITDA was reduced due to the undistributed earnings of such Subsidiary being excluded from Consolidated Net Income pursuant to clause (d) thereof.

“Consolidated Interest Expense” shall mean, for any Test Period, the sum of interest expense of Borrower and its Restricted Subsidiaries for such Test Period as determined on a consolidated basis in accordance with GAAP, *plus*, to the extent deducted in arriving at Consolidated Net Income and without duplication, (a) the interest portion of payments on Capital Leases, (b) amortization of financing fees, debt issuance costs and interest or deferred financing or debt issuance costs, (c) arrangement, commitment or upfront fees, original issue discount, redemption or prepayment premiums, (d) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing, (e) interest with respect to Indebtedness that has been Discharged, (f) the accretion or accrual of discounted liabilities during such period, (g) interest expense attributable to the movement of the mark-to-market valuation of obligations under Swap Contracts or other derivative instruments, (h) payments made under Swap Contracts relating to interest rates with respect to such Test Period and any costs associated with breakage in respect of hedging agreements for interest rates, (i) all interest expense consisting of liquidated damages for failure to timely comply with registration rights obligations and financing fees, all as calculated on a consolidated basis in accordance with GAAP, (j) fees and expenses associated with the consummation of the Transactions (k) annual or quarterly agency fees paid to Administrative Agent and (l) costs and fees associated with obtaining Swap Contracts and fees payable thereunder.

“Consolidated Net Income” shall mean, for any Test Period, the aggregate of the net income of Borrower and its Restricted Subsidiaries for such Test Period, on a consolidated basis, determined in accordance with GAAP; *provided* that, without duplication:

- (a) any gain or loss (together with any related provision for taxes thereon) realized in connection with (i) any asset sale or (ii) any disposition of any securities by such Person or any of its Restricted Subsidiaries shall be excluded;
- (b) any extraordinary gain or loss (together with any related provision for taxes thereon) shall be excluded;
- (c) the net income of any Person that (i) is not a Restricted Subsidiary, (ii) is accounted for by the equity method of accounting, (iii) is an Unrestricted Subsidiary or (iv) is a Restricted Subsidiary (or former Restricted Subsidiary) with respect to which a Trigger Event has occurred following the occurrence and during the continuance of such Trigger Event shall be excluded; *provided* that Consolidated Net Income of Borrower and its Restricted Subsidiaries shall be increased by the amount of dividends or distributions or other payments (including

management fees) that are actually paid or are payable in cash to Borrower or a Restricted Subsidiary thereof in respect of such period by such Persons (or to the extent converted into cash);

(d) the undistributed earnings of any Subsidiary of Borrower that is not a Guarantor to the extent that, on the date of determination the payment of cash dividends or similar cash distributions by such Subsidiary (or loans or advances by such subsidiary to any parent company) are not permitted by the terms of any Contractual Obligation (other than under any Credit Document) or Requirement of Law applicable to such Subsidiary shall be excluded, unless such restrictions with respect to the payment of cash dividends and other similar cash distributions have been waived; *provided* that Consolidated Net Income of Borrower and its Restricted Subsidiaries shall be increased by the amount of dividends or distributions or other payments (including management fees) that are actually paid or are payable in cash to Borrower or a Restricted Subsidiary (not subject to such restriction) thereof in respect of such period by such Subsidiaries (or to the extent converted into cash); *provided*, that from and after the Wynn Las Vegas Reorganization this clause (d) shall not apply to the Wynn Las Vegas Entities;

(e) any goodwill or other asset impairment charges or other asset write-offs or write downs, including any resulting from the application of Accounting Standards Codification Nos. 350 and No. 360, and any expenses or charges relating to the amortization of intangibles as a result of the application of Accounting Standards Codification No. 805, shall be excluded;

(f) any non-cash charges or expenses related to the repurchase of stock options to the extent not prohibited by this Agreement, and any non-cash charges or expenses related to the grant, issuance or repricing of, or any amendment or substitution with respect to, stock appreciation or similar rights, stock options, restricted stock, or other Equity Interests or other equity based awards or rights or equivalent instruments, shall be excluded;

(g) the cumulative effect of a change in accounting principles shall be excluded;

(h) any expenses or reserves for liabilities shall be excluded to the extent that Borrower or any of its Restricted Subsidiaries is entitled to indemnification therefor under binding agreements; *provided* that any such liabilities for which Borrower or any of its Restricted Subsidiaries is not actually indemnified shall reduce Consolidated Net Income for the period in which it is determined that Borrower or such Restricted Subsidiary will not be indemnified (to the extent such liabilities would otherwise reduce Consolidated Net Income without giving effect to this clause (h));

(i) losses, to the extent covered by insurance and actually reimbursed, or, so long as Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded;

(j) gains and losses resulting solely from fluctuations in currency values and the related tax effects shall be excluded, and charges relating to Accounting Standards Codification Nos. 815 and 820 shall be excluded; and

(k) the net income (or loss) of a Restricted Subsidiary that is not a Wholly Owned Subsidiary shall be included in an amount proportional to Borrower's economic ownership interest therein.

"Consolidated Senior Secured Net Leverage Ratio" shall mean, as of any date of determination, the ratio of (a) (i) Consolidated Indebtedness of Borrower and its Restricted Subsidiaries that is secured by Liens on property or assets of Borrower or its Restricted Subsidiaries as of such date (other than (x) any such Consolidated Indebtedness that is expressly subordinated in right of payment to the Obligations pursuant to a written agreement and (y) any such Consolidated Indebtedness that, from and after the Wynn Las Vegas Reorganization, benefits from the Wynn Las Vegas Pledge (but is not otherwise secured by any Liens on property or assets of Borrower or its Restricted Subsidiaries as of such date)) *minus* (ii) Unrestricted Cash to (b) Consolidated EBITDA for the Test Period most recently ended prior to such date; *provided*, that for purposes of calculating the Consolidated Senior Secured Net Leverage Ratio, Consolidated EBITDA for the fiscal quarter in which a Qualifying Act of Terrorism shall have occurred and the next two succeeding fiscal quarters thereafter shall, in each case, be the greater of (1) Substituted Consolidated EBITDA and (2) actual Consolidated EBITDA for such fiscal quarter.

"Contingent Obligation" shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds

(i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) 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; or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business and any lease guarantees executed by any Company in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated potential liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“Contractual Obligation” shall mean as to any Person, any provision of any security issued by such Person or of any mortgage, deed of trust, security agreement, pledge agreement, promissory note, indenture, credit or loan agreement, guaranty, securities purchase agreement, instrument, lease, contract, agreement or other contractual obligation to which such Person is a party or by which it or any of its Property is bound or subject.

“Covenant Suspension Period” shall mean the period commencing on the date of any Qualifying Act of Terrorism and continuing until (and including) the last day of the second full fiscal quarter following the fiscal quarter in which the Qualifying Act of Terrorism occurs; *provided, however*, that if a separate and distinct Qualifying Act of Terrorism occurs during any Covenant Suspension Period, such Covenant Suspension Period shall continue until (and including) the last day of the second full fiscal quarter following the fiscal quarter in which such subsequent Qualifying Act of Terrorism shall occur. Notwithstanding the foregoing, Borrower may, in its sole discretion, elect that any Covenant Suspension Period end on any date prior to the date that such Covenant Suspension Period would otherwise end absent such election.

“Covered Taxes” shall mean (a) all Taxes imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under this Agreement, any Note, any Guarantee or any other Credit Document and (b) to the extent not otherwise described in the foregoing clause (a), Other Taxes; other than, in the case of clause (a) or (b), Excluded Taxes.

“Credit Agreement Refinancing Indebtedness” shall mean (a) Permitted First Priority Refinancing Debt, (b) Permitted Second Priority Refinancing Debt, (c) Permitted Unsecured Refinancing Debt or (d) other Indebtedness incurred pursuant to a Refinancing Amendment (including, without limitation, Other Term Loans and Other Revolving Loans), in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, then-existing Term Loans, Revolving Loans (and/or unused Revolving Commitments) and/or Credit Agreement Refinancing Indebtedness (**“Refinanced Debt”**); *provided* that (i) such Indebtedness has the same or a later maturity and, except in the case of any Indebtedness consisting of a revolving credit facility, a Weighted Average Life to Maturity equal to or greater than the Refinanced Debt (*provided* that the stated maturity or Weighted Average Life to Maturity may be shorter if the stated maturity of any principal payment (including any amortization payments) is not earlier than the earlier of (1) the stated maturity of such Indebtedness in effect prior to such refinancing or (2) 91 days after the Final Maturity Date in effect at the time of issuance), (ii) such Indebtedness shall not have a greater principal amount than the principal amount of the Refinanced Debt, *plus*, accrued interest, fees and premiums (if any) thereon, *plus*, other fees and expenses associated with the refinancing (including any upfront fees and original issue discount), (iii) such Refinanced Debt shall be repaid, defeased or satisfied and discharged on a dollar-for-dollar basis, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid, on the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained, (iv) to the extent such Credit Agreement Refinancing Indebtedness consists of a revolving credit facility, the Revolving Commitments shall be reduced and/or terminated, as applicable, such that the Total Revolving Commitments (after giving effect to such Credit Agreement Refinancing Indebtedness and such reduction or termination) shall not exceed the Total Revolving Commitments immediately prior to the incurrence of such Credit Agreement Refinancing Indebtedness, *plus*, accrued interest, fees and premiums (if any) thereon, *plus*, other fees and expenses associated with the refinancing (including any upfront fees and original issue discount), (v) the terms (excluding

pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of which are (as determined by Borrower in good faith), taken as a whole, not materially more restrictive than the terms set forth in this Agreement, (vi) Borrower shall be the sole borrower thereunder and no Subsidiary of Borrower shall guaranty such Indebtedness unless such Subsidiary is also a Guarantor hereunder, and (vii) such Indebtedness shall not be secured by any Liens, except Liens on the Collateral.

“**Credit Documents**” shall mean (a) this Agreement, (b) the Notes, (c) the L/C Documents, (d) the Security Documents, (e) any Pari Passu Intercreditor Agreement, (f) any Second Lien Intercreditor Agreement, (g) any Extension Amendment, (h) the Completion Guaranty, (i) any Subordination Agreement and (j) each other agreement entered into by any Credit Party with Administrative Agent, Collateral Agent and/or any Lender, in connection herewith or therewith evidencing or governing the Obligations (other than the Fee Letter), all as amended from time to time, but shall not include a Swap Contract or Cash Management Agreement.

“**Credit Parties**” shall mean Borrower and the Guarantors.

“**Credit Swap Contracts**” shall mean any Swap Contract between Borrower and/or any or all of its Restricted Subsidiaries and a Swap Provider (excluding any Swap Contract of the type described in the last sentence of the definition of Swap Contract).

“**Creditor**” shall mean each of (a) each Agent, (b) each L/C Lender and (c) each Lender.

“**Cure Expiration Date**” has the meaning assigned to such term in Section 11.03.

“**DB**” shall mean Deutsche Bank AG New York Branch.

“**Debt Fund Affiliate Lender**” shall mean a Lender that is an Affiliate of Borrower that is primarily engaged in, or advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and for which neither Wynn Resorts nor its Subsidiaries, directly or indirectly, possesses the power to direct or cause the direction of the investment policies of such entity.

“**Debt Issuance**” shall mean the incurrence by Borrower or any Restricted Subsidiary of any Indebtedness after the Closing Date (other than as permitted by Section 10.01). The issuance or sale of any debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall be deemed a Debt Issuance for purposes of Section 2.10(a).

“**Debtor Relief Laws**” shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdiction from time to time in effect.

“**Declined Amounts**” shall have the meaning given to such term in Section 2.10(b).

“**Default**” shall mean any event or condition that constitutes an Event of Default or that would become, with notice or lapse of time or both, an Event of Default.

“**Default Rate**” shall mean a *per annum* rate equal to, (i) in the case of principal on any Loan, the rate which is 2% in excess of the rate borne by such Loan immediately prior to the respective payment default or other Event of Default, and (ii) in the case of any other Obligations, the rate which is 2% in excess of the rate otherwise applicable to ABR Loans which are Revolving Loans from time to time (determined based on a weighted average if multiple Tranches of Revolving Commitments are then outstanding).

“**Defaulting Lender**” shall mean, subject to Section 2.14(b), any Lender that (i) has failed to (A) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender has notified Administrative Agent and Borrower in writing that such failure is the result of such

Lender's good faith determination that one or more conditions precedent to funding has not been satisfied (which conditions precedent, together with the applicable default, if any, will be specifically identified in such writing), or (B) comply with its obligations under this Agreement to make a payment to the L/C Lender in respect of a L/C Liability, and/or make a payment to a Lender of any amount required to be paid to it hereunder, in each case within two (2) Business Days of the date when due, (ii) has notified Borrower, Administrative Agent or an L/C Lender in writing, or has stated publicly, that it will not comply with any such funding obligation hereunder, unless such writing or statement states that such position is based on such Lender's good faith determination that one or more conditions precedent to funding cannot be satisfied (which conditions precedent, together with the applicable default, if any, will be specifically identified in such writing or public statement), or has defaulted generally (excluding bona fide disputes) on its funding obligations under other loan agreements or credit agreements or other similar agreements, (iii) a Lender Insolvency Event has occurred and is continuing with respect to such Lender or its Parent Company or (iv) any Lender that has, for three or more Business Days after written request of Administrative Agent or Borrower, failed to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender will cease to be a Defaulting Lender pursuant to this clause (iv) upon Administrative Agent's and Borrower's receipt of such written confirmation). Any determination of a Defaulting Lender under clauses (i) through (iv) above will be conclusive and binding absent manifest error.

"Designated Jurisdiction" shall mean any country or territory to the extent that such country or territory is, or whose government is, the subject of any Sanction broadly prohibiting dealings with such government, country, or territory, including, without limitation, currently, Cuba, Iran, Burma, North Korea, Sudan and Syria.

"Designated Non-Cash Consideration" shall mean the fair market value of non-cash consideration received by Borrower or any of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officers' Certificate setting forth the basis of such valuation, executed by a financial officer of Borrower, *minus* the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-Cash Consideration.

"Designation" has the meaning set forth in Section 9.12(a).

"Designation Amount" has the meaning set forth in Section 9.12(a)(ii).

"Development Financing" shall mean, without duplication, the aggregate principal amount (not to exceed \$500.0 million at any time prior to the Initial Test Date), of outstanding Indebtedness (including Indebtedness hereunder), the proceeds of which, at the time of determination, as certified by a Responsible Officer of Borrower, are pending application and are intended to be used to fund, or have previously been applied to, in each case, (i) Expansion Capital Expenditures of Borrower or any Restricted Subsidiary, (ii) Investments in or Capital Expenditures or other expenditures with respect to a Development Project or (iii) interest, fees or related charges with respect to such Indebtedness; *provided* that (A) Borrower or the Restricted Subsidiary or other Person that owns assets subject to the Expansion Capital Expenditure or Development Project, as applicable, has not at any time abandoned development efforts with respect to such Expansion Capital Expenditure or Development Project, as applicable, for a period in excess of 90 consecutive days (other than as a result of a force majeure event or inability to obtain requisite Gaming Approvals or other governmental authorizations, so long as, in the case of any such Gaming Approvals or other governmental authorizations, Borrower or a Restricted Subsidiary or other applicable Person is diligently pursuing such Gaming Approvals or governmental authorizations) and (B) no such Indebtedness shall constitute Development Financing from and after the second full fiscal quarter following the fiscal quarter in which occurs the earlier of (x) opening of the applicable Expansion Capital Expenditures (or the business represented thereby) or Development Project to the general public for business and (y) completion of construction of the applicable Expansion Capital Expenditures or Development Project (such second full fiscal quarter, the **"Development Financing Initial Fiscal Quarter"**).

"Development Financing Initial Fiscal Quarter" shall have the meaning assigned to such term in the definition of "Development Financing."

"Development Project" shall mean any Facility under development (excluding the Wynn Massachusetts Project) directly or indirectly by (a) Borrower or any of its Restricted Subsidiaries, (b) any Joint Ventures in which

Borrower or any of its Restricted Subsidiaries, directly or indirectly, has control or with whom it has a management or similar contract and in which Borrower or any of its Restricted Subsidiaries owns (directly or indirectly) at least 25% of the Equity Interest of such Joint Venture or (c) other Persons with respect to which Borrower or any of its Restricted Subsidiaries has (directly or indirectly through Subsidiaries) entered into a management or similar contract and such contract remains in full force and effect at the time of such determination.

“Discharged” shall mean Indebtedness that has been defeased (pursuant to a contractual or legal defeasance) or discharged pursuant to the prepayment or deposit of amounts sufficient to satisfy such Indebtedness as it becomes due or irrevocably called for redemption (and regardless of whether such Indebtedness constitutes a liability on the balance sheet of the obligors thereof); *provided, however*, that the Indebtedness shall be deemed Discharged if the payment or deposit of all amounts required for defeasance or discharge or redemption thereof have been made even if certain conditions thereto have not been satisfied, so long as such conditions are reasonably expected to be satisfied within 95 days after such prepayment or deposit.

“Discount Range” shall have the meaning provided in Exhibit N hereto.

“Disinterested Director” shall mean, with respect to any person and transaction, a member of the Board of Directors of such person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“Disqualification” shall mean, with respect to any Lender: (a) the failure of that person timely to file pursuant to applicable Gaming Laws (i) any application requested of that person by any Gaming Authority in connection with any licensing required of that person as a lender to Borrower; or (ii) any required application or other papers in connection with determination of the suitability of that person as a lender to Borrower; (b) the withdrawal by that person (except where requested or permitted by the Gaming Authority) of any such application or other required papers; (c) any finding by a Gaming Authority that there is reasonable cause to believe that such person may be found unqualified or unsuitable; or (d) any final determination by a Gaming Authority pursuant to applicable Gaming Laws: (i) that such person is “unsuitable” as a lender to Borrower; (ii) that such person shall be “disqualified” as a lender to Borrower; or (iii) denying the issuance to that person of any license or other approval required under applicable Gaming Laws to be held by all lenders to Borrower.

“Disqualified Capital Stock” shall mean, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable or redeemable at the sole option of the holder thereof (other than solely (x) for Qualified Capital Stock or upon a sale of assets, casualty event or a change of control, in each case, subject to the prior payment in full of the Obligations, (y) as a result of a redemption required by Gaming Law or (z) as a result of a redemption that by the terms of such Equity Interest is contingent upon such redemption not being prohibited by this Agreement), pursuant to a sinking fund obligation or otherwise (other than solely for Qualified Capital Stock) or exchangeable or convertible into debt securities of the issuer thereof at the sole option of the holder thereof, in whole or in part, on or prior to the date that is 181 days after the Final Maturity Date then in effect at the time of issuance thereof.

“Disqualified Lenders” shall mean such Persons that have been specified in writing to the Administrative Agent (it being understood that the Administrative Agent will distribute the list of such Persons to the Lenders) (a) at least 10 Business Days prior to the Closing Date as being “Disqualified Lenders” and (b) within 10 Business Days after the end of each fiscal quarter, *provided*, that (i) if no Persons are specified in writing to the Administrative Agent pursuant to clause (b) for any fiscal quarter, the Persons specified in writing to the Administrative Agent with respect to the previous fiscal quarter (or, if no previous fiscal quarter, pursuant to clause (a) above), shall be deemed to have been specified in writing to the Administrative Agent for such fiscal quarter, and (ii) in no event shall any Person be specified in writing to the Administrative Agent pursuant to clause (b) above at any time that such Person is a Lender hereunder.

“Documentation Agent” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as documentation agent hereunder.

“Dollar Equivalent” shall mean, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternate Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable L/C Lender, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternate Currency.

“Dollars” and **“\$”** shall mean the lawful money of the United States.

“Domestic Subsidiary” of any Person shall mean any Subsidiary of such Person incorporated, organized or formed in the United States, any state thereof or the District of Columbia.

“Eligible Assignee” shall mean and include (i) a commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other “accredited investor” (as defined in Regulation D), (ii) solely for purposes of Borrower Loan Purchases, Borrower and its Restricted Subsidiaries, and (iii) so long as in compliance with Sections 13.05(e) and (f), as applicable, Affiliate Lenders and Debt Fund Affiliates; *provided, however*, that (x) other than as set forth in clause (ii) of this definition, neither Borrower nor any of Borrower’s Affiliates or Subsidiaries shall be an Eligible Assignee, (y) Eligible Assignee shall not include any Person that is a Competitor unless consented to in writing by Borrower and (z) Eligible Assignee shall not include any Person who is a Defaulting Lender or is subject to a Disqualification.

“Employee Benefit Plan” shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) that is maintained or contributed to by Borrower or any of its Restricted Subsidiaries.

“Encore at Wynn Las Vegas” means the hotel tower, casino facility and retail and convention space that is part of Wynn Las Vegas and called “Encore at Wynn Las Vegas.”

“Environment” shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as otherwise defined in any Environmental Law.

“Environmental Action” shall mean (a) any notice, claim, demand or other written or, to the knowledge of any Responsible Officer of Borrower, oral communication alleging liability of Borrower or any of its Restricted Subsidiaries for investigation, remediation, removal, cleanup, response, corrective action or other costs, damages to natural resources, personal injury, property damage, fines or penalties resulting from, related to or arising out of (i) the presence, Release or threatened Release in or into the Environment of Hazardous Material at any location or (ii) any violation of Environmental Law, and shall include, without limitation, any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to human health, safety or the Environment arising under Environmental Law and (b) any investigation, monitoring, removal or remedial activities undertaken by or on behalf of Borrower or any of its Restricted Subsidiaries, arising under Environmental Law whether or not such activities are carried out voluntarily.

“Environmental Law” shall mean any and all applicable treaties, laws, statutes, ordinances, regulations, rules, decrees, judgments, orders, consent orders, consent decrees and other binding legal requirements, and the common law, relating to protection of public health or the Environment, the Release or threatened Release of Hazardous Material, natural resources or natural resource damages, or occupational safety or health.

“Equity Contribution” shall mean the Pre-Closing Equity Contribution and the Post-Closing Equity Contribution.

“Equity Contribution Threshold” means \$300.0 million.

“Equity Interests” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership or member’s interests (however designated, whether voting or non-voting), of equity

of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the Closing Date or issued after the Closing Date; *provided, however*, that a debt instrument convertible into or exchangeable or exercisable for any Equity Interests or Swap Contracts entered into as a part of, or in connection with, an issuance of such debt instrument shall not be deemed an Equity Interest.

“Equity Issuance” shall mean (a) any issuance or sale after the Closing Date by Borrower of any Equity Interests (including any Equity Interests issued upon exercise of any Equity Rights) or any Equity Rights, or (b) the receipt by Borrower after the Closing Date of any capital contribution (whether or not evidenced by any Equity Interest issued by the recipient of such contribution). The issuance or sale of any debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall be deemed a Debt Issuance and not an Equity Issuance for purposes of the definition of Equity Issuance Proceeds; *provided, however*, that such issuance or sale shall be deemed an Equity Issuance upon the conversion or exchange of such debt instrument into Equity Interests.

“Equity Issuance Proceeds” shall mean, with respect to any Equity Issuance, the aggregate amount of all cash received in respect thereof by the Person consummating such Equity Issuance net of all investment banking fees, discounts and commissions, legal fees, consulting fees, accountants’ fees, underwriting discounts and commissions and other fees and expenses actually incurred in connection therewith.

“Equity Rights” shall mean, with respect to any Person, any then-outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including any stockholders’ or voting trust agreements) for the issuance, sale, registration or voting of any additional Equity Interests of any class, or partnership or other ownership interests of any type in, such Person; *provided, however*, that a debt instrument convertible into or exchangeable or exercisable for any Equity Interests shall not be deemed an Equity Right.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Entity” shall mean any member of an ERISA Group.

“ERISA Event” shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Pension Plan (other than an event for which the 30-day notice requirement is waived); (b) with respect to any Pension Plan, the failure to satisfy the minimum funding standard under Section 412 of the Code and Section 302 of ERISA, whether or not waived, the failure by any ERISA Entity to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the incurrence by any ERISA Entity of any liability under Title IV of ERISA with respect to the termination of any Pension Plan; (d) the receipt by any ERISA Entity from the PBGC or a plan administrator of any notice indicating an intent to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan; (e) the occurrence of any event or condition which would reasonably constitute grounds under ERISA for the termination of or the appointment of a trustee to administer, any Pension Plan; (f) the incurrence by any ERISA Entity of any liability with respect to the withdrawal or partial withdrawal from any Pension Plan or Multiemployer Plan; (g) the receipt by an ERISA Entity of any notice concerning the imposition of Withdrawal Liability on any ERISA Entity or a determination that a Multiemployer Plan is insolvent or in reorganization, within the meaning of Title IV of ERISA or in “endangered” or “critical” status, within the meaning of Section 432 of the Code or Section 305 of ERISA; (h) a failure by any ERISA Entity to pay when due (after expiration of any applicable grace period) any installment payment with respect to withdrawal liability under Section 4201 of ERISA; (i) the withdrawal of any ERISA Entity from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such ERISA Entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; or (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in liability to any ERISA Entity.

“**ERISA Group**” shall mean Borrower or any of its Restricted Subsidiaries and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with Borrower and its Restricted Subsidiaries, are treated as a single employer under Section 414(b) or (c) of the Code.

“**Events of Default**” has the meaning set forth in Section 11.01.

“**Excess Cash Flow**” shall mean, for any fiscal year of Borrower, an amount, if positive, equal to (without duplication):

- (a) Consolidated Net Income; *plus*
- (b) an amount equal to the amount of all non-cash charges or losses (including write-offs or write-downs, depreciation expense and amortization expense including amortization of goodwill and other intangibles) to the extent deducted in arriving at such Consolidated Net Income (excluding any such non-cash expense to the extent that it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period and that did not reduce Excess Cash Flow at the time paid); *plus*
- (c) the decrease, if any, in Working Capital from the beginning of such period to the end of such period (for the avoidance of doubt, an increase in negative Working Capital is a decrease in Working Capital); *plus*
- (d) any amounts received from the early extinguishment of Swap Contracts that are not included in Consolidated Net Income; *minus*
- (e) the increase, if any, of Working Capital from the beginning of such period to the end of such period; *minus*
- (f) any amounts paid in connection with the early extinguishment of Swap Contracts that are not included in Consolidated Net Income; *minus*
- (g) the amount of Capital Expenditures made in cash during such period, except to the extent financed with the proceeds of Indebtedness, Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*
- (h) the amount of principal payments of the Loans, Other Applicable Indebtedness and Other First Lien Indebtedness of Borrower and its Restricted Subsidiaries (excluding repayments of Revolving Loans or other revolving indebtedness, except to the extent the Revolving Commitments or commitments in respect of such other revolving debt, as applicable, are permanently reduced in connection with such repayments), in each case, except to the extent financed with the proceeds of Indebtedness, Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*
- (i) the amount of Investments made during such period pursuant to Section 10.04 (other than Sections 10.04(a), (b), (c), (d), (e), (f) (except to the extent such amount increased Consolidated Net Income), (g), (h) (to the extent not taken into account in arriving at Consolidated Net Income), (j), (k), (l), (o), (p), (r), (s), (x) and (y)), except to the extent financed with the proceeds of Indebtedness (other than Revolving Loans), Asset Sales or Casualty Events (to the extent such proceeds did not increase Consolidated Net Income) of Borrower or its Restricted Subsidiaries; *minus*
- (j) the amount of all non-cash gains to the extent included in arriving at such Consolidated Net Income (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash loss in any prior period); *minus*
- (k) any expenses or reserves for liabilities to the extent that Borrower or any Restricted Subsidiary is entitled to indemnification or reimbursement therefor under binding agreements or insurance claims therefor to the extent Borrower has not received such indemnity or reimbursement payment, in each case, to the extent not taken into account in arriving at Consolidated Net Income.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Excluded Designation**” has the meaning set forth in Section 9.13(a).

“**Excluded Immaterial Subsidiaries**” has the meaning set forth in Section 9.13(a).

“**Excluded Information**” shall have the meaning provided in Section 12.07(b).

“Excluded Subsidiary” shall mean (a) any Unrestricted Subsidiary, (b) any Immaterial Subsidiary, (c) any Foreign Subsidiary or CFC Holdco, (d) any Subsidiary that is prohibited by applicable law, rule or regulation (including, without limitation, any Gaming Laws) or by any agreement, instrument or other undertaking to which such Subsidiary is a party or by which it or any of its property or assets is bound from guaranteeing the Obligations; *provided* that any such agreement, instrument or other undertaking (i) is in existence on the Closing Date and listed on Schedule 1.01(b) (or, with respect to a Subsidiary acquired after the Closing Date, as of the date of such acquisition) and (ii) in the case of a Subsidiary acquired after the Closing Date, was not entered into in connection with or anticipation of such acquisition, (e) any Subsidiary with respect to which guaranteeing the Obligations would require consent, approval, license or authorization from any Governmental Authority (including, without limitation, any Gaming Authority), unless such consent, approval, license or authorization has been received and is in effect, (f) from and after the Wynn Las Vegas Reorganization, but prior to the Wynn Las Vegas 2020 and 2022 Note Repayment, the Wynn Las Vegas Entities, (g) each Subsidiary that is not a Wholly Owned Subsidiary (for so long as such Subsidiary remains a non-Wholly Owned Subsidiary) and (h) any other Subsidiary with respect to which, in the reasonable judgment of Administrative Agent (which shall be confirmed in writing by notice to Borrower), the cost or other consequences (including any adverse tax consequences) of providing a guarantee shall be excessive in view of the benefits to be obtained by the Lenders therefrom.

“Excluded Swap Obligation” shall mean, with respect to any Guarantor, (x) as it relates to all or a portion of the Guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” shall mean any of the following Taxes imposed on or with respect to any Agent or Lender or required to be withheld or deducted from any payment to any Agent or Lender: (a) income, franchise or branch profits Taxes imposed on or measured by net income or net profits (however denominated), in each case, (i) imposed by any jurisdiction as a result of such recipient being organized under the laws of, having its principal office located in or, in the case of any Lender, having its Applicable Lending Office located in the jurisdiction imposing such Tax, or (ii) that are Other Connection Taxes, (b) in the case of any Lender, other than an assignee pursuant to a request by Borrower under Section 2.11(a), any U.S. federal withholding tax that is imposed on amounts payable to such Person under the laws in effect at the time such Person becomes a party to this Agreement (or designates a new Applicable Lending Office), except to the extent that such Person (or its assignor, if any) was entitled, immediately prior to the designation of a new Applicable Lending Office (or assignment), to receive additional amounts from Borrower with respect to such withholding Tax pursuant to Section 5.06(a), (c) Taxes attributable to such Lender’s failure to comply with Sections 5.06(b) or (d) and (d) any Taxes imposed under FATCA.

“Executive Order” has the meaning set forth in Section 8.22(a).

“Existing Credit Agreement” shall have the meaning provided in the First Amendment.

“Existing Revolving Loans” shall have the meaning provided in Section 2.13(b).

“Existing Revolving Tranche” shall have the meaning provided in Section 2.13(b).

“Existing Term Facility Loans” shall have the meaning provided in Section 2.03(c)(ii).

“Existing Term Loan Tranche” shall have the meaning provided in Section 2.13(a).

“Existing Tranche” shall mean any Existing Term Loan Tranche or Existing Revolving Tranche.

“Expansion Capital Expenditures” shall mean any capital expenditure by Borrower or any of its Restricted Subsidiaries in respect of the purchase or other acquisition of any fixed or capital assets or the refurbishment of existing assets or properties that, in Borrower’s reasonable determination, adds to or improves (or is reasonably expected to add to or improve) the property of Borrower and its Restricted Subsidiaries, excluding any such capital expenditures fully financed with Net Available Proceeds of an Asset Sale or Casualty Event and excluding capital expenditures made in the ordinary course made to maintain, repair, restore or refurbish the property of Borrower and its Restricted Subsidiaries in its then existing state or to support the continuation of such Person’s day to day operations as then conducted.

“Extended Revolving Commitments” shall have the meaning provided in Section 2.13(b).

“Extended Revolving Loans” shall have the meaning provided in Section 2.13(b).

“Extended Term Loans” shall have the meaning provided in Section 2.13(a).

“Extending Lender” shall have the meaning provided in Section 2.13(c).

“Extension Amendment” shall have the meaning provided in Section 2.13(d).

“Extension Date” shall mean any date on which any Existing Term Loan Tranche or Existing Revolving Tranche is modified to extend the related scheduled maturity date(s) in accordance with Section 2.13 (with respect to the Lenders under such Existing Term Loan Tranche or Existing Revolving Tranche which agree to such modification).

“Extension Election” shall have the meaning provided in Section 2.13(c).

“Extension Request” shall mean any Term Loan Extension Request or Revolving Extension Request.

“Extension Tranche” shall mean all Extended Term Loans of the same tranche or Extended Revolving Commitments of the same tranche that are established pursuant to the same Extension Amendment (or any subsequent Extension Amendment to the extent such Extension Amendment expressly provides that the Extended Term Loans or Extended Revolving Commitments, as applicable, provided for therein are intended to be a part of any previously established Extension Tranche).

“Facility” shall mean any establishment, facility and other property or assets ancillary or related thereto or used in connection therewith, the primary focus of which is, or when completed will be, the hospitality, gaming, leisure and/or consumer industries (including, without limitation, any Gaming Facility).

“fair market value” shall mean, with respect to any Property, a price (after taking into account any liabilities relating to such Property), as determined in good faith by Borrower, that could be negotiated in an arm’s-length free market transaction, for cash, between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction.

“Fair Share” has the meaning set forth in Section 6.10.

“Fair Share Shortfall” has the meaning set forth in Section 6.10.

“FATCA” shall mean Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any regulations thereunder or official governmental interpretations thereof, any agreements entered into pursuant to current

Section 1471(b) of the Code (or any amended or successor version described above), any intergovernmental agreements (and any related laws, regulations or official guidance) implementing the foregoing.

“Federal Funds Rate” shall mean, for any day, the rate *per annum* (rounded upwards, if necessary, to the nearest 1/100th 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, however*, that (a) if the day for which such rate is to be determined 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 such rate is not so published for any Business Day, the Federal Funds Rate for such Business Day shall be the average rate quoted to Administrative Agent on such Business Day on such transactions by three federal funds brokers of recognized standing, as determined by Administrative Agent.

“Fee Letter” shall mean the fee letter agreement dated as of the date hereof, between Borrower and Administrative Agent.

“Final Maturity Date” shall mean the latest of the latest R/C Maturity Date, the Term Facility Maturity Date, the latest final maturity date applicable to any Extended Term Loans, the latest final maturity date applicable to any Extended Revolving Commitments, the latest final maturity date applicable to any Other Term Loans and the latest final maturity date applicable to any Other Revolving Loans.

“Financial Maintenance Covenant” shall mean the covenant set forth in Section 10.08(a).

“First Amendment” shall mean that certain **First Amendment to Credit Agreement, dated as of November 5, 2015, by and among Borrower, the Guarantors party thereto, Administrative Agent, Collateral Agent and the other parties party thereto.**

“First Amendment Effective Date” shall mean the **“Agreement Effective Date”** as defined in the **First Amendment.**

“Fitch” shall mean Fitch Ratings Inc., or any successor entity thereto.

“Flood Insurance Laws” shall mean, collectively, (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (d) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender” shall mean a Lender that is not a U.S. Person.

“Foreign Subsidiary” shall mean any Subsidiary that is organized under the laws of a jurisdiction other than the United States, any state thereof, or the District of Columbia.

“Funding Credit Party” has the meaning set forth in Section 6.10.

“Funding Date” shall mean the date of the making of any extension of credit (whether the making of a Loan or the issuance of a Letter of Credit) hereunder (including the Closing Date).

“GAAP” shall mean generally accepted accounting principles set forth as of the relevant date 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 agencies with similar functions of comparable stature and authority within the U.S. accounting profession), including, without limitation, any Accounting Standards Codifications, which are applicable to the circumstances as of the date of determination.

“Gaming Approval” shall mean any and all approvals, authorizations, permits, consents, rulings, orders or directives of any Governmental Authority (including, without limitation, any Gaming Authority) (a) necessary to enable Borrower or any of its Restricted Subsidiaries to engage in, operate or manage the casino, gambling or gaming business or otherwise continue to conduct, operate or manage such business substantially as is presently conducted, operated or managed or contemplated to be conducted, operated or managed following the Closing Date (after giving effect to the Transactions), (b) required by any Gaming Law or (c) necessary as is contemplated on the Closing Date (after giving effect to the Transactions), to accomplish the financing and other transactions contemplated hereby after giving effect to the Transactions.

“Gaming Authority” shall mean any Governmental Authority with regulatory, licensing or permitting authority or jurisdiction over any gaming business or enterprise or any Gaming Facility or with regulatory, licensing or permitting authority or jurisdiction over any gaming operation (or proposed gaming operation) owned, managed, leased or operated by Borrower or any of its Restricted Subsidiaries.

“Gaming Facility” shall mean any gaming establishment, facility and other property or assets ancillary or related thereto or used in connection therewith, including, without limitation, any casinos, hotels, resorts, theaters, parking facilities, timeshare operations, retail shops, restaurants, other buildings, land, golf courses and other recreation and entertainment facilities, marinas, vessels and related equipment.

“Gaming Laws” shall mean all applicable provisions of all: (a) constitutions, treaties, statutes or laws governing Gaming Facilities (including, without limitation, card club casinos) and rules, regulations, codes and ordinances of, and all administrative or judicial orders or decrees or other laws pursuant to which, any Gaming Authority possesses regulatory, licensing, investigatory or permit authority over gambling, gaming or Gaming Facility activities conducted, operated or managed by Borrower or any of its Restricted Subsidiaries within its jurisdiction; (b) Gaming Approvals; and (c) orders, decisions, determinations, judgments, awards and decrees of any Gaming Authority.

“Gaming License” shall mean any Gaming Approval or other casino, gambling or gaming license issued by any Gaming Authority covering any Gaming Facility that permits the licensee to operate a gaming establishment.

“Governmental Authority” shall mean any government or political subdivision of the United States or any other country, whether federal, state, provincial or local, or any agency, authority, board, bureau, central bank, commission, office, division, department or instrumentality thereof or therein, including, without limitation, any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government or political subdivision including, without limitation, any Gaming Authority.

“Gross Adjusted Revenues” shall mean, for any period, the Net Revenues for the relevant period, *plus* promotions and discounts provided by Borrower and its Restricted Subsidiaries during such period calculated in accordance with GAAP.

“Guarantee” shall mean the guarantee of each Guarantor pursuant to Article VI.

“Guaranteed Obligations” has the meaning set forth in Section 6.01.

“Guarantors” shall mean each of the Persons listed on Schedule 1.01(a) attached hereto and each Wholly Owned Restricted Subsidiary that may hereafter execute a Joinder Agreement pursuant to Section 9.11, together with their successors and permitted assigns, and **“Guarantor”** shall mean any one of them; *provided, however*, that notwithstanding the foregoing, Guarantors shall not include any Subsidiary of Borrower that is an Excluded Subsidiary or any Person that has been released as a Guarantor in accordance with the terms of the Credit Documents.

“Hazardous Material” shall mean any material, substance, waste, constituent, compound, pollutant or contaminant including, without limitation, petroleum (including, without limitation, crude oil or any fraction thereof or any petroleum product or waste) subject to regulation or which could reasonably be expected to give rise to liability under Environmental Law.

“Immaterial Subsidiary” shall mean, at any time, any Restricted Subsidiary of Borrower having, together with all other Immaterial Subsidiaries, tangible assets with an aggregate fair market value of less than the Immaterial Subsidiary Threshold Amount as of the most recent Calculation Date.

“Immaterial Subsidiary Threshold Amount” shall mean \$75.0 million.

“Impacted Loans” has the meaning set forth in Section 5.02.

“Increased Amount” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness, the accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies.

“incur” shall mean, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), permit to exist, assume, guarantee or otherwise become liable in respect of such Indebtedness or other obligation (and **“incurrence,” “incurred”** and **“incurring”** shall have meanings correlative to the foregoing).

“Indebtedness” of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person; (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding (i) trade accounts payable and accrued obligations incurred in the ordinary course of business, (ii) the financing of insurance premiums, (iii) any such obligations payable solely through the issuance of Equity Interests and (iv) any earn-out obligation until such obligation appears in the liabilities section of the balance sheet of such Person in accordance with GAAP (excluding disclosure on the notes and footnotes thereto); *provided* that any earn-out obligation that appears in the liabilities section of the balance sheet of such Person shall be excluded, to the extent (x) such Person is indemnified for the payment thereof or (y) amounts to be applied to the payment therefor are in escrow); (e) all Indebtedness (excluding prepaid interest thereon) of others secured by any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; *provided, however*, that if such obligations have not been assumed, the amount of such Indebtedness included for the purposes of this definition will be the amount equal to the lesser of the fair market value of such property and the amount of the Indebtedness secured; (f) with respect to any Capital Lease Obligations of such Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP; (g) all net obligations of such Person in respect of Swap Contracts; (h) all obligations of such Person as an account party in respect of letters of credit and bankers’ acceptances, except obligations in respect of letters of credit issued in support of obligations not otherwise constituting Indebtedness shall not constitute Indebtedness except to the extent such letter of credit is drawn and not reimbursed within five (5) Business Days of such drawing; (i) all obligations of such Person in respect of Disqualified Capital Stock; and (j) all Contingent Obligations of such Person in respect of Indebtedness of others of the kinds referred to in clauses (a) through (i) above. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner unless recourse is limited, in which case the amount of such Indebtedness shall be the amount such Person is liable therefor (except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor). The amount of Indebtedness of the type described in clause (d) shall be calculated based on the net present value thereof. The amount of Indebtedness of the type referred to in clause (g) above of any Person shall be zero unless and until such Indebtedness shall be terminated, in which case the amount of such Indebtedness shall be the then termination payment due thereunder by such Person. For the avoidance of doubt, it is understood and agreed that (x) casino “chips” and gaming winnings of customers, (y) any obligations of such Person in respect of Cash Management Agreements and (z) any obligations of such Person in respect of employee deferred compensation and benefit plans shall not constitute Indebtedness.

“Indemnitee” has the meaning set forth in Section 13.03(b).

“Initial Perfection Certificate” has the meaning set forth in the definition of “Perfection Certificate.”

“**Initial Test Date**” has the meaning set forth in Section 10.8.

“**Intellectual Property**” has the meaning set forth in Section 8.18.

“**Intercompany Contribution Indebtedness**” shall mean unsecured Indebtedness (including unsecured Indebtedness convertible into or exchangeable or exercisable for any Equity Interests) of Borrower or all or any Restricted Subsidiaries owed to Wynn Resorts or any other Affiliate of Borrower (other than Borrower or a Subsidiary of Borrower) that (a) is subject to a Subordination Agreement or otherwise contains subordination provisions reasonably satisfactory to Administrative Agent and (b) shall not have a scheduled maturity date or any scheduled principal payments or be subject to any mandatory redemption, prepayment, or sinking fund or interest payment, fee payment or similar payment due prior to the date that is 91 days after the Final Maturity Date then in effect at the time of issuance.

“**Interest Period**” shall mean, as to each LIBOR Loan, the period commencing on the date such LIBOR Loan is disbursed or converted to or continued as a LIBOR Loan and, **subject to Section 2.01(c)(ii)**, ending on the date one, two, three or six months thereafter, as selected by Borrower in its Notice of Borrowing or Notice of Continuation/Conversion, as applicable, or such other period that is twelve months or less requested by Borrower and consented to by, in the case of a period that is one month or less, the Administrative Agent and, in all cases of a period that is twelve months or less but greater than one month, all the applicable Lenders; *provided that*:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a LIBOR Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to LIBOR Loan 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 the calendar month at the end of such Interest Period; and

(iii) no Interest Period for a Class shall extend beyond the maturity date for such Class.

Notwithstanding the foregoing, (x) as to any LIBOR Loan made on a day that is not the last Business Day of a calendar month, Borrower may select an Interest Period that shall commence on the date on which such Loan is made and expire on the last Business Day of such calendar month and thereafter revert to the Interest Period selected in compliance with the foregoing, and (y) as to any LIBOR Loan made, or continued or converted pursuant to Section 2.09, prior to the expiration of the **applicable** Term Facility Availability Period, Borrower may select an Interest Period that expires on the last Business Day of ~~the~~**such** Term Facility Availability Period and thereafter revert to the Interest Period selected in compliance with the foregoing.

“**Interest Rate Protection Agreement**” shall mean, for any Person, an interest rate swap, cap or collar agreement or similar arrangement between such Person and one or more financial institutions providing for the transfer or mitigation of interest risks either generally or under specific contingencies.

“**Investments**” of any Person shall mean (a) any loan or advance of funds or credit by such Person to any other Person, (b) any Contingent Obligation by such Person in respect of the Indebtedness of any other Person (*provided that* upon termination of any such Contingent Obligation, no Investment in respect thereof shall be deemed outstanding, except as contemplated in clause (e) below), (c) any purchase or other acquisition of any Equity Interests or indebtedness or other securities of any other Person, (d) any capital contribution by such Person to any other Person, (e) without duplication of any amounts included under clause (b) above, any payment under any Contingent Obligation by such Person in respect of the Indebtedness or other obligation of any other Person or (f) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of the definition of “Unrestricted Subsidiary” and Section 10.04, “Investment” shall include the portion (proportionate to Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of any Subsidiary of Borrower at the time of Designation of such Subsidiary as an Unrestricted Subsidiary pursuant to Section 9.12 (excluding any Subsidiaries

designated as Unrestricted Subsidiaries on the Closing Date and set forth on Schedule 9.12); *provided, however*, that upon the Revocation of a Subsidiary that was Designated as an Unrestricted Subsidiary after the Closing Date, the amount of outstanding Investments in Unrestricted Subsidiaries shall be deemed to be reduced by the lesser of (x) the fair market value of such Subsidiary at the time of such Revocation and (y) the amount of Investments in such Subsidiary deemed to have been made (directly or indirectly) at the time of, and made (directly or indirectly) since, the Designation of such Subsidiary as an Unrestricted Subsidiary, to the extent that such amount constitutes an outstanding Investment under Section 10.04 at the time of such Revocation.

“IP Licensing Fees” shall mean any fees payable by Borrower or a Restricted Subsidiary to any Affiliate (other than Borrower or a Restricted Subsidiary) pursuant to (a) (i) that certain 2014 Intellectual Property Licensing Agreement, dated as of November 20, 2014, among Wynn Resorts Holdings, LLC, Wynn Resorts and Wynn Massachusetts and (ii) that certain Intellectual Property Licensing Agreement, dated as of December 14, 2004, among Wynn Resorts, Wynn Resorts Holdings, LLC and Wynn Las Vegas and (b) without duplication to any fees paid under any agreement described in clause (a), licensing agreements in form and substance substantially similar to any agreement described in clause (a).

“ISP” shall mean, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Joinder Agreements” shall mean each Joinder Agreement substantially in the form of Exhibit J attached hereto or such other form as is reasonably acceptable to Administrative Agent and each Joinder Agreement to be entered into pursuant to the Security Agreement.

“Joint Venture” shall mean any Person, other than an individual or a Wholly Owned Subsidiary of Borrower, in which Borrower or a Restricted Subsidiary of Borrower (directly or indirectly) holds or acquires an ownership interest (whether by way of capital stock, partnership or limited liability company interest, or other evidence of ownership).

“Judgment Currency Conversion Date” has the meaning set forth in Section 13.15(a).

“Junior Financing” shall mean unsecured Indebtedness (including unsecured Indebtedness convertible into or exchangeable or exercisable for any Equity Interests) of Borrower or all or any Restricted Subsidiaries (a) (i) that is subordinated in right of payment to the Loans and contains subordination provisions that are customary in the good faith determination of Borrower for senior subordinated notes or subordinated notes issued under Rule 144A of the Securities Act (or other corporate issuers in private placements or public offerings of securities) or (ii) that contains subordination provisions reasonably satisfactory to Administrative Agent and (b) that shall not have a scheduled maturity date or any scheduled principal payments or be subject to any mandatory redemption, prepayment, or sinking fund (except for customary change of control provisions and, in the case of bridge facilities, customary mandatory redemptions or prepayments with proceeds of Permitted Refinancings thereof (which Permitted Refinancings would constitute Junior Financing) or Equity Issuances, and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Obligations prior to application to such Junior Financing) due prior to the date that is 91 days after the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities allowing extensions on customary terms to at least 91 days after such Final Maturity Date).

“Junior Prepayments” shall have the meaning provided in Section 10.09.

“L/C Commitments” shall mean the commitments of the L/C Lender to issue Letters of Credit pursuant to Section 2.03. The L/C Commitments are part of, and not in addition to, the Revolving Commitments.

“L/C Disbursements” shall mean a payment or disbursement made by any L/C Lender pursuant to a Letter of Credit.

“L/C Documents” shall mean, with respect to any Letter of Credit, collectively, any other agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit)

governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations, each as the same may be amended or modified and in effect from time to time.

“**L/C Interest**” shall mean, for each Revolving Lender, such Lender’s participation interest (or, in the case of each L/C Lender, such L/C Lender’s retained interest) in each L/C Lender’s liability under Letters of Credit and such Lender’s rights and interests in Reimbursement Obligations and fees, interest and other amounts payable in connection with Letters of Credit and Reimbursement Obligations.

“**L/C Lender**” shall mean, as the context may require: (a) each of DB (solely in respect of standby Letters of Credit), Bank of America, N.A., Credit Agricole Corporate and Investment Bank, Fifth Third Bank and BNP Paribas or any of their respective Affiliates, in its capacity as issuer of Letters of Credit issued by it hereunder, together with its successors and assigns in such capacity; and/or (b) any other Revolving Lender or Revolving Lenders selected by Borrower and reasonably acceptable to Administrative Agent (such approval not to be unreasonably withheld or delayed) that agrees to become an L/C Lender, in each case under this clause (b) in its capacity as issuer of Letters of Credit issued by such Lender hereunder, together with its successors and assigns in such capacity.

“**L/C Liability**” shall mean, at any time, without duplication, the sum of (a) the Dollar Equivalent of the Stated Amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all L/C Disbursements that have not yet been reimbursed at such time (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of any Letter of Credit denominated in an Alternate Currency) in respect of all Letters of Credit. The L/C Liability of any Revolving Lender at any time shall mean such Revolving Lender’s participations and obligations in respect of outstanding Letters of Credit at such time.

“**L/C Payment Notice**” has the meaning provided in Section 2.03(d).

“**L/C Sublimit**” shall mean an amount equal to the lesser of (a) \$100.0 million and (b) the Total Revolving Commitments then in effect. With respect to any L/C Lender, such L/C Lender’s L/C Sublimit shall be the percentage of the L/C Sublimit under the preceding sentence set forth on Annex A-3 hereto. The L/C Sublimit is part of, and not in addition to, the Total Revolving Commitments.

“**Laws**” shall mean, collectively, all common law and all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents, including without limitation the interpretation thereof by any Governmental Authority charged with the enforcement thereof.

“**Lead Arrangers**” shall mean, collectively, Deutsche Bank Securities, Inc., Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Credit Agricole Corporate and Investment Bank, Fifth Third Bank, SunTrust Robinson Humphrey, Inc., The Bank of Nova Scotia, BNP Paribas Securities Corp., Sumitomo Mitsui Banking Corporation and UBS Securities LLC, in their capacities as joint lead arrangers and joint bookrunners hereunder.

“**Lease**” shall mean any lease, sublease, franchise agreement, license, occupancy or concession agreement.

“**Lender Insolvency Event**” shall mean that (i) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (ii) such Lender or its Parent Company is the subject of a proceeding under any Debtor Relief Law, or a receiver, trustee, conservator, intervenor, administrator, sequestrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority) has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action authorizing or indicating its consent to or acquiescence in any such proceeding or appointment; *provided, however*, that a Lender Insolvency Event shall not be deemed to exist solely as the result of the acquisition or maintenance of an ownership interest in such Lender or its Parent Company by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or

such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“**Lenders**” shall mean (a) each Person listed on Annexes A-1 and A-2, (b) any Person that becomes a Lender from time to time party hereto pursuant to Section 2.15 and (c) any Person that becomes a “Lender” hereunder pursuant to an Assignment Agreement, in each case, other than any such Person that ceases to be a Lender pursuant to an Assignment Agreement or a Borrower Assignment Agreement. Unless the context requires otherwise, the term “Lenders” shall include the L/C Lender.

“**Letter of Credit Request**” has the meaning set forth in Section 2.03(b).

“**Letters of Credit**” shall have the meaning set forth in Section 2.03(a).

“**LIBO Base Rate**” shall mean, with respect to any LIBOR Loan for any Interest Period, the rate per annum equal to the Intercontinental Exchange Benchmark Administration Ltd. LIBOR (“**ICE LIBOR**”), as published by Reuters (or other commercially available source providing quotations of ICE LIBOR as designated by the Administrative Agent from time to time) at or about 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “LIBO Base Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in the approximate amount of the LIBOR Loan being made, continued or converted by the Administrative Agent and with a term equivalent to such Interest Period would be offered by the Administrative Agent’s London Branch (or other Administrative Agent branch or Affiliate) to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

“**LIBO Rate**” shall mean, for any LIBOR Loan for any Interest Period therefor, a rate *per annum* (rounded upwards, if necessary, to the nearest 1/100th of 1%) determined by Administrative Agent to be equal to the LIBO Base Rate for such Loan for such Interest Period divided by 1 minus the Reserve Requirement (if any) for such Loan for such Interest Period; *provided* that the LIBO Rate shall not be less than 0%. Notwithstanding the foregoing, for purposes of clause (c) of the definition of Alternate Base Rate, the rates referred to above shall be the rates as of 11:00 a.m., London, England time, on the date of determination (rather than the second Business Day preceding the date of determination).

“**LIBOR Loans**” shall mean Loans that bear interest at rates based on rates referred to in the definition of “LIBO Rate.”

“**License Revocation**” shall mean the revocation, failure to renew or suspension of, or the appointment of a receiver, supervisor or similar official with respect to, any Gaming License covering any Gaming Facility owned, leased, operated or used by Borrower or any of its Restricted Subsidiaries.

“**Lien**” shall mean, with respect to any Property, any mortgage, deed of trust, lien, pledge, security interest, or assignment, hypothecation or encumbrance for security of any kind, or any filing of any financing statement under the UCC or any other similar notice of lien under any similar notice or recording statute of any Governmental Authority (other than such financing statement or similar notices filed for informational or precautionary purposes only), or any conditional sale or other title retention agreement or any lease in the nature thereof.

“**Liquor Authority**” has the meaning set forth in Section 13.13(a).

“**Liquor Laws**” has the meaning set forth in Section 13.13(a).

“**Loans**” shall mean the Revolving Loans and the Term Loans.

“**Losses**” of any Person shall mean the losses, liabilities, claims (including those based upon negligence, strict or absolute liability and liability in tort), damages, reasonable expenses, obligations, penalties, actions, judgments, penalties, fines, suits, reasonable and documented costs or disbursements (including reasonable fees and expenses of one primary counsel for the Secured Parties collectively, and any local counsel reasonably required in any applicable jurisdiction (and solely in the case of an actual or perceived conflict of interest, where the Persons affected by such conflict inform Borrower in writing of the existence of an actual or perceived conflict of interest prior to retaining additional counsel, one additional of each such counsel for each group of similarly situated Secured Parties), in connection with any Proceeding commenced or threatened in writing, whether or not such Person shall be designated a party thereto) at any time (including following the payment of the Obligations) incurred by, imposed on or asserted against such Person.

“**Macau Project**” shall mean the hotel towers, casino facilities and retail and convention spaces that are owned and/or operated by Affiliates of Wynn Resorts, in the Macau Special Administrative Region of the People’s Republic of China, which include Wynn Macau, Wynn Encore and Wynn Palace hotel towers, casino facilities and retail and convention spaces adjacent thereto.

“**Management Fees**” shall mean (a) any fees, costs, expenses or reimbursements payable by Borrower or a Restricted Subsidiary to any Affiliate (other than Borrower or a Restricted Subsidiary) pursuant to (i) that certain Management Fee and Corporate Allocation Agreement, dated as of November 20, 2014, between Wynn Massachusetts and Wynn Resorts and (ii) that certain Management Agreement, dated December 14, 2004, between Wynn Las Vegas and Wynn Resorts and (b) without duplication to any fees, costs, expenses or reimbursements paid or made under any agreement described in clause (a), management agreements in form and substance substantially similar to any agreement described in clause (a).

“**Margin Stock**” shall mean margin stock within the meaning of Regulation T, Regulation U and Regulation X.

“**Material Adverse Effect**” shall mean (a) a material adverse effect on the business, assets, financial condition or results of operations of Borrower and its Restricted Subsidiaries, taken as a whole and after giving effect to the Transactions, (b) a material adverse effect on the ability of the Credit Parties (taken as a whole) to satisfy their material payment Obligations under the Credit Documents or (c) a material adverse effect on the legality, binding effect or enforceability against any material Credit Party of the Credit Documents to which it is a party or any of the material rights and remedies of any Secured Party thereunder or the legality, priority or enforceability of the Liens on a material portion of the Collateral; *provided*, that no litigation challenging the issuance of a Gaming License (whether in Massachusetts or otherwise) or any matters arising therefrom, related thereto or in connection therewith shall constitute, result or otherwise have (or reasonably be expected to constitute, result or otherwise have) a Material Adverse Effect; *provided, further*, that for the purposes of evaluating a material adverse effect on the business, assets, financial condition or results of operations of Borrower and its Restricted Subsidiaries, taken as a whole, prior to the Wynn Las Vegas Reorganization, the Restricted Subsidiaries shall be deemed to include the Wynn Las Vegas Entities for such evaluation.

“**Maximum Rate**” has the meaning set forth in Section 13.19.

“**Minimum Collateral Amount**” shall mean, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate un-reallocated portions of L/C Liabilities during the existence of a Defaulting Lender, an amount equal to 103% of the un-reallocated L/C Liabilities at such time, (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Sections 2.03, 2.10(c), 2.10(d), 2.16(a)(i), 2.16(a)(ii) or 11.01, an amount equal to 103% of the aggregate L/C Liability, and (iii) otherwise, an amount determined by the Administrative Agent and the L/C Lenders in their reasonable discretion.

“**Moody’s**” shall mean Moody’s Investors Service, Inc., or any successor entity thereto.

“**Mortgage**” shall mean an agreement, including, but not limited to, a mortgage, deed of trust or any other document, creating and evidencing a first Lien (subject only to the Liens permitted thereunder) in favor of Collateral

Agent on behalf of the Secured Parties on each Mortgaged Real Property, which shall be in substantially the form of Exhibit I or such other form as is reasonably acceptable to Administrative Agent, with such schedules and including such provisions as shall be necessary to conform such document to applicable or local law or as shall be customary under local law, as the same may at any time be amended in accordance with the terms thereof and hereof and such changes thereto as shall be reasonably acceptable to Administrative Agent.

“**Mortgaged Real Property**” shall mean each Real Property, if any, which shall be subject to a Mortgage delivered after the Closing Date pursuant to Section 9.08 or 9.11 (in each case, unless and until such Real Property is no longer subject to a Mortgage).

“**Multiemployer Plan**” shall mean a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA (a) to which any ERISA Entity is then making or accruing an obligation to make contributions, (b) to which any ERISA Entity has within the preceding five plan years made contributions, including any Person which ceased to be an ERISA Entity during such five year period or (c) with respect to which any Company is reasonably likely to incur liability under Title IV of ERISA.

“**NAIC**” shall mean the National Association of Insurance Commissioners.

“**Net Available Proceeds**” shall mean:

(i) in the case of any Asset Sale pursuant to Section 10.05(c), the aggregate amount of all cash payments (including any cash payments received by way of deferred payment of principal pursuant to a note or otherwise, but only as and when received) received by Borrower or any Restricted Subsidiary directly or indirectly in connection with such Asset Sale, net (without duplication) of (A) the amount of all reasonable fees and expenses and transaction costs paid by or on behalf of Borrower or any Restricted Subsidiary in connection with such Asset Sale (including, without limitation, any underwriting, brokerage or other customary selling commissions and legal, advisory and other fees and expenses, including survey, title and recording expenses, transfer taxes and expenses incurred for preparing such assets for sale, associated therewith); (B) any Taxes paid or estimated in good faith to be payable by or on behalf of any Company as a result of such Asset Sale (after application of all credits and other offsets that arise from such Asset Sale); (C) any repayments by or on behalf of any Company of Indebtedness (other than the Obligations) to the extent that such Indebtedness is secured by a Permitted Lien on the subject Property required to be repaid as a condition to the purchase or sale of such Property; (D) amounts required to be paid to any Person (other than any Company) owning a beneficial interest in the subject Property; and (E) amounts reserved, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by Borrower or any of its Subsidiaries after such Asset Sale and related thereto, including pension and other post-employment benefit liabilities, purchase price adjustments, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as reflected in an Officer’s Certificate delivered to Administrative Agent; *provided*, that Net Available Proceeds shall include any cash payments received upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in clause (E) of this clause (i) or, if such liabilities have not been satisfied in cash and such reserve is not reversed within eighteen (18) months after such Asset Sale, the amount of such reserve; *provided further* that for purposes of Section 2.10 only, Net Available Proceeds shall exclude any payments related to Asset Sales by any Wynn Las Vegas Entities so long as such Wynn Las Vegas Entity is an Excluded Subsidiary;

(ii) in the case of any Casualty Event, the aggregate amount of cash proceeds of insurance, condemnation awards and other compensation (excluding proceeds constituting business interruption insurance or other similar compensation for loss of revenue, but including the proceeds of any disposition of Property pursuant to Section 10.05(l)) received by the Person whose Property was subject to such Casualty Event in respect of such Casualty Event net of (A) fees and expenses incurred by or on behalf of Borrower or any Restricted Subsidiary in connection with recovery thereof, (B) repayments of Indebtedness (other than Indebtedness hereunder) to the extent secured by a Lien on such Property that is permitted by the Credit Documents and that is not junior to the Lien thereon securing the Obligations, and (C) any Taxes paid or payable by or on behalf of Borrower or any Restricted Subsidiary in respect of the amount so recovered (after

application of all credits and other offsets arising from such Casualty Event) and amounts required to be paid to any Person (other than any Company) owning a beneficial interest in the subject Property; *provided* that, in the case of a Casualty Event with respect to property that is subject to a lease entered into for the purpose of, or with respect to, operating or managing a Facility, such cash proceeds shall not constitute Net Available Proceeds to the extent, and for so long as, such cash proceeds are required, by the terms of such lease, (x) to be paid to the holder of any mortgage, deed of trust or other security agreement securing indebtedness of the lessor or (y) to be paid to, or for the account of, the lessor or deposited in an escrow account to fund rent and other amounts due with respect to such property and costs to preserve, stabilize, repair, replace or restore such property (in accordance with the provisions of the applicable lease); *provided further* that for purposes of Section 2.10 only, Net Available Proceeds shall exclude any payments related to Casualty Events affecting any Wynn Las Vegas Entities so long as such Wynn Las Vegas Entity is an Excluded Subsidiary; and

(iii) in the case of any Debt Issuance, the aggregate amount of all cash received in respect thereof by the Person consummating such Debt Issuance in respect thereof net of all investment banking fees, discounts and commissions, legal fees, consulting fees, accountants' fees, underwriting discounts and commissions and other fees and expenses, actually incurred in connection therewith.

"Net Revenues" shall mean, for any period, the net revenues of Borrower and its Restricted Subsidiaries, as set forth on 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.

"New Term Facility Loans" shall have the meaning provided in Section 2.03(c)(ii).

"Non-Defaulting Lender" shall mean each Lender other than a Defaulting Lender.

"Non-Extension Notice Date" shall have the meaning provided by Section 2.03(b).

"Notes" shall mean the Revolving Notes and the Term Facility Notes.

"Notice of Borrowing" shall mean a notice of borrowing substantially in the form of Exhibit B or such other form as is reasonably acceptable to Administrative Agent.

"Notice of Continuation/Conversion" shall mean a notice of continuation/conversion substantially in the form of Exhibit C or such other form as is reasonably acceptable to Administrative Agent.

"Notice of Intent to Cure" has the meaning specified in Section 9.04(c).

"Obligation Currency" has the meaning set forth in Section 13.15(a).

"Obligations" shall mean all amounts, liabilities and obligations, direct or indirect, contingent or absolute, of every type or description, and at any time existing, owing by any Credit Party to any Secured Party or any of its Agent Related Parties or their respective successors, transferees or assignees pursuant to the terms of any Credit Document, any Credit Swap Contract or, with the prior written approval of Borrower, any Secured Cash Management Agreement (including in each case interest, fees, costs or charges accruing or obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), whether or not the right of such Person to payment in respect of such obligations and liabilities is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured and whether or not such claim is discharged, stayed or otherwise affected by any bankruptcy case or insolvency or liquidation proceeding.

"OFAC" has the meaning set forth in Section 8.22(b)(v).

“Officer’s Certificate” shall mean, as applied to any entity, a certificate executed on behalf of such entity (or such entity’s manager or member or general partner, as applicable) by its chairman of the Board of Directors (or functional equivalent) (if an officer), its chief executive officer, its president, any of its vice presidents, its chief financial officer, its chief accounting officer or its treasurer or controller (in each case, or an equivalent officer) in their official (and not individual) capacities.

“Open Market Assignment and Assumption Agreement” shall mean an Open Market Assignment and Assumption Agreement substantially in the form attached as Exhibit Q hereto or such other form as is reasonably acceptable to Administrative Agent.

“Organizational Document” shall mean, relative to any Person, its certificate of incorporation, its certificate of formation or articles of organization, its certificate of partnership, its by-laws, its partnership agreement, its limited liability company or operating agreement, its memorandum or articles of association, share designations or similar organization documents and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized Equity Interests.

“Other Applicable Indebtedness” shall mean Indebtedness incurred pursuant to Section 10.01(c), (e), (h), (k), (n), (p), (q) and (u).

“Other Commitments” shall mean the Other Term Loan Commitments and Other Revolving Commitments.

“Other Connection Taxes” shall mean, with respect to any Agent or Lender, Taxes imposed as a result of a present or former connection between such Agent or Lender and the jurisdiction imposing such Tax (other than connections arising from such Agent or Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document).

“Other First Lien Indebtedness” shall mean outstanding Indebtedness that is not incurred under this Agreement and that (a) is secured by the Collateral on a *pari passu* basis with the Obligations and (b) is Permitted First Priority Refinancing Debt or Permitted First Lien Indebtedness.

“Other Junior Indebtedness” shall mean Permitted Unsecured Indebtedness, Permitted Second Lien Indebtedness, Permitted Unsecured Refinancing Debt or Permitted Second Priority Refinancing Debt that is secured by a Lien on Collateral junior to the Liens securing the Obligations or that is unsecured.

“Other Revolving Commitments” shall mean one or more Tranches of revolving credit commitments hereunder that result from a Refinancing Amendment.

“Other Revolving Loans” shall mean one or more Tranches of Revolving Loans that result from a Refinancing Amendment.

“Other Taxes” has the meaning set forth in Section 5.06(e).

“Other Term Loan Commitments” shall mean one or more Tranches of term loan commitments hereunder that result from a Refinancing Amendment.

“Other Term Loans” shall mean one or more Tranches of Term Loans that result from a Refinancing Amendment.

“Paid in Full” or **“Payment in Full”** and any other similar terms, expressions or phrases shall mean, at any time, (a) with respect to obligations other than the Obligations or the Secured Obligations (as defined in the Security Agreement), the payment in full of all of such obligations and (b) with respect to the Obligations or the Secured Obligations (as defined in the Security Agreement), the irrevocable termination of all Commitments, the payment in full in cash of all Obligations (except undrawn Letters of Credit and Unasserted Obligations), including principal,

interest, fees, costs (including post-petition interest, fees, costs and charges even if such interest, fees costs and charges are not an allowed claim enforceable against any Credit Party in a bankruptcy case under applicable law) and premium (if any), and the discharge or Cash Collateralization of all Letters of Credit outstanding in an amount equal to 103% of the greatest amount for which such Letters of Credit may be drawn (or receipt of backstop letters of credit reasonably satisfactory to the applicable L/C Lender and the Administrative Agent). For purposes of this definition, “**Unasserted Obligations**” shall mean, at any time, contingent indemnity obligations in respect of which no claim or demand for payment has been made at such time.

“**Parent Company**” shall mean, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

“**Pari Passu Intercreditor Agreement**” shall mean an intercreditor agreement substantially in the form of Exhibit R hereto or such other form as is reasonably acceptable to Administrative Agent.

“**Participant Register**” has the meaning set forth in Section 13.05(a).

“**Pass Through Entity**” means an entity treated as a partnership or a disregarded entity for U.S. federal, state and/or local income tax purposes, as applicable.

“**Patriot Act**” has the meaning set forth in Section 8.22(a).

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“**Pension Plan**” shall mean an employee pension benefit plan (other than a Multiemployer Plan) that is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code or Section 302 of ERISA and is maintained or contributed to by any ERISA Entity or with respect to which any Company is reasonably likely to incur liability under Title IV of ERISA.

“**Perfection Certificate**” shall mean that certain Perfection Certificate, dated as of the Closing Date (the “**Initial Perfection Certificate**”), executed and delivered by Borrower on behalf of Borrower and each of the Guarantors existing on the initial Funding Date, and each other Perfection Certificate (which shall be substantially in the form of Exhibit M or such other form as is reasonably acceptable to Administrative Agent) executed and delivered by the applicable Credit Party from time to time, in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with Section 9.04(h)(ii).

“**Permits**” has the meaning set forth in Section 8.15.

“**Permitted Acquisition**” shall mean (x) the acquisition of the Wynn Las Vegas Entities by Borrower pursuant to the Wynn Las Vegas Reorganization and (y) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, any other acquisition, whether by purchase, merger, consolidation or otherwise, by Borrower or any of its Restricted Subsidiaries of all or substantially all of the business, property or assets of, or Equity Interests in, a Person or any division or line of business of a Person so long as (with respect to this clause (y) only) (a) immediately after a binding contract with respect thereto is entered into between Borrower or one of its Restricted Subsidiaries and the seller with respect thereto and after giving pro forma effect to such acquisition and related transactions, no Event of Default has occurred and is continuing or would result therefrom and (A) prior to the Initial Test Date, immediately after giving effect thereto the Consolidated Senior Secured Net Leverage Ratio calculated on a Pro Forma Basis shall not exceed 2.50 to 1.00 as of the most recent Calculation Date, and (B) from and after the Initial Test Date, immediately after giving effect thereto Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant as of the most recent Calculation Date (whether or not then in effect), (b) immediately after giving effect thereto, Borrower shall be in compliance with Section 10.11, and (c) with respect to a Permitted Acquisition in excess of \$50.0 million, Borrower has delivered to Administrative Agent an Officer’s Certificate

to the effect set forth in clauses (a) through (c) above, together with all relevant financial information for the Person or assets to be acquired.

“Permitted Business” shall mean any business of the type in which Borrower and its Restricted Subsidiaries are engaged or proposed to be engaged on the date of this Agreement, including any business, the primary focus of which, is in the hospitality, gaming, leisure or consumer industries, or any business reasonably related, incidental or ancillary thereto (including assets or businesses complementary thereto).

“Permitted Business Assets” shall mean (a) one or more Permitted Businesses, (b) a controlling equity interest in any Person whose assets consist primarily of one or more Permitted Businesses, (c) assets that are used or useful in a Permitted Business or (d) any combination of the preceding clauses (a), (b) and (c), in each case, as determined by Borrower’s Board of Directors or a Responsible Officer or other management of Borrower or the Restricted Subsidiary acquiring such assets, in each case, in its good faith judgment.

“Permitted First Lien Indebtedness” shall mean any Indebtedness of Borrower (and Contingent Obligations of the Guarantors in respect thereof) that (a) is secured by the Collateral on a *pari passu* basis to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) the holders of such Indebtedness (or their representative) and Administrative Agent shall be party to the *Pari Passu* Intercreditor Agreement, (c) is not scheduled to mature prior to the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities allowing extensions on customary terms to at least such Final Maturity Date), (d) is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, (e) the terms (excluding pricing, fees, rate floors, premiums, optional prepayment or optional redemption provisions) of which are (as determined by Borrower in good faith), taken as a whole, not materially more restrictive than the terms set forth in this Agreement (other than, in the case of any bridge facility, covenants, defaults and remedy provisions customary for bridge financings) and (f) other than in the case of a revolving credit facility, does not have a Weighted Average Life to Maturity (excluding the effects of any prepayments of Term Loans reducing amortization) that is shorter than that of any outstanding Term Loans (excluding bridge facilities allowing extensions on customary terms at least to such Final Maturity Date) (*provided* that the Weighted Average Life to Maturity may be shorter if the stated maturity of any principal payment (including any amortization payments) is not earlier than the earlier of (i) the stated maturity of any then-outstanding Term Loans or (ii) the Final Maturity Date then in effect at the time of issuance or incurrence) (excluding bridge facilities allowing extensions on customary terms at least to such Final Maturity Date).

“Permitted First Priority Refinancing Debt” shall mean any secured Indebtedness incurred by Borrower (and Contingent Obligations of the Guarantors in respect thereof) in the form of one or more series of senior secured notes or loans; *provided* that (a) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Obligations and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness, (c) such Indebtedness is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors, and (d) the holders of such Indebtedness (or their representative) and Administrative Agent shall be party to the *Pari Passu* Intercreditor Agreement.

“Permitted Junior Debt Conditions” shall mean that such applicable debt (i) does not have a scheduled maturity date prior to the date that is 91 days after the Final Maturity Date then in effect at the time of issuance (excluding bridge facilities allowing extensions on customary terms to at least 91 days after such Final Maturity Date), (ii) does not have a Weighted Average Life to Maturity (excluding the effects of any prepayments of Term Loans reducing amortization) that is shorter than that of any outstanding Term Loans (excluding bridge facilities allowing extensions on customary terms to at least ninety-one (91) days after the Final Maturity Date), (iii) shall not have any scheduled principal payments or be subject to any mandatory redemption, prepayment, or sinking fund (except for customary change of control (and, in the case of convertible or exchangeable debt instruments, delisting) provisions and, in the case of bridge facilities, customary mandatory redemptions or prepayments with proceeds of Permitted Refinancings thereof (which Permitted Refinancings would constitute Junior Financing) or Equity Issuances, and customary asset sale provisions that permit application of the applicable proceeds to the payment of the Obligations prior to application to such Junior Financing) due prior to the date that is ninety-one (91) days after the Final Maturity Date then in effect

at the time of issuance (excluding bridge facilities allowing extensions on customary terms to at least ninety-one (91) days after such Final Maturity Date) and (iv) is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors.

“**Permitted Liens**” has the meaning set forth in Section 10.02.

“**Permitted Refinancing**” shall mean, with respect to any Indebtedness, any refinancing thereof; *provided* that: (a) no Default or Event of Default shall have occurred and be continuing or would arise therefrom; (b) any such refinancing Indebtedness shall (i) not have a stated maturity or, other than in the case of a revolving credit facility, a Weighted Average Life to Maturity that is shorter than that of the Indebtedness being refinanced (*provided* that the stated maturity or Weighted Average Life to Maturity may be shorter if the stated maturity of any principal payment (including any amortization payments) is not earlier than the earlier of (1) the stated maturity of such Indebtedness in effect prior to such refinancing or (2) 91 days after the Final Maturity Date in effect at the time of issuance), (ii) if the Indebtedness being refinanced is subordinated to the Obligations by its terms or by the terms of any agreement or instrument relating to such Indebtedness, be at least as subordinate to the Obligations as the Indebtedness being refinanced (and unsecured if the refinanced Indebtedness is unsecured) and (iii) be in a principal amount that does not exceed the principal amount so refinanced, *plus*, accrued interest, *plus*, any premium or other payment required to be paid in connection with such refinancing, *plus*, the amount of fees and expenses of Borrower or any of its Restricted Subsidiaries incurred in connection with such refinancing, *plus*, any unutilized commitments thereunder; and (c) the obligors on such refinancing Indebtedness shall be the obligors on such Indebtedness being refinanced (other than in the case of the Wynn Las Vegas Notes, in which case the obligors may be Borrower or any of its Restricted Subsidiaries); *provided, however*, that (i) the borrower of the refinancing indebtedness shall be Borrower or the borrower of the indebtedness being refinanced and (ii) any Credit Party shall be permitted to guarantee any such refinancing Indebtedness of any other Credit Party

“**Permitted Second Lien Indebtedness**” shall mean any Indebtedness of Borrower (and Contingent Obligations of the Guarantors in respect thereof) that (a) is secured by the Collateral on a second priority (or other junior priority) basis to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and any Permitted First Lien Indebtedness and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) meets the Permitted Junior Debt Conditions and (c) the holders of such Indebtedness (or their representative) shall be party to the Second Lien Intercreditor Agreement (as “Second Priority Debt Parties”) with the Administrative Agent.

“**Permitted Second Priority Refinancing Debt**” shall mean secured Indebtedness incurred by Borrower (and Contingent Obligations of the Guarantors in respect thereof) in the form of one or more series of second lien (or other junior lien) secured notes or second lien (or other junior lien) secured loans; *provided* that (a) such Indebtedness is secured by the Collateral on a second priority (or other junior priority) basis to the liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and any Permitted First Lien Indebtedness and is not secured by any property or assets of Borrower or any Restricted Subsidiary other than the Collateral, (b) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness (*provided*, that such Indebtedness may be secured by a Lien on the Collateral that is junior to the Liens securing the Obligations and the obligations in respect of any Permitted First Priority Refinancing Debt and Permitted First Lien Indebtedness, notwithstanding any provision to the contrary contained in the definition of “Credit Agreement Refinancing Indebtedness”), (c) the holders of such Indebtedness (or their representative) shall be party to the Second Lien Intercreditor Agreement (as “Second Priority Debt Parties”) with the Administrative Agent and (d) meets the Permitted Junior Debt Conditions.

“**Permitted Unsecured Indebtedness**” shall mean any unsecured Indebtedness of Borrower (and Contingent Obligations of the Guarantors in respect thereof) that meets the Permitted Junior Debt Conditions or is Junior Financing. For the avoidance of doubt, Disqualified Capital Stock shall not constitute Permitted Unsecured Indebtedness.

“**Permitted Unsecured Refinancing Debt**” shall mean unsecured Indebtedness incurred by Borrower or its Restricted Subsidiaries in the form of one or more series of senior unsecured notes or loans; *provided* that (a) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness and (b) meets the Permitted Junior Debt Conditions.

“**Person**” shall mean any individual, corporation, company, association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or any other entity.

“**Pledged Collateral**” has the meaning set forth in the Security Agreement.

“**Post-Closing Equity Contribution**” shall mean all equity contributions and/or Intercompany Contribution Indebtedness made by Wynn Resorts or any of its Affiliates (other than Borrower or its Restricted Subsidiaries) to Borrower and its Restricted Subsidiaries on or after the Closing Date and all amounts distributed from the Wynn Las Vegas Entities to the Credit Parties on or after the Wynn Las Vegas Reorganization.

“**Post-Increase Revolving Lenders**” has the meaning set forth in Section 2.12(d).

“**Post-Refinancing Revolving Lenders**” has the meaning set forth in Section 2.15(f).

“**Pre-Closing Equity Contributions**” shall mean equity contributions and/or Intercompany Contribution Indebtedness made by Wynn Resorts or any of its Affiliates (other than Borrower or its Restricted Subsidiaries) to Borrower and its Restricted Subsidiaries prior to the Closing Date in the amount of \$260.0 million.

“**Pre-Increase Revolving Lenders**” has the meaning set forth in Section 2.12(d).

“**Pre-Opening Expenses**” shall mean, with respect to any fiscal period, the amount of expenses (including Consolidated Interest Expense) incurred with respect to capital projects which are appropriately classified as “pre-opening expenses” on the applicable financial statements of Borrower and its Subsidiaries for such period.

“**Pre-Refinancing Revolving Lenders**” has the meaning set forth in Section 2.15(f).

“**Principal Asset**” shall mean each of the Wynn Massachusetts Project and, from and after the Wynn Las Vegas Reorganization, the Wynn Las Vegas Resort and the Encore at Wynn Las Vegas.

“**Principal Office**” shall mean the principal office of Administrative Agent, located on the Closing Date at 60 Wall Street, New York, NY 10005, or such other office as may be designated in writing by Administrative Agent.

“**Prior Mortgage Liens**” shall mean, with respect to each Mortgaged Real Property, the Liens identified in Schedule B annexed to the applicable Mortgage as such Schedule B may be amended from time to time to the reasonable satisfaction of Administrative Agent.

“**Pro Forma Basis**” shall mean, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.06.

“**Proceeding**” shall mean any claim, counterclaim, action, judgment, suit, hearing, governmental investigation, arbitration or proceeding, including by or before any Governmental Authority and whether judicial or administrative.

“**Property**” shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including all contract rights, income or revenue rights, real property interests, trademarks, trade names, equipment and proceeds of the foregoing and, with respect to any Person, Equity Interests or other ownership interests of any other Person.

“**Public Lender**” has the meaning set forth in Section 9.04.

“**Purchase Money Obligation**” shall mean, for any Person, the obligations of such Person in respect of Indebtedness incurred for the purpose of financing all or any part of the purchase price of any Property (including Equity Interests of any Person) or the cost of installation, construction or improvement of any property or assets and

any refinancing thereof; *provided, however*, that such Indebtedness is incurred (except in the case of a refinancing) within 270 days after such acquisition of such Property or the incurrence of such costs by such Person.

“Qualified Capital Stock” shall mean, with respect to any Person, any Equity Interests of such Person which is not Disqualified Capital Stock.

“Qualified Contingent Obligation” shall mean Contingent Obligations permitted by Section 10.04 in respect of (a) Indebtedness of any Joint Venture in which Borrower or any of its Restricted Subsidiaries owns (directly or indirectly) at least 25% of the Equity Interest of such Joint Venture or (b) Indebtedness of Facilities (and properties ancillary or related thereto) with respect to which Borrower or any of its Restricted Subsidiaries has (directly or indirectly through Subsidiaries) entered into a management or similar contract and such contract remains in full force and effect at the time such Contingent Obligations are incurred.

“Qualified ECP Guarantor” shall mean, in respect of any Swap Obligations, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualifying Act of Terrorism” shall mean (a) any Act of Terrorism which occurs on any property of Borrower or its Affiliates or in which Borrower or any of its Affiliates, or any property of any of them, is the target or (b) any Act of Terrorism which occurs at any gaming facility or material hospitality establishment in any market in which Borrower or any of its Affiliates operates a Facility.

“Qualifying Project” shall mean the Facilities of Wynn Resorts and its Subsidiaries which are operating or for which the financing for the development, construction and opening thereof has been obtained. For purposes of this definition, each of the Wynn Las Vegas Resort, Encore at Wynn Las Vegas, the Macau Project and the Wynn Massachusetts Project shall count as separate projects.

“Quarter” shall mean each three month period ending on March 31, June 30, September 30 and December 31.

“Quarterly Dates” shall mean the last Business Day of each Quarter in each year, commencing with the last Business Day of the first full Quarter after the Closing Date.

“R/C Maturity Date” shall mean, (a) with respect to the Closing Date Revolving Commitments, the date that is the fifth anniversary of the Closing Date and (b) with respect to any other Tranche of Revolving Commitments and Revolving Loans, the maturity date set forth therefor in the applicable Extension Amendment or Refinancing Amendment.

“R/C Percentage” of any Revolving Lender at any time shall mean a fraction (expressed as a percentage) the numerator of which is the Revolving Commitment of such Revolving Lender at such time and the denominator of which is the Total Revolving Commitments at such time; *provided, however*, that if the R/C Percentage of any Revolving Lender is to be determined after the Total Revolving Commitments have been terminated, then the R/C Percentage of such Revolving Lender shall be determined immediately prior (and without giving effect) to such termination but after giving effect to any assignments after termination of the Revolving Commitments.

“Real Property” shall mean, as to any Person, all the right, title and interest of such Person in and to land, improvements and appurtenant fixtures, including leaseholds.

“redeem” shall mean redeem, repurchase, repay, defease (covenant or legal), Discharge or otherwise acquire or retire for value; and **“redemption”** and **“redeemed”** have correlative meanings.

“Redesignation” has the meaning set forth in Section 9.13(a).

“**refinance**” shall mean refinance, renew, extend, exchange, replace, defease (covenant or legal) (with proceeds of Indebtedness), Discharge (with proceeds of Indebtedness) or refund (with proceeds of Indebtedness), in whole or in part, including successively; and “**refinancing**” and “**refinanced**” have correlative meanings.

“**Refinancing Amendment**” shall mean an amendment to this Agreement in form and substance reasonably satisfactory to Administrative Agent and Borrower executed by each of (a) Borrower, (b) Administrative Agent, (c) each additional Lender and each existing Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.15.

“**Register**” has the meaning set forth in Section 2.08(c).

“**Regulation D**” shall mean Regulation D (12 C.F.R. Part 204) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation T**” shall mean Regulation T (12 C.F.R. Part 220) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” shall mean Regulation U (12 C.F.R. Part 221) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” shall mean Regulation X (12 C.F.R. Part 224) of the Board of Governors of the Federal Reserve System of the United States (or any successor), as the same may be amended, modified or supplemented and in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Reimbursement Obligations**” shall mean the obligations of Borrower to reimburse L/C Disbursements in respect of any Letter of Credit.

“**Related Indemnified Person**” has the meaning set forth in Section 13.03(b).

“**Related Parties**” shall mean, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“**Release**” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the Environment.

“**Relevant Four Fiscal Quarter Period**” means, with respect to any requested Specified Equity Contribution, the four-fiscal quarter period ending on (and including) the fiscal quarter in which Consolidated EBITDA will be increased as a result of such Specified Equity Contribution.

“**Removal Effective Date**” has the meaning set forth in Section 12.06(b).

“**Replaced Lender**” has the meaning set forth in Section 2.11(a).

“**Replacement Lender**” has the meaning set forth in Section 2.11(a).

“**Required Lenders**” shall mean, as of any date of determination: (a) prior to the Closing Date, Lenders holding more than 50% of the aggregate amount of the Commitments; and (b) thereafter, Non-Defaulting Lenders the sum of whose outstanding Term Loans, unutilized Term Loan Commitments, Revolving Loans, Unutilized R/C Commitments and L/C Liabilities then outstanding represents more than 50% of the aggregate sum (without duplication)

of (i) all outstanding Term Loans of all Non-Defaulting Lenders and all unutilized Term Loan Commitments of all Non-Defaulting Lenders, (ii) all outstanding Revolving Loans of all Non-Defaulting Lenders, (iii) the aggregate Unutilized R/C Commitments of all Non-Defaulting Lenders and (iv) the L/C Liabilities of all Non-Defaulting Lenders.

“Required Revolving Lenders” shall mean, as of any date of determination: (a) at any time prior to the Closing Date, Lenders holding more than 50% of the aggregate amount of the Revolving Commitments and (b) thereafter, Non-Defaulting Lenders holding more than 50% of the aggregate sum of (without duplication) (i) the aggregate principal amount of outstanding Revolving Loans of all Non-Defaulting Lenders, (ii) the aggregate Unutilized R/C Commitments of all Non-Defaulting Lenders and (iii) the L/C Liabilities of all Non-Defaulting Lenders.

“Required Tranche Lenders” shall mean: (a) with respect to ~~Lenders having~~ Revolving Commitments or Revolving Loans of any particular Tranche, Non-Defaulting Lenders having more than 50% of the aggregate sum of the Unutilized R/C Commitments, Revolving Loans and L/C Liabilities of all Non-Defaulting Lenders, in each case, in respect of such Tranche and then outstanding; (b) with respect to ~~Lenders having~~ Term Facility Loans ~~or Term Facility Commitments~~, Non-Defaulting Lenders having more than 50% of the aggregate sum of the Term Facility Loans and unutilized Term Facility Commitments of all Non-Defaulting Lenders then outstanding; (c) **with respect to Tranche A Term Facility Commitments, Non-Defaulting Lenders having more than 50% of the aggregate sum of the unutilized Tranche A Term Facility Commitments of all Non-Defaulting Lenders then outstanding;** (d) **with respect to Tranche B Term Facility Commitments, Non-Defaulting Lenders having more than 50% of the aggregate sum of the unutilized Tranche B Term Facility Commitments of all Non-Defaulting Lenders then outstanding;** (e) **with respect to Tranche C Term Facility Commitments, Non-Defaulting Lenders having more than 50% of the aggregate sum of the unutilized Tranche C Term Facility Commitments of all Non-Defaulting Lenders then outstanding;** (f) for each Extension Tranche, if applicable, with respect to Lenders having Extended Revolving Loans or Extended Revolving Commitments or Extended Term Loans or commitments in respect of Extended Term Loans, in each case, in respect of such Extension Tranche, Non-Defaulting Lenders having more than 50% of the aggregate sum of such Extended Revolving Loans and Extended Revolving Commitments or Extended Term Loans and commitments of all Non-Defaulting Lenders in respect thereof, as applicable, then outstanding; and ~~(d)~~ for each Tranche of Other Term Loans, Non-Defaulting Lenders having more than 50% of the aggregate sum of such Other Term Loans and unutilized Other Term Loan Commitments of all Non-Defaulting Lenders then outstanding.

“Requirement of Law” shall mean, as to any Person, any Law or determination of an arbitrator or any 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.

“Reserve Requirement” shall mean, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System of the United States for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to LIBOR funding by member banks (currently referred to as “Eurocurrency liabilities”). The LIBO Rate for each outstanding LIBOR Loan shall be adjusted automatically as of the effective date of any change in the Reserve Requirement.

“Resignation Effective Date” has the meaning set forth in Section 12.06(a).

“Responsible Officer” shall mean the chief executive officer of Borrower, the president of Borrower (if not the chief executive officer), any senior or executive vice president of Borrower, the chief financial officer, the chief accounting officer or treasurer of Borrower or, with respect to financial matters, the chief financial officer, chief accounting officer, senior financial officer or treasurer of Borrower.

“Restricted Payment” shall mean dividends (in cash, Property or obligations) on, or other payments or distributions (including return of capital) on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement, defeasance, termination, repurchase or other acquisition of, any Equity Interests or Equity Rights (other than any payment made relating to any Transfer Agreement) in Borrower or any of its Restricted Subsidiaries, but excluding dividends, payments or distributions paid through the issuance of additional

shares of Qualified Capital Stock and any redemption, retirement or exchange of any Qualified Capital Stock in Borrower or such Restricted Subsidiary through, or with the proceeds of, the issuance of Qualified Capital Stock in Borrower or any of its Restricted Subsidiaries.

“Restricted Subsidiaries” shall mean all existing and future Subsidiaries of Borrower other than the Unrestricted Subsidiaries.

“Revaluation Date” shall mean, with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternate Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by an L/C Lender under any Letter of Credit denominated in an Alternate Currency, and (iv) such additional dates as the Administrative Agent or the applicable L/C Lender shall reasonably determine or the Required Lenders shall require.

“Reverse Trigger Event” shall mean the transfer of Equity Interests of any Restricted Subsidiary or any Gaming Facility from trust or other similar arrangement to Borrower or any of its Restricted Subsidiaries from time to time.

“Revocation” has the meaning set forth in Section 9.12(b).

“Revolving Availability Period” shall mean, (i) with respect to the Revolving Commitments under the Closing Date Revolving Facility, the period from and including the Closing Date to but excluding the earlier of the applicable R/C Maturity Date and the date of termination of such Revolving Commitments, and (ii) with respect to any other Tranche of Revolving Commitments, the period from and including the date such Tranche of Revolving Commitments is established to but excluding the earlier of the applicable R/C Maturity Date and the date of termination of such Tranche of Revolving Commitments. Unless the context otherwise requires, references in this Agreement to the Revolving Availability Period shall mean with respect to each Tranche of Revolving Commitments, the Revolving Availability Period applicable to such Tranche.

“Revolving Borrowing” shall mean a Borrowing comprised of Revolving Loans.

“Revolving Commitment” shall mean, for each Revolving Lender, the obligation of such Lender to make Revolving Loans in an aggregate principal amount at any one time outstanding up to but not exceeding the amount set opposite the name of such Lender on Annex A-1 under the caption “Revolving Commitment,” or in the Assignment Agreement pursuant to which such Lender assumed its Revolving Commitment or in any Refinancing Amendment, as applicable, as the same may be (a) changed pursuant to Section 13.05(b), (b) reduced or terminated from time to time pursuant to Sections 2.04 and/or 11.01, as applicable, or (c) increased or otherwise adjusted from time to time in accordance with this Agreement, including pursuant to Section 2.12 and Section 2.15; it being understood that a Revolving Lender’s Revolving Commitment shall include any Extended Revolving Commitments and Other Revolving Commitments of such Revolving Lender.

“Revolving Exposure” shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender’s L/C Liability.

“Revolving Extension Request” shall have the meaning provided in Section 2.13(b).

“Revolving Facility” shall mean each credit facility comprising Revolving Commitments of a particular Tranche.

“Revolving Lenders” shall mean (a) on the Closing Date, the Lenders having a Revolving Commitment on Annex A-1 hereof and (b) thereafter, the Lenders from time to time holding Revolving Loans and/or a Revolving Commitment as in effect from time to time.

“Revolving Loans” has the meaning set forth in Section 2.01(a).

“**Revolving Notes**” shall mean the promissory notes substantially in the form of Exhibit A-1.

“**Revolving Tranche Exposure**” shall mean with respect to any Lender and Tranche of Revolving Commitments at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Tranche of such Lender, *plus* the aggregate amount at such time of such Lender’s L/C Liability under its Revolving Commitment of such Tranche.

“**S&P**” shall mean Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, or any successor thereto.

“**Sanction(s)**” shall mean any economic or trade or financial sanction or restrictive measures or trade embargo enacted, administered, imposed or enforced by the United States Government (including, without limitation, OFAC and the U.S. Department of State), the United Nations Security Council, the European Union or any member state thereof, Her Majesty’s Treasury or other relevant sanctions authority.

“**SEC**” shall mean the Securities and Exchange Commission of the United States or any successor thereto.

“**Second Lien Intercreditor Agreement**” shall mean an intercreditor agreement substantially in the form of Exhibit S hereto or such other form as is reasonably acceptable to Administrative Agent.

“**Section 9.04 Financials**” shall mean the financial statements delivered, or required to be delivered, pursuant to Section 9.04(a) or (b), together with the accompanying certificate of a Responsible Officer of Borrower delivered, or required to be delivered, pursuant to Section 9.04(c).

“**Secured Cash Management Agreement**” shall mean any Cash Management Agreement that is entered into by and between Borrower and/or any or all of its Restricted Subsidiaries and any Cash Management Bank.

“**Secured Parties**” shall mean the Agents, the Lenders, any Swap Provider that is party to a Credit Swap Contract and any Cash Management Bank that is a party to a Secured Cash Management Agreement.

“**Securities Act**” shall mean the Securities Act of 1933, as amended, and all rules and regulations of the SEC promulgated thereunder.

“**Security Agreement**” shall mean a security agreement substantially in the form of Exhibit H among the Credit Parties and Collateral Agent, as the same may be amended in accordance with the terms thereof and hereof.

“**Security Documents**” shall mean the Security Agreement, the Mortgages and each other security document or pledge agreement, instrument or other document required by applicable local law or otherwise executed and delivered by a Credit Party to grant or perfect a security interest in any Property acquired or developed that is of the kind and nature that would constitute Collateral on the Closing Date, and any other document, agreement or instrument utilized to pledge or grant as collateral for the Obligations any Property of whatever kind or nature.

“**Solvent**” and “**Solvency**” shall mean, for any Person on a particular date, that on such date (a) the fair value of the Property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts and liabilities beyond such Person’s ability to pay as such debts and liabilities mature, (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s Property would constitute an unreasonably small capital and (e) such Person is able to pay its debts as they become due and payable. For purposes of this definition, the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability, without duplication.

“**Specified Equity Contribution**” has the meaning specified in Section 11.03.

“**Specified Equity Issuance Proceeds**” shall mean Equity Issuance Proceeds received by Borrower prior to the Wynn Las Vegas Reorganization to the extent financed by distributions made by the Wynn Las Vegas Entities to Wynn Resorts (except to the extent such distributions by Wynn Las Vegas to Wynn Resorts were related to Management Fees (as defined in the Wynn Las Vegas Notes) or fees payable by the Wynn Las Vegas Entities to Wynn Resorts and its Affiliates for the licensing of intellectual property); *provided* that no Equity Insurance Proceeds shall be classified as Specified Equity Issuance Proceeds unless certified by a Responsible Officer of Borrower to Agent acting in good faith.

“**Specified Letters of Credit**” shall mean those Letters of Credit described on Schedule 2.03.

“**Specified Transaction**” shall mean any (a) incurrence or repayment of Indebtedness (other than for working capital purposes or under a Revolving Facility), (b) Investment that results in a Person becoming a Restricted Subsidiary or an Unrestricted Subsidiary, (c) Permitted Acquisition or other Acquisition, (d) Asset Sale, designation or redesignation of a Restricted Subsidiary that results in a Restricted Subsidiary ceasing to be a Restricted Subsidiary of Borrower and (e) Acquisition or Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person.

“**Spot Rate**” for a currency shall mean the rate determined by the Administrative Agent or the applicable L/C Lender, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; *provided* that the Administrative Agent or such L/C Lender may obtain such spot rate from another financial institution designated by the Administrative Agent or such L/C Lender if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and *provided further* that such L/C Lender may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternate Currency.

“**Stated Amount**” of each Letter of Credit shall mean, at any time, the maximum amount available to be drawn thereunder (in each case determined without regard to whether any conditions to drawing could then be met).

“**Subordination Agreement**” shall mean each Subordination Agreement, substantially in the form of Exhibit T, among the Administrative Agent, the applicable Credit Parties and the providers of any Intercompany Contribution Indebtedness.

“**Subsidiary**” shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% equity interest at the time. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of Borrower.

“**Substituted Consolidated EBITDA**” shall mean with respect to any fiscal quarter, the greater of Consolidated EBITDA for the fiscal quarter (a) during the immediately preceding fiscal year corresponding to such fiscal quarter and (b) immediately preceding the fiscal quarter in which the applicable Qualifying Act of Terrorism shall have occurred, in each case subject to customary seasonal adjustments (as determined in good faith by Borrower).

“**Swap Contract**” shall mean any agreement entered into in the ordinary course of business (as a bona fide hedge and not for speculative purposes) (including any master agreement and any schedule or agreement, whether or not in writing, relating to any single transaction) that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate

option, foreign exchange agreement, rate cap, collar or floor agreement, currency swap agreement, cross-currency rate swap agreement, swap option, currency option or any other similar agreement (including any option to enter into any of the foregoing) and is designed to protect any Company against fluctuations in interest rates, currency exchange rates, commodity prices, or similar risks (including any Interest Rate Protection Agreement). For the avoidance of doubt, the term “Swap Contract” includes, without limitation, any call options, warrants and capped calls entered into as part of, or in connection with, an issuance of convertible or exchangeable debt by Borrower or its Restricted Subsidiaries.

“**Swap Obligation**” shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Swap Provider**” shall mean any Person that is a party to a Swap Contract with Borrower and/or any of its Restricted Subsidiaries if such Person was, at the date of entering into such Swap Contract, a Lender or Agent or Affiliate of a Lender or Agent, and such Person executes and delivers to Administrative Agent a letter agreement in form and substance reasonably acceptable to Administrative Agent pursuant to which such Person (a) appoints Collateral Agent as its agent under the applicable Credit Documents and (b) agrees to be bound by the provisions of Section 12.03.

“**Syndication Agents**” shall mean, collectively, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Credit Agricole Corporate and Investment Bank, Fifth Third Bank, SunTrust Bank, The Bank of Nova Scotia, BNP Paribas Securities Corp., Sumitomo Mitsui Banking Corporation and UBS Securities LLC, in their capacities as syndication agents hereunder.

“**T/C Percentage**” of any Term Facility Lender **with respect to a Tranche of Term Facility Commitments** at any time shall mean a fraction (expressed as a percentage) the numerator of which is the Term Facility Commitment **under such Tranche** of such Term Facility Lender at such time and the denominator of which is the total Term Facility Commitments **under such Tranche** at such time; *provided, however*, that if the T/C Percentage of any Term Facility Lender **with respect to a Tranche of Term Facility Commitments** is to be determined after the total Term Facility Commitments **under such Tranche** have been terminated, then the T/C Percentage of such Term Facility Lender **under such Tranche of Term Facility Commitments** shall be determined immediately prior (and without giving effect) to such termination but after giving effect to any assignments after termination of the Term Facility Commitments **under such Tranche**.

“**Taking**” shall mean a taking or voluntary conveyance during the term of this Agreement of all or part of any Mortgaged Real 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 any Mortgaged Real Property or any portion thereof, whether or not the same shall have actually been commenced.

“**Tax Payments**” shall mean, with respect to any taxable period (i) for which Borrower and/or any of its Subsidiaries are members of a consolidated, combined or similar income tax group for applicable federal, state and/or local income tax purposes of which a direct or indirect parent of Borrower is the common parent (a “**Tax Group**”) or (ii) for which Borrower is a disregarded entity or a partnership with a direct or indirect corporate parent (a “**Corporate Parent**”), (a) payments equal to the portion of any consolidated, combined or similar federal, state and/or local income taxes (as applicable) of such Tax Group, or the portion of the federal, state and/or local income taxes of such Corporate Parent (or, where such Corporate Parent owns some of its equity interest in Borrower indirectly through one or more corporate subsidiaries, such corporate subsidiaries (the “**Corporate Parent Subsidiaries**”), for such taxable period, that, in each case, is attributable to the income of Borrower, the applicable Restricted Subsidiaries or, to the extent of the amount actually received from its applicable Unrestricted Subsidiaries, such Unrestricted Subsidiaries, *provided* that in each case the amount of such payments with respect to any taxable period does not exceed the amount that Borrower, the applicable Restricted Subsidiaries and (to the extent described above) the applicable Unrestricted Subsidiaries would have been required to pay in respect of such federal, state and local income taxes for such taxable period had Borrower, the applicable Restricted Subsidiaries and (to the extent described above) the applicable Unrestricted Subsidiaries been a stand-alone corporate taxpayer or stand-alone corporate tax group for all taxable periods ending after the Closing Date and (b) for any such taxable period with respect to which the portion of the actual Massachusetts income tax liability of the Tax Group or Corporate Parent (or any applicable Corporate Parent

Subsidiaries) that is attributable to Borrower or its applicable Restricted Subsidiaries (or, to the extent of the amount actually received from any applicable Unrestricted Subsidiaries in respect thereof, such Unrestricted Subsidiaries) exceeds the maximum payment permitted under clause (a) for such taxable period in respect of Massachusetts income tax, a payment equal to the amount of such excess (reduced, to the extent such excess is not deducted under clause (a) in computing the permitted distribution under clause (a) for federal income taxes for such period, by any actual federal income tax benefit derived by the Tax Group or Corporate Parent (or any applicable Corporate Parent Subsidiaries) in respect of the deduction of such excess).

“**Tax Indemnification Agreement**” means the Tax Indemnification Agreement, dated as of September 24, 2002, 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.

“**Taxes**” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term Facilities**” shall mean, collectively, the credit facilities comprising the Term Facility Commitments, the Term Facility Loans, any Extended Term Loans and any Other Term Loans.

“**Term Facility Availability Period**” shall mean (a) with respect to the Tranche A Term Facility Commitments, the period from and including the Closing Date through but excluding the earlier of the date that is the one (1) year anniversary of the Closing Date and the date of termination of the Tranche A Term Facility Commitments, (b) with respect to the Tranche B Term Facility Commitments, the period from and including the Closing Date through but excluding the earlier of March 30, 2016 and the date of termination of the Tranche B Term Facility Commitments and (c) with respect to the Tranche C Term Facility Commitments, the period from and including the Closing Date through but excluding the earlier of June 30, 2016 and the date of termination of the Tranche C Term Facility Commitments.

“**Term Facility Commitment**” shall mean, for each Term Facility Lender, ~~the obligation of such Lender to make Term Facility Loans during the Term Facility Availability Period in a principal amount not to exceed the amount set forth opposite the name of such Lender on Annex A-2 under the caption “its Tranche A Term Facility Commitment,” or in the Assignment Agreement pursuant to which such Lender assumed its Tranche B Term Facility Commitment and/or Tranche C Term Facility Commitment, as applicable, as the same may be (a) changed pursuant to Section 13.05(b) or (b) reduced or terminated from time to time pursuant to Section 2.04 or Section 11.01.~~ The aggregate principal amount of the Term Facility Commitments of all Term Facility Lenders on the ~~Closing~~First Amendment Effective Date is \$875.0 million.

“**Term Facility Lenders**” shall mean (a) ~~on the Closing Date, the Lenders having in respect of any unutilized Term Facility Commitments on Annex A-2 hereof and (b) thereafter, the~~ the Tranche A Term Facility Lenders, the Tranche B Term Facility Lenders and/or the Tranche C Term Facility Lenders, as applicable, and (b) in respect of any Term Facility Loans, the Lenders from time to time holding any ~~unutilized Term Facility Commitments and/or~~ Term Facility Loans, ~~as the case may be,~~ after giving effect to any assignments thereof permitted by Section 13.05(b).

“**Term Facility Loans**” shall mean collectively, delayed draw term loans made pursuant to Section 2.01(b).

“**Term Facility Maturity Date**” shall mean the date that is the sixth anniversary of the Closing Date.

“**Term Facility Notes**” shall mean the promissory notes substantially in the form of Exhibit A-2.

“**Term Loan Commitments**” shall mean, collectively, (a) the Term Facility Commitments and (b) any Other Term Loan Commitments.

“Term Loan Extension Request” shall have the meaning provided in Section 2.13(a).

“Term Loans” shall mean, collectively, the Term Facility Loans, any Extended Term Loans and any Other Term Loans.

“Test Period” shall mean, for any date of determination, the period of the four most recently ended consecutive fiscal quarters of Borrower and its Restricted Subsidiaries for which quarterly or annual financial statements have been delivered or are required to have been delivered to Administrative Agent or have been filed with the SEC.

“Total Revolving Commitments” shall mean, at any time, the Revolving Commitments of all the Revolving Lenders at such time. The Total Revolving Commitments on the Closing Date are \$375.0 million.

“Tranche” shall mean (i) when used with respect to the Lenders, each of the following classes of Lenders: (a) Lenders having Revolving Loans incurred pursuant to the Closing Date Revolving Commitment or Closing Date Revolving Commitments, (b) Lenders having such other Tranche of Revolving Loans or Revolving Commitments created pursuant to an Extension Amendment, (c) Lenders having Term Facility Loans ~~or~~, **(d) Lenders having Tranche A Term Facility Commitments, (e) Lenders having Tranche B Term Facility Commitments, (f) Lenders having Tranche C Term Facility Commitments** and ~~(eg)~~ Lenders having such other Tranche of Term Loans or Term Loan Commitments created pursuant to an Extension Amendment or Refinancing Amendment, and (ii) when used with respect to Loans or Commitments, each of the following classes of Loans or Commitments: (a) Revolving Loans incurred pursuant to the Closing Date Revolving Commitment or Closing Date Revolving Commitments, (b) such other Tranche of Revolving Loans or Revolving Commitments created pursuant to an Extension Amendment, (c) Term Facility Loans ~~or~~, **(d) Tranche A Term Facility Commitments, (e) Tranche B Term Facility Commitments, (f) Tranche C Term Facility Commitments** and ~~(dg)~~ such other Tranche of Term Loans or Term Loan Commitments created pursuant to an Extension Amendment or Refinancing Amendment.

“Tranche A Term Facility Commitment” shall mean, for each Tranche A Term Facility Lender, the obligation of such Lender to make Term Facility Loans pursuant to Section 2.01(b)(i) hereof during the applicable Term Facility Availability Period in a principal amount not to exceed the amount of such Tranche A Term Facility Lender’s Term Facility Commitments (as defined in the Existing Credit Agreement) immediately prior to the First Amendment Effective Date or as set forth in the Assignment Agreement pursuant to which such Lender assumed its Tranche A Term Facility Commitment, as applicable, as the same may be (a) changed pursuant to Section 13.05(b) or (b) reduced or terminated from time to time pursuant to Section 2.04 or Section 11.01. The aggregate principal amount of the Tranche A Term Facility Commitments of all Tranche A Term Facility Lenders on the First Amendment Effective Date is \$70,000,000.00.

“Tranche A Term Facility Lenders” shall mean (a) as of the First Amendment Effective Date, the Lenders having Term Facility Commitments other than the Tranche B Term Facility Lenders and the Tranche C Term Facility Lenders and (b) thereafter, the Lenders from time to time holding any unutilized Tranche A Term Facility Commitments after giving effect to any assignments thereof permitted by Section 13.05(b).

“Tranche B Term Facility Commitment” shall mean, for each Tranche B Term Facility Lender, the obligation of such Lender to make Term Facility Loans pursuant to Section 2.01(b)(ii) hereof during the applicable Term Facility Availability Period in a principal amount not to exceed the amount of such Tranche B Term Facility Lender’s Term Facility Commitments (as defined in the Existing Credit Agreement) immediately prior to the First Amendment Effective Date or as set forth in the Assignment Agreement pursuant to which such Lender assumed its Tranche B Term Facility Commitment, as applicable, as the same may be (a) changed pursuant to Section 13.05(b) or (b) reduced or terminated from time to time pursuant to Section 2.04 or Section 11.01. The aggregate principal amount of the Tranche B Term Facility Commitments of all Tranche B Term Facility Lenders on the First Amendment Effective Date is \$100,333,333.34.

“Tranche B Term Facility Lenders” shall mean (a) as of the First Amendment Effective Date, the Consenting Lenders (as defined in the First Amendment) electing “Extension Option 1” in their respective Consenting Lender Agreements (as defined in the First Amendment) and (b) thereafter, the Lenders from time

to time holding any unutilized Tranche B Term Facility Commitments after giving effect to any assignments thereof permitted by Section 13.05(b).

“**Tranche C Term Facility Commitment**” shall mean, for each Tranche C Term Facility Lender, the obligation of such Lender to make Term Facility Loans pursuant to Section 2.01(b)(iii) hereof during the applicable Term Facility Availability Period in a principal amount not to exceed the amount of such Tranche C Term Facility Lender’s Term Facility Commitments (as defined in the Existing Credit Agreement) immediately prior to the First Amendment Effective Date or as set forth in the Assignment Agreement pursuant to which such Lender assumed its Tranche C Term Facility Commitment, as applicable, as the same may be (a) changed pursuant to Section 13.05(b) or (b) reduced or terminated from time to time pursuant to Section 2.04 or Section 11.01. The aggregate principal amount of the Tranche C Term Facility Commitments of all Tranche C Term Facility Lenders on the First Amendment Effective Date is \$704,666,666.66.

“**Tranche C Term Facility Lenders**” shall mean (a) as of the First Amendment Effective Date, the Consenting Lenders (as defined in the First Amendment) electing “Extension Option 2” in their respective Consenting Lender Agreements (as defined in the First Amendment) and (b) thereafter, the Lenders from time to time holding any unutilized Tranche C Term Facility Commitments after giving effect to any assignments thereof permitted by Section 13.05(b).

“**Transactions**” shall mean, collectively, (a) the entering into of this Agreement and the other Credit Documents and the borrowings hereunder, if any, on the Closing Date, (b) the making of the Pre-Closing Equity Contribution prior to the Closing Date, and (c) the payment of fees and expenses in connection with the foregoing.

“**Transfer Agreement**” shall mean any trust or similar arrangement required by any Gaming Authority from time to time with respect to the Equity Interests of any Restricted Subsidiary (or any Person that was a Restricted Subsidiary) or any Gaming Facility.

“**Trigger Event**” shall mean the transfer of shares of Equity Interests of any Restricted Subsidiary or any Gaming Facility into trust or other similar arrangement required by any Gaming Authority from time to time.

“**Type**” has the meaning set forth in Section 1.03.

“**UCC**” shall mean the Uniform Commercial Code as from time to time in effect in the applicable state or other jurisdiction.

“**UCP**” shall mean, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“**ICC**”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“**Unaffiliated Joint Ventures**” shall mean any joint venture of Borrower or any of its Subsidiaries; *provided, however*, that (i) all Investments in, and other transactions entered into with, such joint venture by Borrower or any of its Restricted Subsidiaries were made in compliance with this Agreement and (ii) no Affiliate (other than Borrower or any Subsidiary or any other Unaffiliated Joint Venture) or officer or director of Borrower or any of its Subsidiaries owns any Equity Interest, or has any material economic interest, in such joint venture (other than through Borrower (directly or indirectly through its Subsidiaries)). No Subsidiary of Borrower shall be an Unaffiliated Joint Venture.

“**United States**” shall mean the United States of America.

“**un-reallocated portion**” has the meaning set forth in Section 2.14(a).

“**Unreimbursed Amount**” has the meaning set forth in Section 2.03(e).

“**Unrestricted Cash**” shall mean cash and Cash Equivalents of Borrower and its Restricted Subsidiaries that would not appear as “restricted” on a combined or consolidated balance sheet of the Consolidated Companies.

“Unrestricted Subsidiaries” shall mean (a) as of the Closing Date, the Subsidiaries listed on Schedule 8.12(c), (b) any Subsidiary of Borrower designated as an “Unrestricted Subsidiary” pursuant to and in compliance with Section 9.12 and (c) any Subsidiary of an Unrestricted Subsidiary (in each case, unless such Subsidiary is no longer a Subsidiary of Borrower or is subsequently designated as a Restricted Subsidiary pursuant to this Agreement).

“Unutilized R/C Commitment” shall mean, for any Revolving Lender, at any time, the excess of such Revolving Lender’s Revolving Commitment at such time over the sum of (i) the aggregate outstanding principal amount of all Revolving Loans made by such Revolving Lender and (ii) such Revolving Lender’s L/C Liability at such time.

“U.S. Person” shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 5.06(b)(ii).

“Voting Stock” shall mean, with respect to any Person, the Equity Interests, participations, rights in, or other equivalents of, such Equity Interests, and any and all rights, warrants or options exchangeable for or convertible into such Equity Interests of such Person, in each case, that ordinarily has voting power for the election of directors (or Persons performing similar functions) of such Person, whether at all times or only as long as no senior class of Equity Interests has such voting power by reason of any contingency.

“Weighted Average Life to Maturity” shall mean, on any date and with respect to the aggregate amount of the Term Loans (or any applicable portion thereof), an amount equal to (a) the scheduled repayments of such Term Loans to be made after such date, multiplied by the number of days from such date to the date of such scheduled repayments divided by (b) the aggregate principal amount of such Term Loans.

“Wholly Owned Restricted Subsidiary” shall mean, with respect to any Person, any Wholly Owned Subsidiary of such Person that is a Restricted Subsidiary. Unless the context clearly requires otherwise, all references to any Wholly Owned Restricted Subsidiary shall mean a Wholly Owned Restricted Subsidiary of Borrower.

“Wholly Owned Subsidiary” shall mean, with respect to any Person, any corporation, partnership, limited liability company or other entity of which all of the Equity Interests (other than, in the case of a corporation, directors’ qualifying shares or nominee shares required under applicable law) are directly or indirectly owned or controlled by such Person and/or one or more Wholly Owned Subsidiaries of such Person. Unless the context clearly requires otherwise, all references to any Wholly Owned Subsidiary shall mean a Wholly Owned Subsidiary of Borrower.

“Withdrawal Liability” shall mean liability by an ERISA Entity to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

“Working Capital” means, for any Person at any date, the amount (which may be a negative number) of the Consolidated Current Assets of such Person minus the Consolidated Current Liabilities of such Person at such date; *provided* that, for purposes of calculating Working Capital, increases or decreases in Working Capital shall be calculated without regard to any changes in Consolidated Current Assets or Consolidated Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent, (b) the effects of purchase accounting or (c) the impact of non-cash items on Consolidated Current Assets and Consolidated Current Liabilities. For purposes of calculating Working Capital (i) for any period in which a Permitted Acquisition or other Acquisition occurs (other than with respect to any Unrestricted Subsidiary) or any Unrestricted Subsidiary is revoked and converted into a Restricted Subsidiary, the “consolidated current assets” and “consolidated current liabilities” of any Person, property, business or asset so acquired or Unrestricted Subsidiary so revoked, as the case may be (determined on a basis consistent with the corresponding definitions herein, with appropriate reference changes) shall be excluded and (ii) for any period in which any Person, property, business or asset (other than an Unrestricted Subsidiary) is sold, transferred or otherwise disposed of, closed or classified as discontinued operations by Borrower or any Restricted Subsidiary or any Restricted Subsidiary is designated as an Unrestricted Subsidiary, the “consolidated current assets” and “consolidated current liabilities” of any Person, property, business or asset so sold, transferred or

otherwise disposed of, closed or classified as discontinued operations or Restricted Subsidiary so designated, as the case may be (determined on a basis consistent with the corresponding definitions herein, with appropriate reference changes) shall be excluded.

“**Wynn Las Vegas**” shall mean Wynn Las Vegas LLC, a Nevada limited liability company.

“**Wynn Las Vegas 2020 Notes**” shall mean each of (a) the 7.875% First Mortgage Notes of Wynn Las Vegas due 2020 and (b) the 7.750% First Mortgage Notes of Wynn Las Vegas due 2020.

“**Wynn Las Vegas 2020 and 2022 Note Repayment**” shall mean the repayment in full of the Wynn Las Vegas 2020 Notes and the Wynn Las Vegas 2022 Notes, whether pursuant to purchase, redemption or other acquisition for value of, or retirement, defeasance, discharge, refinancing or otherwise.

“**Wynn Las Vegas 2022 Notes**” shall mean the 5.375% First Mortgage Notes of Wynn Las Vegas due 2022 in the in the original aggregate principal amount of \$900.0 million.

“**Wynn Las Vegas 2023 Notes**” shall mean the 4.250% Senior Notes of Wynn Las Vegas due 2023 in the in the original aggregate principal amount of \$500.0 million.

“**Wynn Las Vegas Entities**” shall mean Wynn Las Vegas and each of its Subsidiaries.

“**Wynn Las Vegas Notes**” shall mean each of the Wynn Las Vegas 2020 Notes, the Wynn Las Vegas 2022 Notes and the Wynn Las Vegas 2023 Notes, together with, without duplication, any other Indebtedness permitted to be Incurred under Section 10.01(e) (for purposes of the definition of Permitted Refinancing, including under Section 10.01(e), the Wynn Las Vegas Entities shall be deemed to be Restricted Subsidiaries prior to the Wynn Las Vegas Reorganization).

“**Wynn Las Vegas Pledge**” shall mean the direct pledge of the Equity Interests in Wynn Las Vegas and related ancillary rights as collateral security in favor of the holders of the Wynn Las Vegas Notes.

“**Wynn Las Vegas Reorganization**” shall mean a series of corporate restructurings and related transactions, including receipt of Gaming Approvals from relevant Gaming Authorities, pursuant to which the Wynn Las Vegas Entities become Subsidiaries of Borrower.

“**Wynn Las Vegas Resort**” means the Wynn Las Vegas hotel and casino resort.

“**Wynn Macau**” shall mean Wynn Resorts (Macau), S.A., a company incorporated under the laws of Macau.

“**Wynn Massachusetts**” shall mean Wynn MA LLC, a Nevada limited liability company.

“**Wynn Massachusetts Project**” shall mean the casino resort and related amenities to be developed by Borrower and its Subsidiaries in Everett, Massachusetts.

“**Wynn Massachusetts Project Opening Date**” shall mean the date the Wynn Massachusetts Project is open to the general public.

“**Wynn Resorts**” shall mean Wynn Resorts, Limited, a Nevada corporation.

SECTION 1.02 Accounting Terms and Determinations. Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters (including financial covenants) shall be made in accordance with GAAP as in effect on the Closing Date consistently applied for all applicable periods, and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and Borrower notifies Administrative Agent that Borrower requests an amendment to any provision hereof to eliminate the

effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if Administrative Agent notifies Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and Borrower, Administrative Agent or the Required Lenders shall so request, Administrative Agent, the Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders, not to be unreasonably withheld).

SECTION 1.03. Classes and Types of Loans. Loans hereunder are distinguished by “Class” and by “Type.” The “Class” of a Loan (or of a Commitment to make a Loan) refers to whether such Loan is a Revolving Loan of any particular Tranche, a Term Facility Loan (**or, in the case of a commitment to make a Term Facility Loan, a Tranche A Term Facility Commitment, a Tranche B Term Facility Commitment or a Tranche C Term Facility Commitment, as applicable**), or a Term Loan of any particular Tranche of Term Loans created pursuant to an Extension Amendment or a Refinancing Amendment, each of which constitutes a Class. The “Type” of a Loan refers to whether such Loan is an ABR Loan or a LIBOR Loan, each of which constitutes a Type. Loans may be identified by both Class and Type.

SECTION 1.04. Rules of Construction.

(a) In each Credit Document, unless the context clearly requires otherwise (or such other Credit Document clearly provides otherwise), references to (i) the plural include the singular, the singular include the plural and the part include the whole; (ii) Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; (iii) statutes and regulations include any amendments, supplements or modifications of the same from time to time and any successor statutes and regulations; (iv) unless otherwise expressly provided, any reference to any action of any Secured Party by way of consent, approval or waiver shall be deemed modified by the phrase “in its/their reasonable discretion”; (v) time shall be a reference to time of day New York, New York; (vi) Obligations (other than L/C Liabilities) shall not be deemed “outstanding” if such Obligations have been Paid in Full; and (vii) except as expressly provided in any Credit Document any item required to be delivered or performed on a day that is not a Business Day shall not be required until the next succeeding Business Day.

(b) In each Credit Document, unless the context clearly requires otherwise (or such other Credit Document clearly provides otherwise), (i) “**amend**” shall mean “amend, restate, amend and restate, supplement or modify”; and “**amended,**” “**amending**” and “**amendment**” shall have meanings correlative to the foregoing; (ii) in the computation of periods of time from a specified date to a later specified date, “**from**” shall mean “from and including”; “**to**” and “**until**” shall mean “to but excluding”; and “**through**” shall mean “to and including”; (iii) “**hereof,**” “**herein**” and “**hereunder**” (and similar terms) in any Credit Document refer to such Credit Document as a whole and not to any particular provision of such Credit Document; (iv) “**including**” (and similar terms) shall mean “including without limitation” (and similarly for similar terms); (v) “**or**” has the inclusive meaning represented by the phrase “and/or”; (vi) references to “**the date hereof**” shall mean the date first set forth above; (vii) “**asset**” and “**property**” shall have the same meaning and effect and refer to all tangible and intangible assets and property, whether real, personal or mixed and of every type and description; and (viii) a “**fiscal year**” or a “**fiscal quarter**” is a reference to a fiscal year or fiscal quarter of Borrower.

(c) In this Agreement unless the context clearly requires otherwise, any reference to (i) an Annex, Exhibit or Schedule is to an Annex, Exhibit or Schedule, as the case may be, attached to this Agreement and constituting a part hereof, and (ii) a Section or other subdivision is to a Section or such other subdivision of this Agreement.

(d) Unless otherwise expressly provided herein, (i) references to Organizational Documents, agreements (including the Credit Documents) and other contractual instruments shall be deemed to include all subsequent

amendments, restatements, amendments and restatements, extensions, supplements, reaffirmations, replacements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, extensions, supplements, reaffirmations, replacements and other modifications are permitted by the Credit Documents; and (ii) references to any Requirement of Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law.

(e) This Agreement and the other Credit Documents are the result of negotiations among and have been reviewed by counsel to Agents, Borrower and the other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or Agents merely because of Agents' or the Lenders' involvement in their preparation.

SECTION 1.05. Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the applicable L/C Lender, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of extensions of credit hereunder and Obligations denominated in Alternate Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Credit Parties hereunder or calculating financial covenants or financial ratios hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of calculating the Dollar Equivalent of the amount of extensions of credit hereunder and of Obligations denominated in an Alternate Currency under the Credit Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the applicable L/C Lender, as applicable.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, LIBOR Loan or Letter of Credit is denominated in an Alternate Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternate Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the applicable L/C Lender, as the case may be.

(c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBO Rate" or with respect to any comparable or successor rate thereto.

SECTION 1.06 Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, Consolidated EBITDA and the Consolidated Senior Secured Net Leverage Ratio shall be calculated in the manner prescribed by this Section 1.06; *provided* that notwithstanding anything to the contrary in clauses (b), (c) or (d) of this Section 1.06, when calculating Consolidated EBITDA and the Consolidated Senior Secured Net Leverage Ratio for purposes of determining actual compliance (and not compliance on a Pro Forma Basis) with the covenant pursuant to Section 10.08, the events described in this Section 1.06 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect.

(b) For purposes of calculating Consolidated EBITDA and the Consolidated Senior Secured Net Leverage Ratio, Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period and (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If, since the beginning of any applicable Test Period, any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.06, then Consolidated EBITDA and the Consolidated Senior Secured Net Leverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.06.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the pro forma calculations shall be made in good faith by a Responsible Officer of Borrower and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions and synergies projected by Borrower in good faith to be realized as a result of specified actions taken or with respect to which steps have been initiated, or are reasonably expected to be initiated within fifteen (15) months of the closing date of such Specified Transaction (in the good faith determination of Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized during the entirety of the applicable period), net of the amount of actual benefits realized during such period from such actions; *provided* that, with respect to any such cost savings, operating expense reductions and synergies, the limitations and requirements set forth in clause (c) of the definitions of Consolidated EBITDA (other than the requirement set forth in clause (c) of Consolidated EBITDA that steps have been initiated or taken) shall apply; *provided, further*, that the aggregate amount of additions made to Consolidated EBITDA for any Test Period pursuant to this clause (c) and clause (c) of the definition of “Consolidated EBITDA” shall not (i) exceed 20.0% of Consolidated EBITDA for such Test Period (after giving effect to this clause (c) and clause (c) of the definition of “Consolidated EBITDA”) or (ii) be duplicative of one another.

(d) In the event that Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, prepayment, retirement, exchange or extinguishment) any Indebtedness included in the calculations of Consolidated EBITDA and the Consolidated Senior Secured Net Leverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility), (i) during the applicable Test Period and/or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then Consolidated EBITDA and the Consolidated Senior Secured Net Leverage Ratio shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period in the case of Consolidated EBITDA or the Consolidated Senior Secured Net Leverage Ratio.

SECTION 1.07 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II.

CREDITS

SECTION 2.01. Loans.

(a) **Revolving Loans.** Each Revolving Lender agrees, severally and not jointly, on the terms and conditions of this Agreement, to make revolving loans (the “**Revolving Loans**”) to Borrower in Dollars from time to time, on any Business Day during, with respect to any Revolving Commitment of such Revolving Lender, the Revolving Availability Period applicable to such Revolving Commitment, in an aggregate principal amount at any one time outstanding not exceeding the amount of the Revolving Commitment of such Revolving Lender as in effect from time to time; *provided, however*, that, after giving effect to any Borrowing of Revolving Loans, (i) the sum of the aggregate principal amount of (without duplication) all Revolving Loans then outstanding plus the aggregate amount of all L/C Liabilities shall not exceed the Total Revolving Commitments as in effect at such time, (ii) the Revolving Exposure of such Revolving Lender shall not exceed such Revolving Lender’s Revolving Commitments in effect at such time, (iii) the Revolving Tranche Exposure of such Revolving Lender in respect of any Tranche of Revolving Commitments shall not exceed such Revolving Lender’s Revolving Commitment of such Tranche in effect at such time and (iv) the Revolving Tranche Exposure of all Revolving Lenders in respect of any Tranche of Revolving Commitments shall not exceed the aggregate Revolving Commitments of such Tranche in effect at such time. Subject to the terms and conditions of this Agreement, during the applicable Revolving Availability Period, Borrower may borrow, repay and re-borrow the amount of the Revolving Commitments by means of ABR Loans and LIBOR Loans.

(b) Term Facility Loans.

(i) Each Lender with a **Tranche A** Term Facility Commitment agrees, severally and not jointly, on the terms and conditions of this Agreement, to make Term Facility Loans to Borrower in Dollars from time to time, on any Business Day during the **applicable** Term Facility Availability Period, in an aggregate principal amount at any one time outstanding not exceeding the amount of the **Tranche A** Term Facility Commitment of such Term Facility Lender as in effect from time to time.

(ii) Each Lender with a Tranche B Term Facility Commitment agrees, severally and not jointly, on the terms and conditions of this Agreement, to make Term Facility Loans to Borrower in Dollars from time to time, on any Business Day during the applicable Term Facility Availability Period, in an aggregate principal amount at any one time outstanding not exceeding the amount of the Tranche B Term Facility Commitment of such Term Facility Lender as in effect from time to time.

(iii) Each Lender with a Tranche C Term Facility Commitment agrees, severally and not jointly, on the terms and conditions of this Agreement, to make Term Facility Loans to Borrower in Dollars from time to time, on any Business Day during the applicable Term Facility Availability Period, in an aggregate principal amount at any one time outstanding not exceeding the amount of the Tranche C Term Facility Commitment of such Term Facility Lender as in effect from time to time.

It is the understanding, agreement and intention that once made pursuant to this Section 2.01(b), any Term Facility Loans shall be part of the same Tranche, indistinguishable from one another.

(c) LIBOR Loans.

(i) **Limit on LIBOR Loans.** No more than twenty (20) separate Interest Periods in respect of LIBOR Loans may be outstanding at any one time in the aggregate under all of the facilities.

(ii) With respect to Term Facility Loans made under a Tranche of Term Facility Commitments as LIBOR Loans, if at the time such Term Facility Loans (the “New Term Facility Loans”) are made, there are outstanding Term Facility Loans which were made under any other Tranche of Term Facility Commitments (the “Existing Term Facility Loans”), then (i) the initial Interest Period(s) for all such New Term Facility Loans hereunder shall commence upon the making of such New Term Facility Loan and end on the last day of the Interest Period(s) applicable to the Existing Term Facility Loans (as of the date of the making of the New Term Facility Loans) and (ii) such New Term Facility Loans shall have the same LIBO Rate as the corresponding Existing Term Facility Loans (and, if there are multiple Interest Periods and/or multiple LIBO Rates applicable to the Existing Term Facility Loans as of such date of the making of the New Term Facility Loans, then the New Term Facility Loans shall have multiple Interest Periods ending on the same days (and having the same LIBO Rates) as such Interest Periods, and with respect to amounts proportionate to the amount of Existing Term Facility Loans applicable to such Interest Periods).

SECTION 2.02 Borrowings. Borrower shall give Administrative Agent notice of each borrowing hereunder as provided in Section 4.05 in the form of a Notice of Borrowing; *provided* that, in the case of a borrowing of ABR Loans requested to be made on a same day basis, Borrower shall deliver the Notice of Borrowing no later than 1:00 p.m., New York time, on the day of such proposed ABR Loan (which day shall be a Business Day). Unless otherwise agreed to by Administrative Agent in its sole discretion, not later than 12:00 p.m. (Noon) (or, in the case of a borrowing of ABR Loans requested to be made on a same day basis, 4:00 p.m.), New York time, on the date specified for each borrowing in Section 4.05, each Lender shall make available the amount of the Loan or Loans to be made by it on such date to Administrative Agent, at an account specified by Administrative Agent maintained at the Principal Office, in immediately available funds, for the account of Borrower. Each borrowing of Revolving Loans shall be made by each Revolving Lender *pro rata* based on its R/C Percentage. Each borrowing of Term Facility Loans shall be made by each Term Facility Lender *pro rata* based on its **applicable** T/C Percentage. The amounts so received by Administrative Agent shall, subject to the terms and conditions of this Agreement, be made available to Borrower not later than 4:00

p.m., New York time, on the actual applicable Funding Date, by depositing the same by wire transfer of immediately available funds in (or, in the case of an account of Borrower maintained with Administrative Agent at the Principal Office, by crediting the same to) the account or accounts of Borrower or any other account or accounts in each case as directed by Borrower in the applicable Notice of Borrowing.

SECTION 2.03 Letters of Credit.

(a) Subject to the terms and conditions hereof, the Revolving Commitments may be utilized, upon the request of Borrower, in addition to the Revolving Loans provided for by Section 2.01(a), for standby and commercial documentary letters of credit (herein collectively called "**Letters of Credit**") issued by the applicable L/C Lender (which L/C Lenders agree to the terms and provisions of this Section 2.03 in reliance upon the agreements of the other Lenders set forth herein) for the account of Borrower or its Subsidiaries or, with respect to the Specified Letters of Credit (and any replacements thereof), its Affiliates; *provided, however*, that in no event shall

(i) the aggregate amount of all L/C Liabilities, *plus* the aggregate principal amount of all the Revolving Loans then outstanding, exceed at any time the Total Revolving Commitments as in effect at such time,

(ii) the sum of the aggregate principal amount of all Revolving Loans of any Revolving Lender then outstanding, *plus* such Revolving Lender's L/C Liability exceed at any time such Revolving Lender's Revolving Commitment as in effect at such time,

(iii) the outstanding aggregate amount of all L/C Liabilities exceed the L/C Sublimit and, in respect of each L/C Lender, the outstanding aggregate amount of L/C Liabilities in respect of such L/C Lender exceed its L/C Sublimit,

(iv) the Dollar Equivalent of the Stated Amount of any Letter of Credit be less than \$100,000 or such lesser amount as is acceptable to the L/C Lender,

(v) the expiration date of any Letter of Credit extend beyond the earlier of (x) the third Business Day preceding the latest R/C Maturity Date then in effect and (y) the date twelve (12) months following the date of such issuance, unless in the case of this clause (y) the Required Revolving Lenders have approved such expiry date in writing (but never beyond the third Business Day prior to the latest R/C Maturity Date then in effect), except for any Letter of Credit that Borrower has agreed to Cash Collateralize in an amount equal to the Minimum Collateral Amount or otherwise backstop (with a letter of credit on customary terms) to the applicable L/C Lender's and the Administrative Agent's reasonable satisfaction, on or prior to the third Business Day preceding the latest R/C Maturity Date then in effect, subject to the ability of Borrower to request Auto-Extension Letters of Credit in accordance with Section 2.03(b),

(vi) any L/C Lender issue any Letter of Credit after it has received notice from Borrower or the Required Revolving Lenders stating that a Default exists until such time as such L/C Lender shall have received written notice of (x) rescission of such notice from the Required Revolving Lenders, (y) waiver or cure of such Default in accordance with this Agreement or (z) Administrative Agent's good faith determination that such Default has ceased to exist,

(vii) any Letter of Credit be issued in a currency other than Dollars or an Alternate Currency nor at a tenor other than sight, or

(viii) the L/C Lender be obligated to issue any Letter of Credit, amend or modify any outstanding Letter of Credit or extend the expiry date of any outstanding Letter of Credit at any time when a Revolving Lender is a Defaulting Lender if such Defaulting Lender's L/C Liability cannot be reallocated to Non-Defaulting Lenders pursuant to Section 2.14(a) unless arrangements reasonably satisfactory to the L/C Lender and Borrower have been made to eliminate the L/C Lender's risk with respect to the participation in Letters of Credit by all such Defaulting Lenders, including by Cash Collateralizing in an amount equal to the Minimum Collateral Amount,

or obtaining a backstop letter of credit from an issuer reasonably satisfactory to the L/C Lender to support, each such Defaulting Lender's L/C Liability.

(b) Whenever Borrower requires the issuance of a Letter of Credit it shall give the applicable L/C Lender and Administrative Agent at least three (3) Business Days written notice (or such shorter period of notice acceptable to the L/C Lender). Such Letter of Credit application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system agreed to by the applicable L/C Lender, by personal delivery or by any other means acceptable to the applicable L/C Lender. Each notice shall be in the form of Exhibit K or such other form as is reasonably acceptable to the applicable L/C Lender appropriately completed (each a "**Letter of Credit Request**") and shall specify a date of issuance not beyond the fifth Business Day prior to the latest R/C Maturity Date then in effect. Each Letter of Credit Request must be accompanied by documentation describing in reasonable detail the proposed terms, conditions and format of the Letter of Credit to be issued, and if so requested by any L/C Lender each Letter of Credit Request shall be accompanied by such L/C Lender's form of application but which application shall not contain any operating or financial covenants or any provisions inconsistent with this Agreement. If Borrower so requests in any applicable Letter of Credit Request, the applicable L/C Lender may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that any such Auto-Extension Letter of Credit must permit the L/C Lender to decline any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Lender at the time of the original issuance or automatic extension of a Letter of Credit, Borrower shall not be required to make a specific request to the L/C Lender for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Lender to permit the extension of such Letter of Credit at any time to an expiry date not later than the third Business Day preceding the latest R/C Maturity Date then in effect (*provided*, that such three (3) Business Day limitation shall not apply to any Letter of Credit that Borrower has agreed to Cash Collateralize in an amount equal to the Minimum Collateral Amount or otherwise backstop (with a letter of credit on customary terms) to the applicable L/C Lender's and the Administrative Agent's reasonable satisfaction prior to the extension thereof); *provided, however*, that the L/C Lender shall not permit any such extension if (A) the L/C Lender has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 7.02 is not then satisfied, and in each such case directing the L/C Lender not to permit such extension. If there is any conflict between the terms and conditions of this Agreement and the terms and condition of any application, the terms and conditions of this Agreement shall govern. Each Lender hereby authorizes each L/C Lender to issue and perform its obligations with respect to Letters of Credit and each Letter of Credit shall be issued in accordance with the customary procedures of such L/C Lender. Borrower acknowledges and agrees that the failure of any L/C Lender to require an application at any time and from time to time shall not restrict or impair such L/C Lender's right to require such an application or agreement as a condition to the issuance of any subsequent Letter of Credit.

(c) On each day during the period commencing with the issuance by the applicable L/C Lender of any Letter of Credit and until such Letter of Credit shall have expired or been terminated, the Revolving Commitment of each Revolving Lender shall be deemed to be utilized for all purposes hereof in an amount equal to such Lender's R/C Percentage of the Dollar Equivalent of the then Stated Amount of such Letter of Credit plus the amount of any unreimbursed drawings thereunder (the amount of such unreimbursed drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency). Each Revolving Lender (other than the applicable L/C Lender) severally agrees that, upon the issuance of any Letter of Credit hereunder, it shall automatically acquire from the L/C Lender that issued such Letter of Credit, without recourse, a participation in such L/C Lender's obligation to fund drawings and rights under such Letter of Credit in an amount equal to such Lender's R/C Percentage of such obligation (such obligation to fund drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) and rights, and each Revolving Lender (other than such L/C Lender) thereby shall absolutely, unconditionally

and irrevocably assume, as primary obligor and not as surety, and shall be unconditionally obligated to such L/C Lender to pay and discharge when due, its R/C Percentage of such L/C Lender's obligation to fund drawings (such obligation to fund drawings shall be expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) under such Letter of Credit. Such L/C Lender shall be deemed to hold an L/C Liability in an amount equal to its retained interest in the related Letter of Credit after giving effect to such acquisition by the Revolving Lenders other than such L/C Lender of their participation interests.

(d) In the event that any L/C Lender has determined to honor a drawing under a Letter of Credit, such L/C Lender shall promptly notify (the "**L/C Payment Notice**") Administrative Agent and Borrower of the amount paid by such L/C Lender and the date on which payment is to be made to such beneficiary. In the case of a Letter of Credit denominated in an Alternate Currency, Borrower shall reimburse the L/C Lender that issued such Letter of Credit in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternate Currency, the applicable L/C Lender shall notify Administrative Agent and Borrower of the Dollar Equivalent of the amount of the drawing following the determination thereof in accordance with Section 1.05. Borrower hereby unconditionally agrees to pay and reimburse such L/C Lender, through the Administrative Agent, for the amount of payment under such Letter of Credit in Dollars, together with interest thereon at a rate *per annum* equal to the Alternate Base Rate in effect from time to time plus the Applicable Margin applicable to Revolving Loans that are maintained as ABR Loans as are in effect from time to time (determined based on a weighted average if multiple Tranches of Revolving Commitments are then outstanding) from the date payment was made to such beneficiary to the date on which payment is due, such payment to be made not later than the second Business Day after the date on which Borrower receives the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time, on a Business Day). Any such payment due from Borrower and not paid on the required date shall thereafter bear interest at rates specified in Section 3.02(b) until paid. Promptly upon receipt of the amount paid by Borrower pursuant to the immediately prior sentence, the applicable L/C Lender shall notify Administrative Agent of such payment and whether or not such payment constitutes payment in full of the Reimbursement Obligation under the applicable Letter of Credit.

(e) Promptly upon its receipt of a L/C Payment Notice referred to in Section 2.03(d), Borrower shall advise the applicable L/C Lender and Administrative Agent whether or not Borrower intends to borrow hereunder to finance its obligation to reimburse such L/C Lender for the amount of the related demand for payment under the applicable Letter of Credit and, if it does so intend, submit a Notice of Borrowing for such borrowing to Administrative Agent as provided in Section 4.05. In the event that Borrower fails to reimburse any L/C Lender, through the Administrative Agent, for a demand for payment under a Letter of Credit by the second Business Day after the date of the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time on a Business Day), such L/C Lender shall promptly notify Administrative Agent of such failure by Borrower to so reimburse and of the amount of the demand for payment (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency). In the event that Borrower fails to either submit a Notice of Borrowing to Administrative Agent as provided above or reimburse such L/C Lender, through the Administrative Agent, for a demand for payment under a Letter of Credit by the second Business Day after the date of the applicable L/C Payment Notice (or the third Business Day thereafter if such L/C Payment Notice is received on a date that is not a Business Day or after 1:00 p.m., New York time, on a Business Day), Administrative Agent shall give each Revolving Lender prompt notice of the amount of the demand for payment (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) including the interest therein owed by Borrower (the "**Unreimbursed Amount**"), specifying such Lender's R/C Percentage thereof and requesting payment of such amount.

(f) Each Revolving Lender (other than the applicable L/C Lender) shall pay to Administrative Agent for account of the applicable L/C Lender at the Principal Office in Dollars and in immediately available funds, an amount equal to such Revolving Lender's R/C Percentage of the Unreimbursed Amount upon not less than one Business Day's actual notice by Administrative Agent as described in Section 2.03(e) to such Revolving Lender requesting such payment and specifying such amount. Administrative Agent will promptly remit the funds so received to the applicable L/C Lender in Dollars. Each such Revolving Lender's obligation to make such payments to Administrative Agent for the account of L/C Lender under this Section 2.03(f), and the applicable L/C Lender's right to receive the same, shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including (i) the failure of any other

Revolving Lender to make its payment under this Section 2.03(f), (ii) the financial condition of Borrower or the existence of any Default or (iii) the termination of the Commitments. Each such payment to any L/C Lender shall be made without any offset, abatement, withholding or reduction whatsoever.

(g) Upon the making of each payment by a Revolving Lender, through the Administrative Agent, to an L/C Lender pursuant to Section 2.03(f) in respect of any Letter of Credit, such Revolving Lender shall, automatically and without any further action on the part of Administrative Agent, such L/C Lender or such Revolving Lender, acquire (i) a participation in an amount equal to such payment in the Reimbursement Obligation owing to such L/C Lender by Borrower hereunder and under the L/C Documents relating to such Letter of Credit and (ii) a participation equal to such Revolving Lender's R/C Percentage in any interest or other amounts (such interest and other amounts expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) (other than cost reimbursements) payable by Borrower hereunder and under such L/C Documents in respect of such Reimbursement Obligation. If any L/C Lender receives directly from or for the account of Borrower any payment in respect of any Reimbursement Obligation or any such interest or other amounts (including by way of setoff or application of proceeds of any collateral security), such L/C Lender shall promptly pay to Administrative Agent for the account of each Revolving Lender which has satisfied its obligations under Section 2.03(f), such Revolving Lender's R/C Percentage of the Dollar Equivalent of such payment, each such payment by such L/C Lender to be made in Dollars. In the event any payment received by such L/C Lender and so paid to the Revolving Lenders hereunder is rescinded or must otherwise be returned by such L/C Lender, each Revolving Lender shall, upon the request of such L/C Lender (through Administrative Agent), repay to such L/C Lender (through Administrative Agent) the amount of such payment paid to such Revolving Lender, with interest at the rate specified in Section 2.03(j).

(h) Borrower shall pay to Administrative Agent, for the account of each Revolving Lender, and with respect to each Tranche of Revolving Commitments, in respect of each Letter of Credit and each Tranche of Revolving Commitments for which such Revolving Lender has a L/C Liability, a letter of credit commission equal to (x) the rate *per annum* equal to the Applicable Margin for Revolving Loans of such Tranche made by such Revolving Lender that are LIBOR Loans in effect from time to time, multiplied by (y) the daily Dollar Equivalent of the Stated Amount of such Letter of Credit allocable to such Revolving Lender's Revolving Commitments of such Tranche (such Dollar Equivalent to be determined in accordance with Section 1.05) for the period from and including the date of issuance of such Letter of Credit (i) in the case of a Letter of Credit which expires in accordance with its terms, to and including such expiration date and (ii) in the case of a Letter of Credit which is drawn in full or is otherwise terminated other than on the stated expiration date of such Letter of Credit, to and excluding the date such Letter of Credit is drawn in full or is terminated. Such commission will be non-refundable and is to be paid (1) quarterly in arrears on each Quarterly Date and (2) on each R/C Maturity Date. In addition, Borrower shall pay to each L/C Lender, for such L/C Lender's account a fronting fee with respect to each Letter of Credit (whether commercial or standby) at the rate of 0.125% per annum, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit, or increase thereof, on a quarterly basis in arrears. Such fronting fee shall be due and payable on each Quarterly Date in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the latest R/C Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. In addition Borrower agrees to pay to each L/C Lender all charges, costs and expenses in the amounts customarily charged by such L/C Lender, from time to time in like circumstances, with respect to the issuance, amendment, transfer, payment of drawings, and other transactions relating thereto.

(i) Upon the issuance of or amendment or modification to a Letter of Credit, the applicable L/C Lender shall promptly deliver to Administrative Agent and Borrower a written notice of such issuance, amendment or modification and such notice shall be accompanied by a copy of such Letter of Credit or the respective amendment or modification thereto, as the case may be. Promptly upon receipt of such notice, Administrative Agent shall deliver to each Revolving Lender a written notice regarding such issuance, amendment or modification, as the case may be, and, if so requested by a Revolving Lender, Administrative Agent shall deliver to such Revolving Lender a copy of such Letter of Credit or amendment or modification, as the case may be.

(j) If and to the extent that any Revolving Lender fails to pay an amount required to be paid pursuant to Section 2.03(f) or 2.03(g) on the due date therefor, such Revolving Lender shall pay to the applicable L/C Lender (through Administrative Agent) interest on such amount with respect to each Tranche of Revolving Commitments held by such Revolving Lender for each day from and including such due date to but excluding the date such payment is made at a rate *per annum* equal to the Federal Funds Rate (as in effect from time to time) for the first three days and at the interest rate (in effect from time to time) applicable to Revolving Loans under such Tranche made by such Revolving Lender that are maintained as ABR Loans for each date thereafter. If any Revolving Lender holds Revolving Commitments of more than one Tranche and such Revolving Lender makes a partial payment of amounts due by it under Section 2.03(f) or 2.03(g), such partial payment shall be allocated pro rata to each Tranche based on the amount of Revolving Commitments of each Tranche held by such Revolving Lender.

(k) The issuance by any L/C Lender of any amendment or modification to any Letter of Credit hereunder that would extend the expiry date or increase the Stated Amount thereof shall be subject to the same conditions applicable under this Section 2.03 to the issuance of new Letters of Credit, and no such amendment or modification shall be issued hereunder (i) unless either (x) the respective Letter of Credit affected thereby would have complied with such conditions had it originally been issued hereunder in such amended or modified form or (y) the Required Revolving Lenders (or other specified Revolving Lenders to the extent required by Section 13.04) shall have consented thereto or (ii) if the beneficiary of the Letter of Credit does not accept the proposed terms of the Letter of Credit.

(l) Notwithstanding the foregoing, no L/C Lender shall be under any obligation to issue any Letter of Credit if at the time of such issuance, (i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Lender from issuing the Letter of Credit, or any Law applicable to such L/C Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Lender shall prohibit, or request that such L/C Lender refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Lender in good faith deems material to it or (ii) the issuance of the Letter of Credit would violate one or more policies of such L/C Lender applicable to letters of credit generally.

(m) The obligations of Borrower under this Agreement and any L/C Document to reimburse any L/C Lender for a drawing under a Letter of Credit, and to repay any drawing under a Letter of Credit converted into Revolving Loans, shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and each such other L/C Document under all circumstances, including the following:

(i) any lack of validity or enforceability of this Agreement, any Credit Document or any L/C Document;

(ii) the existence of any claim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of any Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by the L/C Documents or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit; or any defense based upon the failure of any drawing under a Letter of Credit to conform to the terms of the Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such drawing;

(iv) waiver by a L/C Lender of any requirement that exists for the L/C Lender's protection and not the protection of Borrower or any waiver by the L/C Lender which does not in fact materially prejudice Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by a L/C Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by a L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by a L/C Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or a Guarantor.

To the extent that any provision of any L/C Document is inconsistent with the provisions of this Section 2.03, the provisions of this Section 2.03 shall control.

(n) On the last Business Day of each month, Borrower and each L/C Lender shall provide to Administrative Agent such information regarding the outstanding Letters of Credit as Administrative Agent shall reasonably request, in form and substance reasonably satisfactory to Administrative Agent (and in such standard electronic format as Administrative Agent shall reasonably specify), for purposes of Administrative Agent's ongoing tracking and reporting of outstanding Letters of Credit. Administrative Agent shall maintain a record of all outstanding Letters of Credit based upon information provided by Borrower and the L/C Lenders pursuant to this Section 2.03(n), and such record of Administrative Agent shall, absent manifest error, be deemed a correct and conclusive record of all Letters of Credit outstanding from time to time hereunder. Notwithstanding the foregoing, if and to the extent Administrative Agent determines that there are one or more discrepancies between information provided by Borrower and any L/C Lender hereunder, Administrative Agent will notify Borrower and such L/C Lender thereof and Borrower and such L/C Lender shall endeavor to reconcile any such discrepancy. In addition to and without limiting the foregoing, with respect to commercial documentary Letters of Credit, on the first Business Day of each week the applicable L/C Lender shall deliver to Administrative Agent, by facsimile or electronic mail, a report detailing the daily outstanding commercial documentary Letters of Credit for the previous week for such Letters of Credit issued in Dollars and for such Letters of Credit issued in an Alternate Currency.

(o) Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Lenders, the Administrative Agent, any of their respective Affiliates, directors, officers, employees, agents and advisors nor any correspondent, participant or assignee of any L/C Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence, bad faith or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Lenders, the Administrative Agent, any of their respective Affiliates, directors, officers, employees, agents and advisors nor any correspondent, participant or assignee of the L/C Lenders shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(m); *provided, however*, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against a L/C Lender, and a L/C Lender may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower

which Borrower proves were caused by such L/C Lender's willful misconduct, bad faith or gross negligence or such L/C Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Lenders may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Lenders shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Lenders may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(p) Unless otherwise expressly agreed by the applicable L/C Lender and Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Lenders shall not be responsible to Borrower for, and the L/C Lenders' rights and remedies against Borrower shall not be impaired by, any action or inaction of the L/C Lenders required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such L/C Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(q) Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, Borrower shall be obligated to reimburse the applicable L/C Lender hereunder for any and all drawings under such Letter of Credit. Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of Borrower, and that Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(r) A Revolving Lender may become an additional L/C Lender hereunder with the approval of the Administrative Agent (such approval not to be unreasonably withheld or delayed), Borrower and such Revolving Lender, pursuant to an agreement with, and in form and substance reasonably satisfactory to, the Administrative Agent, Borrower and such Revolving Lender. The Administrative Agent shall notify the Revolving Lenders of any such additional L/C Lender.

SECTION 2.04. Termination and Reductions of Commitment.

(a) (i) In addition to any other mandatory commitment reductions pursuant to this Section 2.04, **(A) the aggregate amount of the Tranche A Term Facility Commitments shall be automatically and permanently reduced by the amount of Term Facility Loans made in respect thereof from time to time, (B) the aggregate amount of the Tranche B Term Facility Commitments shall be automatically and permanently reduced by the amount of Term Facility Loans made in respect thereof from time to time and (C) the aggregate amount of the Tranche C Term Facility Commitments shall be automatically and permanently reduced by the amount of Term Facility Loans made in respect thereof from time to time.** Notwithstanding any other provision of this Agreement, any outstanding Term Facility Commitments shall automatically terminate upon the earlier of (x) ~~the~~ such Term Facility Commitments being fully funded pursuant to Section 2.01(b) and (y) at 5:00 p.m., New York City time, on the last Business Day of the applicable Term Facility Availability Period.

(ii) The aggregate amount of the Revolving Commitments of any Tranche shall be automatically and permanently reduced to zero on the R/C Maturity Date applicable to such Tranche, and the L/C Commitments shall be automatically and permanently reduced to zero on the last R/C Maturity Date.

(b) Borrower shall have the right at any time or from time to time (without premium or penalty except breakage costs (if any) pursuant to Section 5.05) (i) so long as no Revolving Loans or L/C Liabilities will be outstanding as of the date specified for termination (after giving effect to all transactions occurring on such date), to terminate the

Revolving Commitments in their entirety, (ii) to reduce the aggregate amount of the Unutilized R/C Commitments (which shall be *pro rata* among the Revolving Lenders), (iii) to reduce (x) the aggregate amount of the unutilized **Tranche A** Term Facility Commitments (which shall be *pro rata* among the **Tranche A** Term Facility Lenders), (y) to reduce the aggregate amount of the unutilized **Tranche B** Term Facility Commitments (which shall be *pro rata* among the **Tranche B** Term Facility Lenders) and (z) to reduce the aggregate amount of the unutilized **Tranche C** Term Facility Commitments (which shall be *pro rata* among the **Tranche C** Term Facility Lenders), and (iv) so long as the remaining Total Revolving Commitments will equal or exceed the aggregate amount of outstanding Revolving Loans and L/C Liabilities, to reduce the aggregate amount of the Revolving Commitments (which shall be *pro rata* among the Revolving Lenders); *provided, however*, that (x) Borrower shall give notice of each such termination or reduction as provided in Section 4.05, and (y) each partial reduction shall be in an aggregate amount at least equal to \$5.0 million (or any whole multiple of \$1.0 million in excess thereof) or, if less, the remaining Unutilized R/C Commitments or unutilized Term Facility Commitments **of the applicable Tranche**, as applicable.

(c) Any Commitment once terminated or reduced may not be reinstated.

(d) Each reduction or termination of any of the Commitments applicable to any Tranche pursuant to this Section 2.04 shall be applied ratably among the Lenders with such a Commitment, as the case may be, in accordance with their respective Commitment, as applicable.

SECTION 2.05. Fees.

(a) Borrower shall pay to Administrative Agent for the account of each Revolving Lender (other than a Defaulting Lender), with respect to such Revolving Lender's Revolving Commitments of each Tranche and for the account of each Term Facility Lender (other than a Defaulting Lender), with respect to such Term Facility Lender's Term Facility Commitments **of each Tranche**, a commitment fee for the period from and including the Closing Date (or, following the conversion of any such Revolving Commitment into another Tranche, the applicable Extension Date) to but not including (x) for Revolving Commitments the earlier of (i) the date such Revolving Commitment is terminated or expires (or is modified to constitute another Tranche) and (ii) the R/C Maturity Date applicable to such Revolving Commitment, and (y) for Term Facility Commitments the date such Term Facility Commitment is terminated or expires, in each case, computed at a rate *per annum* equal to the Applicable Fee Percentage in respect of such Tranche in effect from time to time during such period on the actual daily amount of such Revolving Lender's Unutilized R/C Commitment in respect of such Tranche or such Term Facility Lender's unutilized Term Facility Commitment **in respect of such Tranche**, as applicable. Notwithstanding anything to the contrary in the definition of "Unutilized R/C Commitments," for purposes of determining Unutilized R/C Commitments in connection with computing commitment fees with respect to Revolving Commitments, a Revolving Commitment of a Revolving Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and L/C Liability of such Revolving Lender. Any accrued commitment fee under this Section 2.05(a) in respect of any Revolving Commitment or Term Facility Commitment shall be payable in arrears on each Quarterly Date and on the earlier of (i) the date the applicable Revolving Commitment is modified to constitute another Tranche or **such** Term Facility Commitment is terminated or expires, as applicable, and (ii) for any Revolving Commitment, the R/C Maturity Date applicable to such Revolving Commitment and, for any Term Facility Commitment, the termination of the **applicable** Term Facility Availability Period.

(b) Borrower shall pay to Administrative Agent for its own account the administrative fee separately agreed to in the Fee Letter.

(c) Borrower shall pay to Auction Manager for its own account, in connection with any Borrower Loan Purchase, such fees as may be agreed between Borrower and Auction Manager.

SECTION 2.06. Lending Offices. The Loans of each Type made by each Lender shall be made and maintained at such Lender's Applicable Lending Office for Loans of such Type. Each Lender may, at its option but subject to Section 5.06 as if such branch or Affiliate was deemed a "Lender" thereunder for purposes of documentation delivered to the Administrative Agent and payments required to be made to Borrower thereunder, make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option

shall not affect in any manner the obligation of Borrower to repay such Loan in accordance with the terms of this Agreement.

SECTION 2.07. Several Obligations of Lenders. The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan on such date, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender, and no Lender shall have any obligation to Administrative Agent or any other Lender for the failure by such Lender to make any Loan required to be made by such Lender. No Revolving Lender will be responsible for failure of any other Lender to fund its participation in Letters of Credit.

SECTION 2.08 Notes; Register.

(a) At the request of any Lender, its Loans of a particular Class shall be evidenced by a promissory note, payable to such Lender or its registered assigns and otherwise duly completed, substantially in the form of Exhibits A-1 and A-2 of such Lender's Revolving Loans and Term Facility Loans, respectively; *provided* that any promissory notes issued in respect of Other Term Loans, Extended Term Loans or Extended Revolving Loans shall be in such form as mutually agreed by Borrower and Administrative Agent.

(b) The date, amount, Type, interest rate and duration of the Interest Period (if applicable) of each Loan of each Class made by each Lender to Borrower and each payment made on account of the principal thereof, shall be recorded by such Lender or its registered assigns on its books and, prior to any transfer of any Note evidencing the Loans of such Class held by it, endorsed by such Lender (or its nominee) on the schedule attached to such Note or any continuation thereof; *provided, however*, that the failure of such Lender (or its nominee) to make any such recordation or endorsement or any error in such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing hereunder or under such Note.

(c) Borrower hereby designates Administrative Agent to serve as its nonfiduciary agent, solely for purposes of this Section 2.08, to maintain a register (the "**Register**") on which it will record the name and address of each Lender, the Commitment from time to time of each of the Lenders, the principal and interest amounts of the Loans made by each of the Lenders and each repayment in respect of the principal amount of the Loans of each Lender. Failure to make any such recordation or any error in such recordation shall not affect Borrower's obligations in respect of such Loans. The entries in the Register shall be conclusive of the information noted therein (absent manifest error), and the parties hereto shall treat each Person whose name is recorded in the Register as the owner of a Loan or other obligation hereunder as the owner thereof for all purposes of the Credit Documents, notwithstanding any notice to the contrary. The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. No assignment shall be effective unless recorded in the Register; *provided* that Administrative Agent agrees to record in the Register any assignment entered into pursuant to the term hereof promptly after the effectiveness of such assignment.

SECTION 2.09. Optional Prepayments and Conversions or Continuations of Loans.

(a) Subject to Section 4.04, Borrower shall have the right to prepay Loans (without premium or penalty), or to convert Loans of one Type into Loans of another Type or to continue Loans of one Type as Loans of the same Type, at any time or from time to time. Borrower shall give Administrative Agent notice of each such prepayment, conversion or continuation as provided in Section 4.05 (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder; *provided* that Borrower may make any such notice conditional upon the occurrence of a Person's acquisition or sale or any incurrence of indebtedness or issuance of Equity Interests). Each Notice of Continuation/Conversion shall be substantially in the form of Exhibit C. If LIBOR Loans are prepaid or converted other than on the last day of an Interest Period therefor, Borrower shall at such time pay all expenses and costs required by Section 5.05. Notwithstanding the foregoing, and without limiting the rights and remedies of the Lenders under Article XI, in the event that any Event of Default shall have occurred and be continuing, Administrative Agent may (and, at the request of the Required Lenders, shall), upon written notice to Borrower, have the right to suspend the right of Borrower to convert any Loan into a LIBOR Loan, or to continue any Loan as a LIBOR Loan, in

which event all Loans shall be converted (on the last day(s) of the respective Interest Periods therefor) or continued, as the case may be, as ABR Loans.

(b) Application.

(i) The amount of any optional prepayments described in Section 2.09(a) shall be applied to prepay Loans outstanding in order of amortization, in amounts and to Tranches, all as determined by Borrower.

(ii) In addition to the foregoing, following the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date and *provided* that (I) prior to the Initial Test Date, the Consolidated Senior Secured Net Leverage Ratio is less than 2.50 to 1.00 on a Pro Forma Basis (calculated assuming all amounts offered pursuant to this clause (b)(ii) were accepted as prepayment for the Loans and applied thereto) as of the most recent Calculation Date and (II) from and after the Initial Test Date, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) (calculated assuming all amounts offered pursuant to this clause (b)(ii) were accepted as prepayment for the Loans and applied thereto) as of the most recent Calculation Date, Borrower shall have the right to elect to offer to prepay at par the Loans *pro rata* to the Term Facility Loans, the Extended Term Loans and the Other Term Loans then outstanding and apply any amounts rejected for such prepayment to repurchase, prepay, redeem, retire, acquire, defease or cancel Indebtedness or make Restricted Payments notwithstanding any then applicable limitations set forth in Section 10.09 or 10.06, respectively. If Borrower makes such an election, it shall provide notice thereof to Administrative Agent, who shall promptly, and in any event within one Business Day of receipt, provide such notice to the holders of the Term Loans. Any such notice shall specify the aggregate amount offered to prepay the Term Loans. Each holder of a Term Facility Loan, an Other Term Loan or an Extended Term Loan may elect, in its sole discretion, to reject such prepayment offer with respect to an amount equal to or less than (w) with respect to holders of Term Facility Loans, an amount equal to the aggregate amount so offered to prepay Term Facility Loans times a fraction, the numerator of which is the principal amount of Term Facility Loans owed to such holder and the denominator of which is the principal amount of Term Facility Loans outstanding, (x) with respect to holders of Other Term Loans, an amount equal to the aggregate amount so offered to prepay Other Term Loans times a fraction, the numerator of which is the principal amount of Other Term Loans owed to such holder and the denominator of which is the principal amount of Other Term Loans outstanding and (y) with respect to holders of Extended Term Loans, an amount equal to the aggregate amount so offered to prepay Extended Term Loans times a fraction, the numerator of which is the principal amount of Extended Term Loans owed to such holder and the denominator of which is the principal amount of Extended Term Loans outstanding. Any rejection of such offer must be evidenced by written notice delivered to Administrative Agent within five Business Days of receipt of the offer for prepayment, specifying an amount of such prepayment offer rejected by such holder, if any. Failure to give such notice will constitute an election to accept such offer. Any portion of such prepayment offer so accepted will be used to prepay the Term Loans held by the applicable holders within ten Business Days of the date of receipt of the offer to prepay. Any portion of such prepayment rejected may be used by Borrower and its Restricted Subsidiaries to repurchase, prepay, redeem, retire, acquire, defease or cancel Indebtedness or make Restricted Payments notwithstanding any then applicable limitations set forth in Section 10.09 or 10.06, respectively.

SECTION 2.10 Mandatory Prepayments.

(a) Borrower shall prepay the Loans as follows (each such prepayment to be effected in each case in the manner, order and to the extent specified in Section 2.10(b) below):

(i) **Casualty Events.** Within five (5) Business Days after Borrower or any Restricted Subsidiary receives any Net Available Proceeds from any Casualty Event or any disposition pursuant to Section 10.05(l) (or notice of collection by Administrative Agent of the same), in an aggregate principal amount equal to 100% of such Net Available Proceeds (it being understood that applications pursuant to this Section 2.10(a)(i) shall not be duplicative of Section 2.10(a)(iii) below); *provided, however*, that:

(x) if no Event of Default then exists or would arise therefrom, the Net Available Proceeds thereof shall not be required to be so applied on such date to the extent that Borrower delivers an Officer's Certificate to Administrative Agent stating that an amount equal to such proceeds is intended to be used to fund the acquisition of Property used or usable in the business of any Credit Party or repair, replace or restore the Property or other Property used or usable in the business of any Credit Party (in accordance with the provisions of the applicable Security Document in respect of which such Casualty Event has occurred, to the extent applicable), in each case within (A) twelve (12) months following receipt of such Net Available Proceeds or (B) if Borrower or the relevant Restricted Subsidiary enters into a legally binding commitment to reinvest such Net Available Proceeds within twelve (12) months following receipt thereof, within the later of (1) one hundred and eighty (180) days following the date of such legally binding commitment and (2) twelve (12) months following receipt of such Net Available Proceeds, and

(y) if all or any portion of such Net Available Proceeds not required to be applied to the prepayment of Loans pursuant to this Section 2.10(a)(i) is not so used within the period specified by clause (x) above, such remaining portion shall be applied on the last day of such period as specified in Section 2.10(b).

Notwithstanding the foregoing provisions of this Section 2.10(a)(i) or otherwise, no mandatory prepayment shall be required pursuant to this Section 2.10(a)(i) in any fiscal year until the date on which the Net Available Proceeds required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(i) in such fiscal year shall exceed \$15.0 million (and thereafter only Net Available Proceeds in excess of such amount shall be required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(i)).

(ii) **Debt Issuance.** Within five (5) Business Days after any Debt Issuance on or after the Closing Date, in an aggregate principal amount equal to 100% of the Net Available Proceeds of such Debt Issuance.

(iii) **Asset Sales.** Within five (5) Business Days after receipt by Borrower or any of its Restricted Subsidiaries of any Net Available Proceeds from any Asset Sale pursuant to Section 10.05(c), in an aggregate principal amount equal to 100% of the Net Available Proceeds from such Asset Sale (it being understood that applications pursuant to this Section 2.10(a)(iii) shall not be duplicative of Section 2.10(a)(i) above); *provided, however*, that:

(x) an amount equal to the Net Available Proceeds from any Asset Sale pursuant to Section 10.05(c) shall not be required to be applied as provided above on such date if (1) no Event of Default then exists or would arise therefrom and (2) Borrower delivers an Officer's Certificate to Administrative Agent stating that an amount equal to such Net Available Proceeds is intended to be reinvested, directly or indirectly, in assets (which may be pursuant to an acquisition of Equity Interests of a Person that directly or indirectly owns such assets) otherwise permitted under this Agreement of (A) if such Asset Sale was effected by any Credit Party, any Credit Party, and (B) if such Asset Sale was effected by any other Company, any Company, in each case within (x) twelve (12) months following receipt of such Net Available Proceeds or (y) if Borrower or the relevant Restricted Subsidiary enters into a legally binding commitment to reinvest such Net Available Proceeds within twelve (12) months following receipt thereof, within the later of (A) one hundred and eighty (180) days following the date of such legally binding commitment and (B) twelve (12) months following receipt of such Net Available Proceeds (which certificate shall set forth the estimates of the proceeds to be so expended); and

(y) if all or any portion of such Net Available Proceeds is not reinvested in assets in accordance with the Officer's Certificate referred to in clause (x) above within the period specified by clause (x) above, such remaining portion shall be applied on the last day of such period as specified in Section 2.10(b).

Notwithstanding the foregoing provisions of this Section 2.10(a)(iii) or otherwise, no mandatory prepayment shall be required pursuant to this Section 2.10(a)(iii) in any fiscal year until the date on which the

Net Available Proceeds required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(iii) in such fiscal year shall exceed \$15.0 million (and thereafter only Net Available Proceeds in excess of such amount shall be required to be applied as mandatory prepayments pursuant to this Section 2.10(a)(iii)).

(iv) **Prepayments Not Required.** Notwithstanding any other provisions of this Section 2.10(a), to the extent that any of or all the Net Available Proceeds of any Asset Sale or Casualty Event with respect to any property or assets of Foreign Subsidiaries are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Available Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.10(a) but may be retained by the applicable Foreign Subsidiary so long as applicable local law does not permit repatriation to the United States (Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Available Proceeds is permitted under the applicable local law, any such Net Available Proceeds shall be reinvested pursuant to Section 2.10(a)(i) or (iii), as applicable, or applied pursuant to Section 2.10(b) within five (5) Business Days of such repatriation. To the extent Borrower determines in good faith that repatriation of any of or all the Net Available Proceeds of any Asset Sale or Casualty Event with respect to any property or assets of Foreign Subsidiaries would have a material adverse tax costs or consequences to Borrower or any of its Subsidiaries, such Net Available Proceeds so affected may be retained by the applicable Foreign Subsidiary; *provided* that, on or before the date on which the Net Available Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to Section 2.10(a)(i) or (iii), as applicable, unless previously repatriated (in which case, any such Net Available Proceeds shall be reinvested pursuant to Section 2.10(a)(i) or (iii), as applicable, or applied pursuant to Section 2.10(b) within five (5) Business Days of such repatriation), (A) Borrower shall apply an amount equal to such Net Available Proceeds to such reinvestments or prepayments as if such Net Available Proceeds had been received by Borrower rather than such Foreign Subsidiary, minus, the amount of additional taxes that would have been payable or reserved against if such Net Available Proceeds had been repatriated (or, if less, the Net Available Proceeds that would be calculated if received by such Foreign Subsidiary) pursuant to Section 2.10(b) or (B) such Net Available Proceeds shall be applied to the repayment of Indebtedness of a Foreign Subsidiary.

(v) **Prepayments of Other First Lien Indebtedness.** Notwithstanding the foregoing provisions of Section 2.10(a)(i), (ii), (iii) or otherwise, any Net Available Proceeds from any such Casualty Event, Debt Issuance or Asset Sale otherwise required to be applied to prepay the Loans may, at Borrower's option, be applied to prepay the principal amount of Other First Lien Indebtedness only to (and not in excess of) the extent to which a mandatory prepayment in respect of such Casualty Event, Debt Issuance or Asset Sale is required under the terms of such Other First Lien Indebtedness (with any remaining Net Available Proceeds applied to prepay outstanding Loans in accordance with the terms hereof), unless such application would result in the holders of Other First Lien Indebtedness receiving in excess of their *pro rata* share (determined on the basis of the aggregate outstanding principal amount of Term Loans and Other First Lien Indebtedness at such time) of such Net Available Proceeds relative to Lenders, in which case such Net Available Proceeds may only be applied to prepay the principal amount of Other First Lien Indebtedness on a *pro rata* basis with outstanding Term Loans. To the extent the holders of Other First Lien Indebtedness decline to have such indebtedness repurchased, repaid or prepaid with any such Net Available Proceeds, the declined amount of such Net Available Proceeds shall promptly (and, in any event, within ten (10) Business Days after the date of such rejection) be applied to prepay Loans in accordance with the terms hereof (to the extent such Net Available Proceeds would otherwise have been required to be applied if such Other First Lien Indebtedness was not then outstanding). Any such application to Other First Lien Indebtedness shall reduce any prepayments otherwise required hereunder by an equivalent amount.

(b) **Application.** The amount of any required prepayments described in Section 2.10(a) shall be applied to prepay Loans as follows:

(i) *First*, to the reduction of Amortization Payments on the Term Loans required by Sections 3.01(b) and 3.01(c) and, in the case of the Term Facilities, to the remaining principal installments with respect thereto in direct order of maturity over the next succeeding four (4) quarterly installments and, thereafter, on a *pro*

rata basis; *provided* that, each such prepayment shall, subject to the last paragraph of this Section 2.10(b), be applied to such Term Loans that are ABR Loans to the fullest extent thereof before application to Loans that are LIBOR Loans, and such prepayments of LIBOR Loans shall be applied in a manner that minimizes the amount of any payments required to be made by Borrower pursuant to Section 5.05;

(ii) *Second*, after such time as no Term Loans or Permitted First Priority Refinancing Debt remain outstanding, to prepay all outstanding Revolving Loans (in each case, without any reduction in Revolving Commitments); and

(iii) *Third*, after application of prepayments in accordance with clauses (i) and (ii) above, Borrower shall be permitted to retain any such remaining excess.

Notwithstanding the foregoing, any Term Facility Lender may elect, by written notice to Administrative Agent at least one (1) Business Day prior to the prepayment date, to decline all or any portion of any prepayment of its Term Loans, pursuant to this Section 2.10, in which case the aggregate amount of the prepayment that would have been applied to prepay such Term Loans, but was so declined shall be ratably offered to each Term Facility Lender that initially accepted such prepayment. Any such re-offered amounts rejected by such Lenders shall be retained by Borrower (any such retained amounts, “**Declined Amounts**”).

Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding, only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of Borrower, the balance of such required prepayment shall be either (i) deposited in the Collateral Account and applied to the prepayment of LIBOR Loans on the last day of the then next-expiring Interest Period for LIBOR Loans (with all interest accruing thereon for the account of Borrower) or (ii) prepaid immediately, together with any amounts owing to the Lenders under Section 5.05. Notwithstanding any such deposit in the Collateral Account, interest shall continue to accrue on such Loans until prepayment.

(c) **Revolving Credit Extension Reductions.** Until the final R/C Maturity Date, Borrower shall from time to time immediately prepay the Revolving Loans (and/or provide Cash Collateral in an amount equal to the Minimum Collateral Amount for, or otherwise backstop (with a letter of credit on customary terms reasonably acceptable to the applicable L/C Lender and the Administrative Agent), outstanding L/C Liabilities) in such amounts as shall be necessary (I) so that at all times (a) the aggregate outstanding amount of ~~the~~ Revolving Loans, *plus*, the aggregate outstanding L/C Liabilities shall not exceed the Total Revolving Commitments as in effect at such time and (b) the aggregate outstanding amount of the Revolving Loans of any Tranche allocable to such Tranche, *plus* the aggregate outstanding L/C Liabilities under such Tranche shall not exceed the aggregate Revolving Commitments of such Tranche as in effect at such time and (II) to comply with Section 7.02(a)(iii).

(d) **Outstanding Letters of Credit.** If any Letter of Credit is outstanding on the 30th day prior to the next succeeding R/C Maturity Date which has an expiry date later than the third Business Day preceding such R/C Maturity Date (or which, pursuant to its terms, may be extended to a date later than the third Business Day preceding such R/C Maturity Date), then (i) if one or more Tranches of Revolving Commitments with a R/C Maturity Date after such R/C Maturity Date are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Lenders with Revolving Commitments to purchase participations therein and to make Revolving Loans and payments in respect thereof and the commissions applicable thereto), effective as of such R/C Maturity Date, solely under (and ratably participated by Revolving Lenders pursuant to) the Revolving Commitments in respect of such non-terminating Tranches of Revolving Commitments, if any, up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Commitments thereunder at such time, and (ii) to the extent not capable of being reallocated pursuant to clause (i) above, Borrower shall, on such 30th day (or on such later day as such Letters of Credit become incapable of being reallocated pursuant to clause (i) above due to the termination, reduction or utilization of any relevant Revolving Commitments), either (x) Cash Collateralize all such Letters of Credit in an amount not less than the Minimum Collateral Amount with respect to such Letters of Credit (it being understood that such Cash Collateral shall be released to the extent that the aggregate Stated Amount of such Letters of Credit is reduced upon the expiration or termination of such Letters of Credit, so that the Cash

Collateral shall not exceed the Minimum Collateral Amount with respect to such Letters of Credit outstanding at any particular time) or (y) deliver to the applicable L/C Lender a standby letter of credit (other than a Letter of Credit) in favor of such L/C Lender in a stated amount not less than the Minimum Collateral Amount with respect to such Letters of Credit, which standby letter of credit shall be in form and substance, and issued by a financially sound financial institution, reasonably acceptable to such L/C Lender and the Administrative Agent. Except to the extent of reallocations of participations pursuant to clause (i) above, the occurrence of a R/C Maturity Date shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders of the relevant Tranche in any Letter of Credit issued before such R/C Maturity Date. For the avoidance of doubt, the parties hereto agree that upon the occurrence of any reallocations of participations pursuant to clause (i) above and, if necessary, the taking of the actions in described clause (ii) above, all participations in Letters of Credit under the terminated Revolving Commitments shall terminate.

SECTION 2.11 Replacement of Lenders.

(a) Borrower shall have the right to replace any Lender (the “**Replaced Lender**”) with one or more other Eligible Assignees (collectively, the “**Replacement Lender**”), if (x) such Lender is charging Borrower increased costs pursuant to Section 5.01 or 5.06 or such Lender becomes incapable of making LIBOR Loans as provided in Section 5.03 when other Lenders are generally able to do so, (y) such Lender is a Defaulting Lender or (z) such Lender is subject to Disqualification (and such Lender is notified by Borrower and Administrative Agent in writing of such Disqualification); *provided, however*, that (i) at the time of any such replacement, the Replacement Lender shall enter into one or more Assignment Agreements (and with all fees payable pursuant to Section 13.05(b) to be paid by the Replacement Lender or Borrower) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, and in each case L/C Interests of, the Replaced Lender (or if the Replaced Lender is being replaced as a result of being a Defaulting Lender, then the Replacement Lender shall acquire all Revolving Commitments, Revolving Loans and L/C Interests of such Replaced Lender under one or more Tranches of Revolving Commitments or, at the option of Borrower and such Replacement Lender, all other Loans and Commitments held by such Defaulting Lender), (ii) at the time of any such replacement, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender (other than any Loans not being acquired by a Replacement Lender), (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being repaid and terminated or acquired, as the case may be, and (C) all accrued, but theretofore unpaid, fees owing to the Lender pursuant to Section 2.05 with respect to the Loans being assigned, as the case may be and (iii) all obligations of Borrower owing to such Replaced Lender (other than those specifically described in clause (i) above in respect of Replaced Lenders for which the assignment purchase price has been, or is concurrently being, paid, and other than those relating to Loans or Commitments not being acquired by a Replacement Lender, but including any amounts which would be paid to a Lender pursuant to Section 5.05 if Borrower were prepaying a LIBOR Loan), as applicable, shall be paid in full to such Replaced Lender, as applicable, concurrently with such replacement, as the case may be. Upon the execution of the respective Assignment Agreement, the payment of amounts referred to in clauses (i), (ii) and (iii) above, as applicable, the receipt of any consents that would be required for an assignment of the subject Loans and Commitments to such Replacement Lender in accordance with Section 13.05, the Replacement Lender, if any, shall become a Lender hereunder and the Replaced Lender, as applicable, shall cease to constitute a Lender hereunder and be released of all its obligations as a Lender, except with respect to indemnification provisions applicable to such Lender under this Agreement, which shall survive as to such Lender and, in the case of any Replaced Lender, except with respect to Loans, Commitments and L/C Interests of such Replaced Lender not being acquired by the Replacement Lender; *provided*, that if the applicable Replaced Lender does not execute the Assignment Agreement within three (3) Business Days after Borrower’s request, execution of such Assignment Agreement by the Replaced Lender shall not be required to effect such assignment.

(b) If any Lender is subject to a Disqualification (and such Lender is notified by Borrower and Administrative Agent in writing of such Disqualification), Borrower shall have the right to replace such Lender with a Replacement Lender in accordance with Section 2.11(a) or prepay the Loans held by such Lender, in each case, in accordance with any applicable provisions of Section 2.11(a), even if a Default or an Event of Default exists (notwithstanding anything contained in such Section 2.11(a) to the contrary). Any such prepayment shall be deemed an optional prepayment, as

set forth in Section 2.09 and shall not be required to be made on a *pro rata* basis with respect to Loans of the same Tranche as the Loans held by such Lender. Notice to such Lender shall be given at least ten (10) days before the required date of transfer or prepayment (unless a shorter period is required by any Requirement of Law), as the case may be, and shall be accompanied by evidence demonstrating that such transfer or redemption is required pursuant to Gaming Laws. Upon receipt of a notice in accordance with the foregoing, the Replaced Lender shall cooperate with Borrower in effectuating the required transfer or prepayment within the time period set forth in such notice, not to be less than the minimum notice period set forth in the foregoing sentence (unless a shorter period is required under any Requirement of Law). Further, if the transfer or prepayment is triggered by notice from the Gaming Authority that the Lender is disqualified, commencing on the date the Gaming Authority provides the disqualification notice to Borrower, to the extent prohibited by law: (i) such Lender shall no longer receive any interest on the Loans; (ii) such Lender shall no longer exercise, directly or through any trustee or nominee, any right conferred by the Loans; and (iii) such Lender shall not receive any remuneration in any form from Borrower for services or otherwise in respect of the Loans.

SECTION 2.12 [Reserved].

SECTION 2.13 Extensions of Loans and Commitments.

(a) Borrower may, at any time request that all or a portion of the Term Loans of any Tranche (an “**Existing Term Loan Tranche**”) be modified to constitute another Tranche of Term Loans in order to extend the scheduled final maturity date thereof (any such Term Loans which have been so modified, “**Extended Term Loans**”) and to provide for other terms consistent with this Section 2.13. In order to establish any Extended Term Loans, Borrower shall provide a notice to Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Term Loan Tranche) (a “**Term Loan Extension Request**”) setting forth the proposed terms of the Extended Term Loans to be established, which terms shall be identical to those applicable to the Term Loans of the Existing Term Loan Tranche from which they are to be modified except (i) the scheduled final maturity date shall be extended to the date set forth in the applicable Extension Amendment and the amortization shall be as set forth in the Extension Amendment, (ii) (A) the Applicable Margins with respect to the Extended Term Loans may be higher or lower than the Applicable Margins for the Term Loans of such Existing Term Loan Tranche and/or (B) additional fees (including prepayment or termination premiums) may be payable to the Lenders providing such Extended Term Loans in addition to or in lieu of any increased Applicable Margins contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) any Extended Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any optional or mandatory prepayments or prepayment of Term Loans hereunder in each case as specified in the respective Term Loan Extension Request, (iv) the final maturity date and the scheduled amortization applicable to the Extended Term Loans shall be set forth in the applicable Extension Amendment and the scheduled amortization of such Existing Term Loan Tranche shall be adjusted to reflect the amortization schedule (including the principal amounts payable pursuant thereto) in respect of the Term Loans under such Existing Term Loan Tranche that have been extended as Extended Term Loans as set forth in the applicable Extension Amendment; *provided, however*, that the Weighted Average Life to Maturity of such Extended Term Loans shall be no shorter than the Weighted Average Life to Maturity of the Term Loans of such Existing Term Loan Tranche and (v) the covenants set forth in Section 10.08 may be modified in a manner acceptable to Borrower, Administrative Agent and the Lenders party to the applicable Extension Amendment, such modifications to become effective only after the Final Maturity Date in effect immediately prior to giving effect to such Extension Amendment (it being understood that each Lender providing Extended Term Loans, by executing an Extension Amendment, agrees to be bound by such provisions and waives any inconsistent provisions set forth in Section 4.02, 4.07(b) or 13.04). Except as provided above, each Lender holding Extended Term Loans shall be entitled to all the benefits afforded by this Agreement (including, without limitation, the provisions set forth in Section 2.09(b) and 2.10(b) applicable to Term Loans) and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the extension of any Term Loans, including, without limitation, the procurement of title insurance endorsements reasonably requested by and satisfactory to the Administrative Agent. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Tranche modified to constitute Extended Term Loans

pursuant to any Term Loan Extension Request. Any Extended Term Loans of any Extension Tranche shall constitute a separate Tranche and Class of Term Loans from the Existing Term Loan Tranche from which they were modified.

(b) Borrower may, at any time request that all or a portion of the Revolving Commitments of any Tranche (an “**Existing Revolving Tranche**” and any related Revolving Loans thereunder, “**Existing Revolving Loans**”) be modified to constitute another Tranche of Revolving Commitments in order to extend the termination date thereof (any such Revolving Commitments which have been so modified, “**Extended Revolving Commitments**” and any related Revolving Loans, “**Extended Revolving Loans**”) and to provide for other terms consistent with this Section 2.13. In order to establish any Extended Revolving Commitments, Borrower shall provide a notice to Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Revolving Tranche) (a “**Revolving Extension Request**”) setting forth the proposed terms of the Extended Revolving Commitments to be established, which terms shall be identical to those applicable to the Revolving Commitments of the Existing Revolving Tranche from which they are to be modified except (i) the scheduled termination date of the Extended Revolving Commitments and the related scheduled maturity date of the related Extended Revolving Loans shall be extended to the date set forth in the applicable Extension Amendment, (ii) (A) the Applicable Margins with respect to the Extended Revolving Loans may be higher or lower than the Applicable Margins for the Revolving Loans of such Existing Revolving Tranche and/or (B) additional fees may be payable to the Lenders providing such Extended Revolving Commitments in addition to or in lieu of any increased Applicable Margins contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) the Applicable Fee Percentage with respect to the Extended Revolving Commitments may be higher or lower than the Applicable Fee Percentage for the Revolving Commitments of such Existing Revolving Tranche and (iv) the covenants set forth in Section 10.08 may be modified in a manner acceptable to Borrower, Administrative Agent and the Lenders party to the applicable Extension Amendment, such modifications to become effective only after the Final Maturity Date in effect immediately prior to giving effect to such Extension Amendment (it being understood that each Lender providing Extended Revolving Commitments, by executing an Extension Amendment, agrees to be bound by such provisions and waives any inconsistent provisions set forth in Section 4.02, 4.07(b) or 13.04). Except as provided above, each Lender holding Extended Revolving Commitments shall be entitled to all the benefits afforded by this Agreement (including, without limitation, the provisions set forth in Sections 2.09(b) and 2.10(b) applicable to existing Revolving Loans) and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the extension of any Revolving Commitments, including, without limitation, the procurement of title insurance endorsements reasonably requested by and satisfactory to the Administrative Agent. No Lender shall have any obligation to agree to have any of its Revolving Commitments of any Existing Revolving Tranche modified to constitute Extended Revolving Commitments pursuant to any Revolving Extension Request. Any Extended Revolving Commitments of any Extension Tranche shall constitute a separate Tranche and Class of Revolving Commitments from the Existing Revolving Tranche from which they were modified. If, on any Extension Date, any Revolving Loans of any Extending Lender are outstanding under the applicable Existing Revolving Tranche, such Revolving Loans (and any related participations) shall be deemed to be allocated as Extended Revolving Loans (and related participations) and Existing Revolving Loans (and related participations) in the same proportion as such Extending Lender’s Extended Revolving Commitments bear to its remaining Revolving Commitments of the Existing Revolving Tranche.

(c) Borrower shall provide the applicable Extension Request at least five (5) Business Days prior to the date on which Lenders under the Existing Tranche are requested to respond (or such shorter period as is agreed to by Administrative Agent in its sole discretion). Any Lender (an “**Extending Lender**”) wishing to have all or a portion of its Term Loans or Revolving Commitments of the Existing Tranche subject to such Extension Request modified to constitute Extended Term Loans or Extended Revolving Commitments, as applicable, shall notify Administrative Agent (an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Term Loans or Revolving Commitments of the Existing Tranche that it has elected to modify to constitute Extended Term Loans or Extended Revolving Commitments, as applicable. In the event that the aggregate amount of Term Loans or Revolving Commitments of the Existing Tranche subject to Extension Elections exceeds the amount of Extended Term Loans or Extended Revolving Commitments, as applicable, requested pursuant to the Extension Request, Term Loans or Revolving Commitments subject to such Extension Elections shall be modified to constitute Extended Term Loans or

Extended Revolving Commitments, as applicable, on a *pro rata* basis based on the amount of Term Loans or Revolving Commitments included in such Extension Elections. Borrower shall have the right to withdraw any Extension Request upon written notice to Administrative Agent in the event that the aggregate amount of Term Loans or Revolving Commitments of the Existing Tranche subject to such Extension Request is less than the amount of Extended Term Loans or Extended Revolving Commitments, as applicable, requested pursuant to such Extension Request.

(d) Extended Term Loans or Extended Revolving Commitments, as applicable, shall be established pursuant to an amendment (an “**Extension Amendment**”) to this Agreement (which shall be substantially in the form of Exhibit P or Exhibit Q to this Agreement, as applicable, or, in each case, such other form as is reasonably acceptable to Administrative Agent). Each Extension Amendment shall be executed by Borrower, Administrative Agent and the Extending Lenders (it being understood that such Extension Amendment shall not require the consent of any Lender other than (A) the Extending Lenders with respect to the Extended Term Loans or Extended Revolving Commitments, as applicable, established thereby and (B) with respect to any extension of the Revolving Commitments that results in an extension of an L/C Lender’s obligations with respect to Letters of Credit, the consent of such L/C Lender). An Extension Amendment may, subject to Sections 2.13(a) and (b), without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.13 (including, without limitation, (A) amendments to Section 2.04(b)(iii) and Section 2.09(b)(i) to permit reductions of Tranches of Revolving Commitments (and prepayments of the related Revolving Loans) with an R/C Maturity Date prior to the R/C Maturity Date applicable to a Tranche of Extended Revolving Commitments without a concurrent reduction of such Tranche of Extended Revolving Commitments and (B) such other technical amendments as may be necessary or advisable, in the reasonable opinion of Administrative Agent and Borrower, to give effect to the terms and provisions of any Extended Term Loans or Extended Revolving Commitments, as applicable).

SECTION 2.14. Defaulting Lender Provisions.

(a) Notwithstanding anything to the contrary in this Agreement, if a Lender becomes, and during the period it remains, a Defaulting Lender, the following provisions shall apply:

(i) the L/C Liabilities of such Defaulting Lender will, subject to the limitation in the first proviso below, automatically be reallocated (effective on the day such Lender becomes a Defaulting Lender) among the Non-Defaulting Lenders *pro rata* in accordance with their respective Revolving Commitments; *provided that* (i) the sum of each Non-Defaulting Lender’s total Revolving Exposure may not in any event exceed the Revolving Commitment of such Non-Defaulting Lender as in effect at the time of such reallocation, (ii) neither such reallocation nor any payment by a Non-Defaulting Lender pursuant thereto will constitute a waiver or release of any claim Borrower, Administrative Agent, any L/C Lender or any other Lender may have against such Defaulting Lender or cause such Defaulting Lender to be a Non-Defaulting Lender and (iii) no Event of Default shall exist and be continuing at the time of such reallocation (and, unless Borrower shall have otherwise notified the Administrative Agent at such time, Borrower shall be deemed to have represented and warranted that no Event of Default exists and is continuing at such time);

(ii) to the extent that any portion (the “**un-reallocated portion**”) of the Defaulting Lender’s L/C Liabilities cannot be so reallocated, whether by reason of the first proviso in clause (a) above or otherwise, Borrower will, not later than three (3) Business Days after demand by Administrative Agent (at the direction of any L/C Lender), (i) Cash Collateralize the obligations of Borrower to the L/C Lender in respect of such L/C Liabilities, in an amount at least equal to the aggregate amount of the un-reallocated portion of such L/C Liabilities, or (ii) make other arrangements satisfactory to Administrative Agent, and to the applicable L/C Lender, as the case may be, in their sole discretion to protect them against the risk of non-payment by such Defaulting Lender;

(iii) Borrower shall not be required to pay any fees to such Defaulting Lender under Section 2.05(a); and

(iv) any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 11 or

otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 4.07 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to any L/C Lender hereunder; *third*, if so determined by Administrative Agent or requested by the applicable L/C Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Letter of Credit; *fourth*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a non-interest bearing deposit account and released *pro rata* in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders or the L/C Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any L/C Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Liabilities in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 7.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Liabilities owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Liabilities owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.14(a)(iv) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Cure.** If Borrower, Administrative Agent, each L/C Lender agree in writing in their discretion that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any amounts then held in the segregated account referred to in Section 2.14(a)), (x) such Lender will, to the extent applicable, purchase at par such portion of outstanding Loans of the other Lenders and/or make such other adjustments as Administrative Agent may determine to be necessary to cause the Revolving Exposure and L/C Liabilities of the Lenders to be on a *pro rata* basis in accordance with their respective Commitments, whereupon such Lender will cease to be a Defaulting Lender and will be a Non-Defaulting Lender (and such exposure of each Lender will automatically be adjusted on a prospective basis to reflect the foregoing); *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while such Lender was a Defaulting Lender; and *provided, further*, that no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender, and (y) all Cash Collateral provided pursuant to Section 2.14(a)(ii) shall thereafter be promptly returned to Borrower.

(c) **Certain Fees.** Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to Section 2.05 or Section 2.03(h) (without prejudice to the rights of the Non-Defaulting Lenders in respect of such fees), *provided* that (i) to the extent that all or a portion of the L/C Liability of such Defaulting Lender is reallocated to the Non-Defaulting Lenders pursuant to Section 2.14, such fees that would have accrued for the benefit of such Defaulting Lender will instead accrue for the benefit of and be payable to such Non-Defaulting Lenders, *pro rata* in accordance with their respective Commitments, and (ii) to the extent that all or any portion of such L/C Liability cannot be so reallocated, such fees will instead accrue for the benefit of and be payable to the L/C Lender except to the extent of any un-reallocated portion that is Cash Collateralized (and the *pro rata* payment provisions of Section 4.02 will automatically be deemed adjusted to reflect the provisions of this Section 2.14(c)).

SECTION 2.15 Refinancing Amendments.

(a) At any time after the Closing Date, Borrower may obtain Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Term Loans and the Revolving Loans (or unused Revolving Commitments) then outstanding under this Agreement (which for purposes of this clause (a) will be deemed to include any then outstanding Other Term Loans or Other Revolving Loans), in the form of Other Term Loans, Other Term Loan Commitments, Other Revolving Loans or Other Revolving Commitments pursuant to a Refinancing Amendment; *provided* that, notwithstanding anything to the contrary in this Section 2.15 or otherwise, (1) the borrowing and repayment (except for (A) payments of interest and fees at different rates on Other Revolving Commitments (and related outstanding), (B) repayments required upon the maturity date of the Other Revolving Commitments or any other Tranche of Revolving Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments (subject to clause (2) below)) of Loans with respect to Other Revolving Commitments after the date of obtaining any Other Revolving Commitments shall be made on a *pro rata* basis with all other Revolving Commitments (subject to clauses (2) and (3) below), (2) the permanent repayment of Revolving Loans with respect to, and termination of, Other Revolving Commitments after the date of obtaining any Other Revolving Commitments shall be made on a *pro rata* basis with all other Revolving Commitments, except that Borrower shall be permitted to permanently repay and terminate commitments of any Class with an earlier maturity date on a better than a *pro rata* basis as compared to any other Class with a later maturity date than such Class and (3) assignments and participations of Other Revolving Commitments and Other Revolving Loans shall be governed by the same assignment and participation provisions applicable to other Revolving Commitments and Revolving Loans. Each issuance of Credit Agreement Refinancing Indebtedness under this Section 2.15(a) shall be in an aggregate principal amount that is (x) not less than \$5.0 million and (y) an integral multiple of \$1.0 million in excess thereof.

(b) The effectiveness of any such Credit Agreement Refinancing Indebtedness shall subject to the consent required pursuant to Section 2.15(d), be subject solely to the satisfaction of the following conditions to the reasonable satisfaction of Administrative Agent: (i) any Credit Agreement Refinancing Indebtedness in respect of Revolving Commitments or Other Revolving Commitments will have a maturity date that is not prior to the maturity date of the Revolving Loans (or unused Revolving Commitments) being refinanced; (ii) any Credit Agreement Refinancing Indebtedness in respect of Term Loans will have a maturity date that is not prior to the maturity date of, and a Weighted Average Life to Maturity that is not shorter than the Weighted Average Life to Maturity of, the Term Loans being refinanced (determined without giving effect to the impact of prepayments on amortization of Term Loans being refinanced); (iii) the aggregate principal amount of any Credit Agreement Refinancing Indebtedness shall not exceed the principal amount so refinanced, *plus*, accrued interest, *plus*, any premium or other payment required to be paid in connection with such refinancing, *plus*, the amount of reasonable and customary fees and expenses of Borrower or any of its Restricted Subsidiaries incurred in connection with such refinancing, *plus*, any unutilized commitments thereunder; (iv) to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent and the Lenders of customary legal opinions and other documents; (v) to the extent reasonably requested by the Administrative Agent, execution of amendments to the Mortgages by the applicable Credit Parties and Collateral Agent, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent; (vi) to the extent reasonably requested by the Administrative Agent, delivery to the Administrative Agent of title insurance endorsements reasonably satisfactory to the Administrative Agent; and (vii) execution of a Refinancing Amendment by the Credit Parties, Administrative Agent and Lenders providing such Credit Agreement Refinancing Indebtedness.

(c) The Loans and Commitments established pursuant to this Section 2.15 shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Credit Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Credit Parties shall take any actions reasonably required by Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to secure all the Obligations and continue to be perfected under the UCC or otherwise after giving effect to the applicable Refinancing Amendment.

(d) Upon the effectiveness of any Refinancing Amendment pursuant to this Section 2.15, any Person providing the corresponding Credit Agreement Refinancing Indebtedness that was not a Lender hereunder immediately prior to

such time shall, subject to consent of each L/C Lender in the case of Other Revolving Loans or Other Revolving Commitments, become a Lender hereunder. Administrative Agent shall promptly notify each Lender as to the effectiveness of such Refinancing Amendment, and (i) in the case any Other Revolving Commitments resulting from such Refinancing Amendment, the Total Revolving Commitments under, and for all purpose of this Agreement, shall be increased by the aggregate amount of such Other Revolving Commitments (net of any existing Revolving Commitments being refinanced by such Refinancing Amendment), (ii) any Other Revolving Loans resulting from such Refinancing Amendment shall be deemed to be additional Revolving Loans hereunder, (iii) any Other Term Loans resulting from such Refinancing Amendment shall be deemed to be Term Loans hereunder (to the extent funded) and (iv) any Other Term Loan Commitments resulting from such Refinancing Amendment shall be deemed to be Term Loan Commitments hereunder. Notwithstanding anything to the contrary contained herein, Borrower, Collateral Agent and Administrative Agent may (and each of Collateral Agent and Administrative Agent are authorized by each other Secured Party to) execute such amendments and/or amendments and restatements of any Credit Documents as may be necessary or advisable to effectuate the provisions of this Section 2.15. Such amendments may include provisions allowing any Other Term Loans to be treated on the same basis as Term Facility Loans in connection with declining prepayments.

(e) Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Term Loan Commitments, Other Revolving Loans and/or Other Revolving Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the provisions of this Section 2.15. This Section 2.15 shall supersede any provisions in Section 4.02, 4.07(b) or 13.04 to the contrary.

(f) To the extent the Revolving Commitments are being refinanced on the effective date of any Refinancing Amendment, then each of the Revolving Lenders having a Revolving Commitment prior to the effective date of such Refinancing Amendment (such Revolving Lenders the “**Pre-Refinancing Revolving Lenders**”) shall assign or transfer to any Revolving Lender which is acquiring an Other Revolving Commitment on the effective date of such amendment (the “**Post-Refinancing Revolving Lenders**”), and such Post-Refinancing Revolving Lenders shall purchase from each such Pre-Refinancing Revolving Lender, at the principal amount thereof, such interests in Revolving Loans and participation interests in L/C Liabilities (but not, for the avoidance of doubt, the related Revolving Commitments) outstanding on the effective date of such Refinancing Amendment as shall be necessary in order that, after giving effect to all such assignments or transfers and purchases, such Revolving Loans and participation interests in L/C Liabilities will be held by Pre-Refinancing Revolving Lenders and Post-Refinancing Revolving Lenders ratably in accordance with their Revolving Commitments and Other Revolving Commitments, as applicable, after giving effect to such Refinancing Amendment (and after giving effect to any Revolving Loans made on the effective date of such Refinancing Amendment). Such assignments or transfers and purchases shall be made pursuant to such procedures as may be designated by Administrative Agent and shall not be required to be effectuated in accordance with Section 13.05. For the avoidance of doubt, Revolving Loans and participation interests in L/C Liabilities assigned or transferred and purchased pursuant to this Section 2.15(f) shall, upon receipt thereof by the relevant Post-Increase Revolving Lenders, be deemed to be Other Revolving Loans and participation interests in L/C Liabilities in respect of the relevant Other Revolving Commitments acquired by such Post-Increase Revolving Lenders on the relevant amendment effective date and the terms of such Revolving Loans and participation interests (including, without limitation, the interest rate and maturity applicable thereto) shall be adjusted accordingly.

SECTION 2.16 Cash Collateral.

(a) Certain Credit Support Events. Without limiting any other requirements herein to provide Cash Collateral, if (i) any L/C Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an extension of credit hereunder which has not been refinanced as a Revolving Loan or reimbursed, in each case, in accordance with Section 2.03(d) or (ii) Borrower shall be required to provide Cash Collateral pursuant to Section 11.01, Borrower shall, within one (1) Business Day (in the case of clause (i) above) or immediately (in the case

of clause (ii) above) following any request by the Administrative Agent or the applicable L/C Lender, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount.

(b) **Grant of Security Interest.** Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Lenders and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Cash Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral (including Cash Collateral provided in accordance with Sections 2.03, 2.10(d), 2.10(d), 2.14, 2.16 or 11.01) may be applied pursuant to Section 2.16(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person prior to the right or claim of the Administrative Agent or the L/C Lenders as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by any Defaulting Lenders). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at the Administrative Agent or as otherwise agreed to by the Administrative Agent. Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral in accordance with the account agreement governing such deposit account.

(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.16 or Sections 2.03, 2.10(d), 2.10(d), 2.14 or 11.01 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Liabilities, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce un-reallocated portions or to secure other obligations shall, so long as no Event of Default then exists, be released promptly following (i) the elimination of the applicable un-reallocated portion or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, the assignment of such Defaulting Lender's Loans and Commitments to a Replacement Lender)) or (ii) the determination by the Administrative Agent and the L/C Lenders that there exists excess Cash Collateral (which, in any event, shall exist at any time that the aggregate amount of Cash Collateral exceeds the Minimum Collateral Amount); *provided, however*, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Credit Documents and the other applicable provisions of the Credit Documents, and (y) Borrower and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated un-reallocated portions or other obligations.

ARTICLE III.

PAYMENTS OF PRINCIPAL AND INTEREST

SECTION 3.01 Repayment of Loans.

(a) **Revolving Loans.** Borrower hereby promises to pay to Administrative Agent for the account of each applicable Revolving Lender on each R/C Maturity Date, the entire outstanding principal amount of such Revolving Lender's Revolving Loans of the applicable Tranche, and each such Revolving Loan shall mature on the R/C Maturity Date applicable to such Tranche.

(b) **Term Facility Loans.** Borrower hereby promises to pay to Administrative Agent for the account of the Lenders with Term Facility Loans in repayment of the principal of the Term Facility Loans, on each date set forth on Annex B, that principal amount of Term Facility Loans, to the extent then outstanding, as is set forth opposite such date (subject to adjustment for any prepayments made under Section 2.09 or Section 2.10 or Section 2.11(b) or Section 13.04(b)(B))

or as provided in Section 2.12, in Section 2.13 or in Section 2.15), and the remaining principal amount of Term Facility Loans on the Term Facility Maturity Date.

(c) **Extended Term Loans; Other Term Loans.** Extended Term Loans shall mature in installments as specified in the applicable Extension Amendment pursuant to which such Extended Term Loans were established, subject, however, to Section 2.13(a). Other Term Loans shall mature in installments as specified in the applicable Refinancing Amendment pursuant to which such Other Term Loans were established, subject, however, to Section 2.15(a).

SECTION 3.02 Interest.

(a) Borrower hereby promises to pay to Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made or maintained by such Lender to Borrower for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full at the following rates *per annum*:

(i) during such periods as such Loan is an ABR Loan, the Alternate Base Rate (as in effect from time to time), *plus* the Applicable Margin applicable to such Loan, and

(ii) during such periods as such Loan is a LIBOR Loan, for each Interest Period relating thereto, the LIBO Rate for such Loan for such Interest Period, *plus* the Applicable Margin applicable to such Loan.

(b) To the extent permitted by Law, (i) upon the occurrence and during the continuance of an Event of Default (other than Events of Default under Sections 11.01(g) or 11.01(h)), overdue principal and overdue interest in respect of each Loan and all other Obligations not paid when due and (ii) upon the occurrence and during the continuance of an Event of Default under Section 11.01(g) or Section 11.01(h), all Obligations shall, in each case, automatically and without any action by any Person, bear interest at the Default Rate. Interest which accrues under this paragraph shall be payable on demand.

(c) Accrued interest on each Loan shall be payable (i) in the case of each ABR Loan, (x) quarterly in arrears on each Quarterly Date, (y) on the date of any repayment or prepayment in full of all outstanding ABR Loans of any Tranche of Loans (but only on the principal amount so repaid or prepaid), and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand, and (ii) in the case of each LIBOR Loan, (x) on the last day of each Interest Period applicable thereto and, if such Interest Period is longer than three months, on each date occurring at three-month intervals after the first day of such Interest Period, (y) on the date of any repayment or prepayment thereof or the conversion of such Loan to a Loan of another Type (but only on the principal amount so paid, prepaid or converted) and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand. Promptly after the determination of any interest rate provided for herein or any change therein, Administrative Agent shall give notice thereof to the Lenders to which such interest is payable and to Borrower.

ARTICLE IV.

PAYMENTS; PRO RATA TREATMENT; COMPUTATIONS; ETC.

SECTION 4.01. Payments

(a) All payments of principal, interest, Reimbursement Obligations and other amounts to be made by Borrower under this Agreement and the Notes, and, except to the extent otherwise provided therein, all payments to be made by the Credit Parties under any other Credit Document, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Administrative Agent at its account at the Principal Office, not later than 2:00 p.m., New York time, on the date on which such payment shall become due (each such payment made after such time on such due date may, at the discretion of Administrative Agent, be deemed to have been made on the next succeeding Business Day). Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof.

(b) Borrower shall, at the time of making each payment under this Agreement or any Note for the account of any Lender, specify (in accordance with Sections 2.09 and 2.10, if applicable) to Administrative Agent (which shall so notify the intended recipient(s) thereof) the Class and Type of Loans, Reimbursement Obligations or other amounts payable by Borrower hereunder to which such payment is to be applied.

(c) Except to the extent otherwise provided in the third sentence of Section 2.03(h), each payment received by Administrative Agent or by any L/C Lender (directly or through Administrative Agent) under this Agreement or any Note for the account of any Lender shall be paid by Administrative Agent or by such L/C Lender (through Administrative Agent), as the case may be, to such Lender, in immediately available funds, (x) if the payment was actually received by Administrative Agent or by such L/C Lender (directly or through Administrative Agent), as the case may be, prior to 12:00 p.m. (Noon), New York time on any day, on such day and (y) if the payment was actually received by Administrative Agent or by such L/C Lender (directly or through Administrative Agent), as the case may be, after 12:00 p.m. (Noon), New York time, on any day, by 1:00 p.m., New York time, on the following Business Day (it being understood that to the extent that any such payment is not made in full by Administrative Agent or by such L/C Lender (through Administrative Agent), as the case may be, Administrative Agent or such Lender (through Administrative Agent), as applicable, shall pay to such Lender, upon demand, interest at the Federal Funds Rate from the date such amount was required to be paid to such Lender pursuant to the foregoing clauses until the date Administrative Agent or such L/C Lender (through Administrative Agent), as applicable, pays such Lender the full amount).

(d) If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension at the rate then borne by such principal.

SECTION 4.02. Pro Rata Treatment. Except to the extent otherwise provided herein: (a) each borrowing of Loans of a particular Class from the Lenders under Section 2.01 shall be made from the relevant Lenders, each payment of commitment fees under Section 2.05 in respect of Commitments of a particular Class shall be made for account of the relevant Lenders, and each termination or reduction of the amount of the Commitments of a particular Class under Section 2.04 shall be applied to the respective Commitments of such Class of the relevant Lenders *pro rata* according to the amounts of their respective Commitments of such Class; (b) except as otherwise provided in Section 5.04, LIBOR Loans of any Class having the same Interest Period shall be allocated *pro rata* among the relevant Lenders according to the amounts of their respective Revolving Commitments and Term Loan Commitments (in the case of the making of Loans) or their respective Revolving Loans and Term Loans (in the case of conversions and continuations of Loans); (c) except as otherwise provided in Section 2.09(b), Section 2.10(b), Section 2.12, Section 2.13, Section 2.14, Section 2.15, Section 13.04 or Section 13.05(d), each payment or prepayment of principal of any Class of Revolving Loans or of any particular Class of Term Loans shall be made for the account of the relevant Lenders *pro rata* in accordance with the respective unpaid outstanding principal amounts of the Loans of such Class held by them; and (d) except as otherwise provided in Section 2.09(b), Section 2.10(b), Section 2.12, Section 2.13, Section 2.14, Section 2.15, Section 13.04 or Section 13.05(d), each payment of interest on Revolving Loans and Term Loans shall be made for account of the relevant Lenders *pro rata* in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

SECTION 4.03. Computations. Interest on LIBOR Loans, commitment fees and Letter of Credit fees shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which such amounts are payable and interest on ABR Loans and Reimbursement Obligations shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which such amounts are payable.

SECTION 4.04. Minimum Amounts. Except for mandatory prepayments made pursuant to Section 2.10 and conversions or prepayments made pursuant to Section 5.04, and Borrowings made to pay Reimbursement Obligations, each Borrowing, conversion and partial prepayment of principal of Loans shall be in an amount at least equal to (a) in the case of Term Loans (x) with respect to Borrowings, \$50.0 million and (y) with respect to conversions and partial repayments of principal, \$5.0 million and, in each case, in multiples of \$100,000 in excess thereof or, if less, the remaining Term Loans and (b) in the case of Revolving Loans, \$2.5 million with respect to ABR Loans and \$2.5 million with respect to LIBOR Loans and in multiples of \$100,000 in excess thereof (borrowings, conversions or

prepayments of or into Loans of different Types or, in the case of LIBOR Loans, having different Interest Periods at the same time hereunder to be deemed separate borrowings, conversions and prepayments for purposes of the foregoing, one for each Type or Interest Period) or, if less, the remaining Revolving Loans. Anything in this Agreement to the contrary notwithstanding, the aggregate principal amount of LIBOR Loans having the same Interest Period shall be in an amount at least equal to \$1.0 million and in multiples of \$100,000 in excess thereof and, if any LIBOR Loans or portions thereof would otherwise be in a lesser principal amount for any period, such Loans or portions, as the case may be, shall be ABR Loans during such period.

SECTION 4.05. Certain Notices. Notices by Borrower to Administrative Agent of terminations or reductions of the Commitments, of Borrowings, conversions, continuations and optional prepayments of Loans and of Classes of Loans, of Types of Loans and of the duration of Interest Periods shall be irrevocable and shall be effective only if received by Administrative Agent by telephone not later than 1:00 p.m., New York time (promptly followed by written notice via facsimile or electronic mail), on at least the number of Business Days prior to the date of the relevant termination, reduction, Borrowing, conversion, continuation or prepayment or the first day of such Interest Period specified in the table below (unless otherwise agreed to by Administrative Agent in its sole discretion), *provided* that Borrower may make any such notice conditional upon the occurrence of a Person's acquisition or sale or any incurrence of indebtedness or issuance of Equity Interests.

NOTICE PERIODS

	Number of Business Days Prior
Notice	
Termination or reduction of Commitments	3
Optional prepayment of, or conversions into, ABR Loans	1
Borrowing or optional prepayment of, conversions into, continuations as, or duration of Interest Periods for, LIBOR Loans	3
Borrowing of ABR Loans	same day

Each such notice of termination or reduction shall specify the amount and the Class of the Commitments to be terminated or reduced. Each such Notice of Borrowing, conversion, continuation or prepayment shall specify the Class of Loans to be borrowed, converted, continued or prepaid and the amount (subject to Section 4.04) and Type of each Loan to be borrowed, converted, continued or prepaid and the date of borrowing, conversion, continuation or prepayment (which shall be a Business Day). Each such notice of the duration of an Interest Period shall specify the Loans to which such Interest Period is to relate. Administrative Agent shall promptly notify the Lenders of the contents of each such notice. In the event that Borrower fails to select the Type of Loan within the time period and otherwise as provided in this Section 4.05, such Loan (if outstanding as a LIBOR Loan) will be automatically converted into an ABR Loan on the last day of the then current Interest Period for such Loan or (if outstanding as an ABR Loan) will remain as, or (if not then outstanding) will be made as, an ABR Loan. In the event that Borrower has elected to borrow or convert Loans into LIBOR Loans but fails to select the duration of any Interest Period for any LIBOR Loans within the time period and otherwise as provided in this Section 4.05, such LIBOR Loan shall have an Interest Period of one month.

SECTION 4.06. Non-Receipt of Funds by Administrative Agent

(a) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of LIBOR Loans (or, in the case of any Borrowing of ABR Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of ABR Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to Borrower

a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Federal Funds Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by Borrower, the interest rate applicable to ABR Loans. If Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Unless the Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Lenders hereunder that Borrower will not make such payment, the Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Lenders, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or the L/C Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or L/C Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Rate. A notice of the Administrative Agent to any Lender or Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

SECTION 4.07. Right of Setoff, Sharing of Payments; Etc.

(a) If any Event of Default shall have occurred and be continuing, each Credit Party agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim a Lender may otherwise have, each Lender shall be entitled, at its option (to the fullest extent permitted by law), subject to obtaining the prior written consent of the Administrative Agent to set off and apply any deposit (general or special, time or demand, provisional or final), or other indebtedness, held by it for the credit or account of such Credit Party at any of its offices, in Dollars or in any other currency, against any principal of or interest on any of such Lender's Loans, Reimbursement Obligations or any other amount payable to such Lender hereunder that is not paid when due (regardless of whether such deposit or other indebtedness is then due to such Credit Party), in which case it shall promptly notify such Credit Party thereof; *provided, however*, that such Lender's failure to give such notice shall not affect the validity thereof; and *provided further* that no such right of setoff, banker's lien or counterclaim shall apply to any funds held for further distribution to any Governmental Authority.

(b) Each of the Lenders agrees that, if it should receive (other than pursuant to Section 2.09(b), Section 2.10(b), Section 2.11, Section 2.12, Section 2.13, Section 2.15, Article V, Section 13.04 or Section 13.05(d) or as otherwise specifically provided herein or in the Fee Letter) any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents (including any guarantee), or otherwise) which is applicable to the payment of the principal of, or interest on, the Loans, Reimbursement Obligations or fees, the sum of which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such amounts then owed and due to such Lender bears to the total of such amounts then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount; *provided, however*, that if all or any portion of such excess amount is thereafter recovered from such Lender, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Borrower consents to the foregoing arrangements.

(c) Borrower agrees that any Lender so purchasing such participation may exercise all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of any Credit Party. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 4.07 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 4.07 to share in the benefits of any recovery on such secured claim.

(e) Notwithstanding anything to the contrary contained in this Section 4.07, in the event that any Defaulting Lender exercises any right of setoff, (i) all amounts so set off will be paid over immediately to Administrative Agent for further application in accordance with the provisions of Section 2.14 and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, each L/C Lender and the Lenders and (ii) the Defaulting Lender will provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

ARTICLE V.

YIELD PROTECTION, ETC.

SECTION 5.01. Additional Costs

(a) If any Change in Law shall:

(i) subject any Lender or L/C Lender to any Taxes with respect to this Agreement, any Note, any Letter of Credit or any Lender's participation therein, any L/C Document or any Loan made by it (except for (1) any reserve requirement reflected in the LIBO Rate, (2) Covered Taxes and (3) Excluded Taxes);

(ii) impose, modify or hold applicable any reserve, special deposit, compulsory loan, insurance charge 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 or L/C Lender, in each case, that is not otherwise included in the determination of the LIBO Rate hereunder; or

(iii) impose on any Lender or L/C Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing is to materially increase the cost to such Lender or L/C Lender of making, converting into, continuing or maintaining LIBOR Loans (or of maintaining its obligation to make any LIBOR Loans) or issuing, maintaining or participating in Letters of Credit (or maintaining its obligation to participate in or to issue any Letter of Credit), then, in any such case, Borrower shall, within 10 days of written demand therefor, pay such Lender or L/C Lender any additional amounts necessary to compensate such Lender or L/C Lender for such increased cost. If any Lender or L/C Lender becomes entitled to claim any additional amounts pursuant to this subsection, it shall promptly notify Borrower, through Administrative Agent, of the event by reason of which it has become so entitled.

(b) A certificate as to any additional amounts setting forth the calculation of such additional amounts pursuant to this Section 5.01 submitted by such Lender or L/C Lender, through Administrative Agent, to Borrower shall be conclusive in the absence of clearly demonstrable error. Without limiting the survival of any other covenant hereunder, this Section 5.01 shall survive the termination of this Agreement and the payment of the Notes and all other Obligations payable hereunder.

(c) In the event that any Lender shall have determined that any Change in Law affecting such Lender or any Lending Office of such Lender or the Lender's holding company with regard to capital or liquidity requirements, does or shall have the effect of reducing the rate of return on such Lender's or such holding company's capital as a consequence of its obligations hereunder, the Commitments of such Lender, the Loans made by, or participations in Letters of Credit held by such Lender, or the Letters of Credit issued by such L/C Lender, to a level below that which such Lender or such holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, after submission by such Lender or Borrower (with a copy to Administrative Agent) of a written request therefor (setting forth in reasonable detail the amount payable to the affected Lender and the basis for such request), Borrower shall promptly pay to such Lender such additional amount or amounts as will compensate such Lender for such reduction.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's right to demand such compensation; *provided, however*, that Borrower shall not be required to compensate a Lender pursuant to this Section 5.01 for any increased costs or reductions incurred more than ninety (90) days prior to the date that such Lender notifies Borrower of the Change in Law giving rise to such increased costs incurred or reductions suffered and of such Lender's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 5.02. Inability To Determine Interest Rate. If prior to the first day of any Interest Period: (a) Administrative Agent shall have determined (which determination shall be conclusive and binding upon Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the LIBO Base Rate for such Interest Period or (b) Administrative Agent shall have received notice from the Required Lenders that Dollar deposits are not available in the relevant amount and for the relevant Interest Period available to the Required Lenders in the London interbank market or (c) the Required Lenders determine that the LIBO Rate for any requested Interest Period with respect to a proposed LIBOR Loan does not adequately and fairly reflect the cost to such Lenders of funding such LIBOR Loans (in each case, "**Impacted Loans**"), Administrative Agent shall give electronic mail or telephonic notice thereof to Borrower and the Lenders as soon as practicable thereof. If such notice is given, (x) any LIBOR Loans requested to be made on the first day of such Interest Period shall be made as ABR Loans, (y) any Loans that were to have been converted on the first day of such Interest Period to LIBOR Loans shall be converted to, or continued as, ABR Loans and (z) any outstanding LIBOR Loans shall be converted, on the first day of such Interest Period, to ABR Loans. Until such notice has been withdrawn by Administrative Agent (which the Administrative Agent agrees to do if the circumstances giving rise to such notice cease to exist), no further LIBOR Loans shall be made, or continued as such, nor shall Borrower have the right to convert Loans to, LIBOR Loans.

Notwithstanding the foregoing, if there are Impacted Loans as provided above, the Administrative Agent, in consultation with Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans (to the extent Borrower does not elect to maintain such Impacted Loans as ABR Loans) until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans (which the Administrative Agent agrees to do if the circumstances giving rise to Impacted Loans cease to exist), (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and Borrower written notice thereof.

SECTION 5.03. Illegality. Notwithstanding any other provision of this Agreement, in the event that any change after the date hereof in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain LIBOR Loans or issue Letters of Credit hereunder (and, in the sole opinion of such Lender, the designation of a different Applicable

Lending Office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Borrower thereof (with a copy to Administrative Agent) and such Lender's obligation to make or continue, or to convert Loans of any other Type into, LIBOR Loans or issue Letters of Credit shall be suspended until such time as such Lender or L/C Lender may again make and maintain LIBOR Loans or issue Letters of Credit (in which case the provisions of Section 5.04 shall be applicable).

SECTION 5.04. Treatment of Affected Loans. If the obligation of any Lender to make LIBOR Loans or to continue, or to convert ABR Loans into, LIBOR Loans shall be suspended pursuant to Section 5.03, such Lender's LIBOR Loans shall be automatically converted into ABR Loans on the last day(s) of the then current Interest Period(s) for such LIBOR Loans (or on such earlier date as such Lender may specify to Borrower with a copy to Administrative Agent as is required by law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 5.03 which gave rise to such conversion no longer exist:

- (i) to the extent that such Lender's LIBOR Loans have been so converted, all payments and prepayments of principal which would otherwise be applied to such Lender's LIBOR Loans shall be applied instead to its ABR Loans; and
- (ii) all Loans which would otherwise be made or continued by such Lender as LIBOR Loans shall be made or continued instead as ABR Loans and all ABR Loans of such Lender which would otherwise be converted into LIBOR Loans shall remain as ABR Loans.

If such Lender gives notice to Borrower with a copy to Administrative Agent that the circumstances specified in Section 5.03 which gave rise to the conversion of such Lender's LIBOR Loans pursuant to this Section 5.04 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Loans are outstanding, such Lender's ABR Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding LIBOR Loans and by such Lender are held *pro rata* (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

SECTION 5.05. Compensation

(a) Borrower agrees to indemnify each Lender and to hold each Lender harmless from any loss or expense (excluding any loss of profits or margin) which such Lender may sustain or incur as a consequence of (1) default by Borrower in payment when due of the principal amount of or interest on any LIBOR Loan, (2) default by Borrower in making a borrowing of, conversion into or continuation of LIBOR Loans after Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (3) Borrower making any prepayment other than on the date specified in the relevant prepayment notice, or (4) the conversion or the making of a payment or a prepayment (including any repayments or prepayments made pursuant to Sections 2.09 or 2.10 or as a result of an acceleration of Loans pursuant to Section 11.01 or as a result of the replacement of a Lender pursuant to Section 2.11 or 13.04(b)) of LIBOR Loans on a day which is not the last day of an Interest Period with respect thereto, including in each case, any such loss (excluding any loss of profits or margin) or expense arising from the reemployment of funds obtained by it or from fees payable to terminate the deposits from which such funds were obtained.

(b) For the purpose of calculation of all amounts payable to a Lender under this Section 5.05 each Lender shall be deemed to have actually funded its relevant LIBOR Loan through the purchase of a deposit bearing interest at the LIBO Base Rate in an amount equal to the amount of the LIBOR Loan and having a maturity comparable to the relevant Interest Period; *provided, however*, that each Lender may fund each of its LIBOR Loans in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this subsection. Any Lender requesting compensation pursuant to this Section 5.05 will furnish to Administrative Agent and Borrower a certificate setting forth the basis and amount of such request and such certificate, absent manifest error, shall be conclusive. Without limiting the survival of any other covenant hereunder, this covenant shall survive the termination of this Agreement and the payment of the Obligations and all other amounts payable hereunder.

SECTION 5.06. Net Payments

(a) Except as provided in this Section 5.06(a), all payments made by or on account of any obligation of any Credit Party hereunder or under any Note, Guarantee or other Credit Document will be made without setoff, counterclaim or other defense. Except as required by law, all such payments will be made free and clear of, and without deduction or withholding for, any Taxes (including Taxes imposed or asserted on amounts payable under this Section 5.06). If, however, applicable laws require any withholding agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such laws as reasonably determined by such withholding agent. The applicable withholding agent shall timely pay the amount of any Taxes deducted or withheld in respect of a payment made by a Credit Party hereunder or under any note, Guarantee or other Credit Document to the relevant Governmental Authority in accordance with applicable law. If any Credit Party is the applicable withholding agent, Borrower shall furnish to Administrative Agent within 45 days after the date the payment of any Taxes is due pursuant to applicable law documentation reasonably satisfactory to the Administrative Agent evidencing such payment by the applicable Credit Party. If any Covered Taxes are so deducted or withheld by any applicable withholding agent, then the applicable Credit Party agrees to increase the sum payable by such Credit Party so that, after such deduction or withholding (including such deduction or withholding on account of Covered Taxes applicable to additional sums payable under this Section 5.06) the amount received by each Lender or, in the case of payments made to the Administrative Agent for its own account, the Administrative Agent, will not be less than the amount such recipient would have received had no such withholding or deduction been made. The Credit Parties agree to jointly and severally indemnify and hold harmless the Administrative Agent and each Lender, and reimburse any of them upon written request, for the amount of any Covered Taxes that are levied or imposed and paid by such indemnitee (including Covered Taxes imposed or asserted on amounts payable under this Section 5.06) and for any reasonable expenses arising therefrom in each case, whether or not such Covered Taxes were correctly or legally imposed, other than any interest or penalties that are determined by a final and nonappealable judgment of a court of competent jurisdiction to have resulted from the indemnitee's gross negligence or willful misconduct. Such written request shall include a certificate setting forth in reasonable detail the basis of such request and such certificate, absent manifest error, shall be conclusive.

(b) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Credit Document shall deliver to Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or the Administrative Agent, shall deliver such other documentation reasonably requested by Borrower or the Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.06(b)(ii), (c), and (d) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Notwithstanding anything to the contrary in this Section 5.06(b), no Lender shall be required to provide any documentation that such Lender is not legally eligible to deliver.

(ii) any Lender that is a U.S. Person shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), two executed original copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding. Any Foreign Lender shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), two executed original copies of whichever of the following is applicable: (1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to an applicable income tax treaty; (2) IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and that no interest payments in connection with any Credit Documents are effectively connected with such Foreign Lender’s conduct of a U.S. trade or business and (y) IRS Form W-8BEN or W-8BEN-E; or (4) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or participating Lender), IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and not a participating Lender and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner. Any Foreign Lender shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), two executed original copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Administrative Agent in writing of its legal ineligibility to do so.

(c) On the Closing Date, the Administrative Agent shall provide Borrower with two executed original copies of IRS Form W-8IMY (or any applicable successor forms) properly completed and duly executed to treat the Administrative Agent as a U.S. person (as described in U.S. Treasury Regulations Section 1.1441-1T(e)(3)(v)).

(d) If a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment.

(e) In addition, Borrower agrees to timely pay any present or future stamp, documentary, recording, intangible, filing or similar Taxes which arise from any payment made hereunder or under any other Credit Document or from the execution, delivery, filing, performance, enforcement, recordation or registration of, or otherwise with respect to, any Credit Document, except any such Taxes that are imposed with respect to an assignment (other than an assignment made pursuant to Section 2.11(a) at the request of Borrower) if such Tax is imposed as a result of a present or former connection of the transferor or transferee with the jurisdiction imposing such Tax (other than connections arising from having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document) (hereinafter referred to as “**Other Taxes**”).

(f) Any Lender claiming any additional amounts payable pursuant to this Section 5.06 agrees to use (at the Credit Parties’ expense) reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such change would avoid the need for, or in the opinion of such Lender, materially reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the sole judgment of such Lender, be otherwise disadvantageous to such Lender.

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.06 (including by the payment of additional amounts

pursuant to this Section 5.06), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

ARTICLE VI.

GUARANTEES

SECTION 6.01. The Guarantees. Each (a) Guarantor, jointly and severally with each other Guarantor, hereby guarantees as primary obligor and not as surety to each Secured Party and its successors and assigns the prompt payment and performance in full when due (whether at stated maturity, by acceleration, demand or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Bankruptcy Code after any bankruptcy or insolvency petition under the Bankruptcy Code) on the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and (b) Credit Party, jointly and severally with each other Credit Party, hereby guarantees as primary obligor and not as surety to each Secured Party and its successors and assigns the prompt payment and performance in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Bankruptcy Code after any bankruptcy or insolvency petition under the Bankruptcy Code) of all other Obligations from time to time owing to the Secured Parties by any other Credit Party under any Credit Document, any Swap Contract entered into with a Swap Provider or any Cash Management Agreement entered into with a Cash Management Bank, in each case now or hereinafter created, incurred or made, whether absolute or contingent, liquidated or unliquidated and strictly in accordance with the terms thereof; *provided*, that (i) the obligations guaranteed shall exclude obligations under any Swap Contract or Cash Management Agreements with respect to which the applicable Swap Provider or Cash Management Bank, as applicable, provides notice to Borrower that it does not want such Swap Contract or Cash Management Agreement, as applicable, to be secured, and (ii) as to each Guarantor the obligations guaranteed by such Guarantor hereunder shall not include any Excluded Swap Obligations in respect of such Guarantor (such obligations being guaranteed pursuant to clauses (a) and (b) above being herein collectively called the “**Guaranteed Obligations**” (it being understood that the Guaranteed Obligations of Borrower shall be limited to those referred to in clause (b) above)). Each Credit Party, jointly and severally with each other Credit Party, hereby agrees that if any other Credit Party shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, such Credit Party will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 6.02. Obligations Unconditional. The obligations of the Credit Parties under Section 6.01 shall constitute a guaranty of payment (and not of collection) and are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations under this Agreement, the Notes or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability

of any of the Credit Parties with respect to its respective guaranty of the Guaranteed Obligations which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

- (i) at any time or from time to time, without notice to the Credit Parties, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
- (ii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Credit Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
- (iii) the release of any other Credit Party pursuant to Section 6.08;
- (iv) any renewal, extension or acceleration of, or any increase in the amount of the Guaranteed Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Credit Documents;
- (v) any failure or omission to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under any Credit Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations;
- (vi) any settlement, compromise, release, or discharge of, or acceptance or refusal of any offer of payment or performance with respect to, or any substitutions for, the Guaranteed Obligations or any subordination of the Guaranteed Obligations to any other obligations;
- (vii) the validity, perfection, non-perfection or lapse in perfection, priority or avoidance of any security interest or lien, the release of any or all collateral securing, or purporting to secure, the Guaranteed Obligations or any other impairment of such collateral;
- (viii) any exercise of remedies with respect to any security for the Guaranteed Obligations (including, without limitation, any collateral, including the Collateral securing or purporting to secure any of the Guaranteed Obligations) at such time and in such order and in such manner as the Administrative Agent and the Secured Parties may decide and whether or not every aspect thereof is commercially reasonable and whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that any Credit Party would otherwise have; or
- (ix) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of any Credit Party as a guarantor in respect of the Guaranteed Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of any Credit Party as a guarantor of the Guaranteed Obligations, or of such Credit Party under the guarantee contained in this Article 6 or of any security interest granted by any Credit Party in its capacity as a guarantor of the Guaranteed Obligations, whether in a proceeding under the Bankruptcy Code or under any other federal, state or foreign bankruptcy, insolvency, receivership, or similar law, or in any other instance.

The Credit Parties hereby expressly waive diligence, presentment, demand of payment, protest, marshaling and all notices whatsoever, and any requirement that any Secured Party thereof exhaust any right, power or remedy or proceed against any Credit Party under this Agreement or the Notes or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Credit Parties waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party thereof upon this

guarantee or acceptance of this guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this guarantee, and all dealings between the Credit Parties and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this guarantee. This guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment and performance without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by the Secured Parties, and the obligations and liabilities of the Credit Parties hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other Person at any time of any right or remedy against any Credit Party or against any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Credit Parties and the successors and assigns thereof, and shall inure to the benefit of the Secured Parties, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

For the avoidance of doubt, nothing in this Section 6.02 shall permit amendments to the Credit Documents or an acceleration of the Obligations other than as set forth in the Credit Documents.

SECTION 6.03. Reinstatement. The obligations of the Credit Parties under this Article VI shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Credit Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise. The Credit Parties jointly and severally agree that they will indemnify each Secured Party on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law, other than any costs or expenses resulting from the gross negligence, bad faith or willful misconduct of, or material breach by, such Secured Party.

SECTION 6.04. Subrogation; Subordination. Each Credit Party hereby agrees that until the payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall not exercise any right or remedy arising by reason of any performance by it of its guarantee in Section 6.01, whether by subrogation, contribution or otherwise, against any Credit Party of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. The payment of any amounts due with respect to any indebtedness of any Credit Party now or hereafter owing to any Credit Party by reason of any payment by such Credit Party under the Guarantee in this Article VI is hereby subordinated to the prior payment in full in cash of the Guaranteed Obligations. Upon the occurrence and during the continuance of an Event of Default, each Credit Party agrees that it will not demand, sue for or otherwise attempt to collect any such indebtedness of any other Credit Party to such Credit Party until the Obligations shall have been paid in full in cash. If an Event of Default has occurred and is continuing, and any amounts are paid to the Credit Parties in violation of the foregoing limitation, such amounts shall be collected, enforced and received by such Credit Party as trustee for the Secured Parties and be paid over to Administrative Agent on account of the Guaranteed Obligations without affecting in any manner the liability of such Credit Party under the other provisions of the guaranty contained herein.

SECTION 6.05. Remedies. The Credit Parties jointly and severally agree that, as between the Credit Parties and the Lenders, the obligations of any Credit Party under this Agreement and the Notes may be declared to be forthwith due and payable as provided in Article XI (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article XI) for purposes of Section 6.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable arising under the Bankruptcy Code or any other federal or state bankruptcy, insolvency or other law providing for protection from creditors) as against such other Credit Parties and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the other Credit Parties for purposes of Section 6.01.

SECTION 6.06. Continuing Guarantee. The guarantee in this Article VI is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

SECTION 6.07. General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Credit Party under Section 6.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 6.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Credit Party, any Secured Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 6.08. Release of Guarantors. If, in compliance with the terms and provisions of the Credit Documents, (i) the Equity Interests of any Guarantor are directly or indirectly sold or otherwise transferred such that such Guarantor no longer constitutes a Restricted Subsidiary (a “**Transferred Guarantor**”) to a Person or Persons, none of which is Borrower or a Restricted Subsidiary, or (ii) any Restricted Subsidiary is designated as or becomes an Unrestricted Subsidiary, Transferred Guarantor, upon the consummation of such sale or transfer, and such Person so designated or which becomes such an Unrestricted Subsidiary, shall be automatically released from its obligations under this Agreement (including under Section 13.03 hereof) and the other Credit Documents, and its obligations to pledge and grant any Collateral owned by it pursuant to any Security Document, and the pledge of Equity Interests in any Transferred Guarantor or any Unrestricted Subsidiary to Collateral Agent pursuant to the Security Documents shall be automatically released, and, so long as Borrower shall have provided the Agents such certifications or documents as any Agent shall reasonably request, Collateral Agent shall take such actions as are necessary to effect and evidence each release described in this Section 6.08 in accordance with the relevant provisions of the Security Documents and this Agreement.

SECTION 6.09. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under the Guarantee in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 6.09 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 6.09, or otherwise under the Guarantee, as it relates to such Credit Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until a discharge of Guaranteed Obligations. Each Qualified ECP Guarantor intends that this Section 6.09 constitute, and this Section 6.09 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

SECTION 6.10. Right of Contribution. Each Credit Party hereby agrees that to the extent that a Credit Party (a “**Funding Credit Party**”) shall have paid more than its Fair Share (as defined below) of any payment made hereunder, such Credit Party shall be entitled to seek and receive contribution from and against any other Credit Party hereunder which has not paid its Fair Share of such payment. Each Credit Party’s right of contribution shall be subject to the terms and conditions of Section 6.04. The provisions of this Section 6.10 shall in no respect limit the obligations and liabilities of any Credit Party to the Secured Parties, and each Credit Party shall remain liable to the Secured Parties for the full amount guaranteed by such Credit Party hereunder. “**Fair Share**” means, with respect to a Credit Party as of any date of determination, an amount equal to (i) the ratio of (A) the Adjusted Maximum Amount (as defined below) with respect to such Credit Party to (B) the aggregate of the Adjusted Maximum Amounts with respect to all Credit Parties multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Credit Parties under this Article VI in respect of the Guaranteed Obligations. “**Fair Share Shortfall**” means, with respect to a Credit Party as of any date of determination, the excess, if any, of the Fair Share of such Credit Party over the Aggregate Payments of such Credit Party. “**Adjusted Maximum Amount**” means, with respect to a Credit Party as of any date of determination, the maximum aggregate amount of the obligations of such Credit Party under this Article VI; *provided that*, solely for purposes of calculating the “Adjusted Maximum Amount” with respect to any Credit Party for purposes of this Section 6.10, any assets or liabilities of such Credit Party arising by virtue of any rights to subrogation,

reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Credit Party. “**Aggregate Payments**” means, with respect to a Credit Party as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Credit party in respect of this Article VI (including in respect of this Section 6.10) minus (ii) the aggregate amount of all payments received on or before such date by such Credit Party from the other Credit Parties as contributions under this Section 6.10. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Credit Party.

ARTICLE VII.

CONDITIONS PRECEDENT

SECTION 7.01. Conditions to Initial Extensions of Credit

The obligations of Lenders to enter into this Agreement on the Closing Date are subject to the satisfaction of the following:

(a) **Corporate Documents.** Administrative Agent shall have received copies of the Organizational Documents of each Credit Party and evidence of all corporate or other applicable authority for each Credit Party (including resolutions or written consents and incumbency certificates) with respect to the execution, delivery and performance of such of the Credit Documents to which each such Credit Party is intended to be a party as of the Closing Date, certified as of the Closing Date as complete and correct copies thereof by the Secretary or an Assistant Secretary of each such Credit Party (or the member or manager or general partner of such Credit Party, as applicable).

(b) **Officer’s Certificate.** Administrative Agent shall have received an Officer’s Certificate of Borrower, dated the Closing Date, certifying that the conditions set forth in Sections 7.02(a)(i) and 7.02(a)(ii) (giving effect to the provisions contained therein) have been satisfied.

(c) **Opinions of Counsel.** Administrative Agent shall have received the following opinions, each of which shall be addressed to the Administrative Agent, the Collateral Agent and the Lenders, dated the Closing Date and covering such matters as the Administrative Agent shall reasonably request in a manner customary for transactions of this type:

- (i) an opinion of Latham & Watkins LLP, special counsel to the Credit Parties; and
- (ii) opinions of local counsel to the Credit Parties in such jurisdictions as are set forth in Schedule 7.01.

(d) **Notes.** Administrative Agent shall have received copies of the Notes, duly completed and executed, for each Lender that requested a Note at least three (3) Business Days prior to the Closing Date.

(e) **Credit Agreement.** Administrative Agent shall have received this Agreement (a) executed and delivered by a duly authorized officer of each Credit Party and (b) executed and delivered by a duly authorized officer of each Person that is a Lender on the Closing Date.

(f) **Filings and Lien Searches.** Administrative Agent shall have received (i) UCC financing statements in form appropriate for filing in the jurisdiction of organization of each Credit Party, (ii) results of lien searches conducted in the jurisdictions in which Borrower and its Restricted Subsidiaries are organized and such other jurisdictions as may be requested by the Administrative Agent and (iii) security agreements or other agreements in appropriate form for filing in the United States Patent and Trademark Office and United States Copyright Office with respect to intellectual property of Borrower to the extent required pursuant to the Security Agreement.

(g) **Security Agreement.** (i) Administrative Agent shall have received the Security Agreement and the Initial Perfection Certificate, in each case duly authorized, executed and delivered by the applicable Credit Parties, and (ii) Collateral Agent shall have received, to the extent required pursuant to the Security Agreement and not prohibited by applicable Requirements of Law (including, without limitation, any Gaming Laws), (1) original certificates representing the certificated Pledged Securities (as defined in the Security Agreement) required to be delivered to Collateral Agent

pursuant to the Security Agreement, accompanied by original undated stock powers executed in blank, and (2) the promissory notes, intercompany notes, instruments, and chattel paper identified under the name of such Credit Parties in Schedule 7 to the Initial Perfection Certificate (other than such certificates, promissory notes, intercompany notes, instruments and chattel paper that constitute "Excluded Property" (as such term is defined in the Security Agreement)), accompanied by undated notations or instruments of assignment executed in blank, and all of the foregoing shall be reasonably satisfactory to Administrative Agent in form and substance (in each case to the extent required to be delivered to Collateral Agent pursuant to the terms of the Security Agreement).

(h) **Credit Documents in Full Force and Effect; Fee Letter.** The Credit Documents required to be executed and delivered on or prior to the Closing Date shall be in full force and effect. Borrower shall have complied, or shall comply substantially concurrently with the funding of the Loans hereunder, in all respects with its payment obligations under the Fee Letter required to be performed on the Closing Date.

(i) **Consummation of Transactions.** The Transactions shall have been consummated and the consummation thereof shall be in compliance in all material respects with all applicable Laws (including Gaming Laws and Regulation T, Regulation U and Regulation X) and all applicable Gaming Approvals and other applicable regulatory approvals. After giving effect to the Transactions, there shall be no conflict with, or default under, any material Contractual Obligation of Borrower and its Restricted Subsidiaries (except as Administrative Agent shall otherwise agree).

(j) **Approvals.** Other than as set forth on Schedule 7.01(j) or in Section 8.06 or Section 8.15, all necessary Governmental Authority approvals (including Gaming Approvals) and/or consents in connection with the Transactions shall have been obtained and shall remain in full force and effect. In addition, there shall not exist any judgment, order, injunction or other restraint, and there shall be no pending litigation or proceeding by any Governmental Authority, prohibiting, enjoining or imposing materially adverse conditions upon the Transactions, or on the consummation thereof.

(k) **Solvency.** Administrative Agent shall have received a certificate in the form of Exhibit G from a Responsible Officer of Borrower with respect to the Solvency of Borrower (on a consolidated basis with its Restricted Subsidiaries), immediately after giving effect to the consummation of the Transactions.

(l) **Payment of Fees and Expenses.** To the extent invoiced at least five (5) Business Days prior to the closing date, all reasonable costs, fees, expenses of Administrative Agent, Lead Arrangers, Arrangers and (in the case of fees only) the Lenders required to be paid by this Agreement, the Fee Letter or as otherwise agreed by Borrower, in each case, payable to Administrative Agent, Lead Arrangers, Arrangers and/or Lenders in respect of the Transactions, shall have been paid to the extent due.

(m) **Patriot Act.** On or prior to the Closing Date, Administrative Agent shall have received at least five (5) days prior to the Closing Date all documentation and other information reasonably requested in writing at least ten (10) days prior to the Closing Date by Administrative Agent that Administrative Agent reasonably determines is required by regulatory authorities from the Credit Parties under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the Patriot Act.

(n) **Wynn Resorts Financials.** Borrower has delivered to the Administrative Agent or made publically available (a) the audited consolidated balance sheets of Wynn Resorts as of December 31, 2013, and the related statements of earnings, changes in stockholders' equity and cash flows for the fiscal years ended on those dates, together with reports thereon by Ernst & Young LLP, certified public accountants and (b) the unaudited interim consolidated balance sheet of Wynn Resorts and the related statements of earnings, changes in stockholders' equity and cash flows for the most recent fiscal quarter ending after December 31, 2013 (other than the fourth fiscal quarter of any fiscal year) and at least 45 days prior to the Closing Date.

SECTION 7.02. Conditions to All Extensions of Credit. The obligations of the Lenders to make any Loan or otherwise extend any credit to Borrower upon the occasion of each Borrowing or other extension of credit (whether by making a Loan or issuing a Letter of Credit) hereunder (including the initial borrowing) is subject to the further conditions precedent that:

(a) **No Default or Event of Default; Representations and Warranties True.** Both immediately prior to the making of such Loan or other extension of credit and also after giving effect thereto and to the intended use thereof:

(i) no Default or Event of Default shall have occurred and be continuing;

(ii) each of the representations and warranties made by the Credit Parties in Article VIII and by each Credit Party in each of the other Credit Documents to which it is a party shall be true and correct in all material respects on and as of the date of the making of such Loan or other extension of credit with the same force and effect as if made on and as of such date (it being understood and agreed that any such representation or warranty which by its terms is made as of an earlier date shall be required to be true and correct in all material respects only as such earlier date, and that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on the applicable date); and

(iii) from and after December 31, 2015 and until the Wynn Massachusetts Project Opening Date, if the Credit Parties have not received Equity Contributions as of such date in an amount equal to or greater than the Equity Contribution Threshold, the aggregate amount of all Revolving Loans outstanding (after giving effect to the requested Revolving Loan) shall not exceed the amount of the Equity Contributions made on or prior to the date such Revolving Loan is made;

provided, that prior to the Wynn Massachusetts Project Opening Date Borrower shall not be required to satisfy the conditions in this Section 7.02(a)(iii) in connection with any Loan requested by Borrower to be utilized solely to pay interest or fees due and payable or to become due and payable under this Agreement.

(b) **Notice of Borrowing.** Administrative Agent shall have received a Notice of Borrowing and/or Letter of Credit Request, as applicable, duly completed and complying with Section 4.05. Each Notice of Borrowing or Letter of Credit Request delivered by Borrower hereunder shall constitute a representation and warranty by Borrower that on and as of the date of such notice and on and as of the relevant borrowing date or date of issuance of a Letter of Credit (both immediately before and after giving effect to such borrowing or issuance and the application of the proceeds thereof) that the applicable conditions in Sections 7.01 or 7.02, as the case may be, have been satisfied.

ARTICLE VIII.

REPRESENTATIONS AND WARRANTIES

Each Credit Party represents and warrants to Administrative Agent, the Collateral Agent and Lenders that, at and as of each Funding Date, in each case immediately before and immediately after giving effect to the transactions to occur on such date (*provided*, that such representations and warranties made on the Closing Date shall be made giving effect to the Transactions):

SECTION 8.01. Corporate Existence; Compliance with Law

(a) Borrower and each Restricted Subsidiary (a) is a corporation, partnership, limited liability company or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b)(i) has all requisite corporate or other power and authority, and (ii) has all governmental licenses, authorizations, consents and approvals necessary to own its Property and carry on its business as now being conducted; and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary; except, in the case of clauses (b)(ii) and (c) where the failure thereof individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(b) Neither Borrower nor any Restricted Subsidiary nor any of its Property is in violation of, nor will the continued operation of Borrower’s or such Restricted Subsidiary’s Property as currently conducted violate, any Requirement of Law or is in default with respect to any judgment, writ, injunction, decree or order of any

Governmental Authority, where such violations or defaults would reasonably be expected to have a Material Adverse Effect.

SECTION 8.02. Material Adverse Effect. Since December 31, 2013, there shall not have occurred any event or circumstance that has had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 8.03. Litigation. Except as set forth on Schedule 8.03, there is no Proceeding (other than any (a) *qui tam* Proceeding, to which this Section 8.03 is limited to knowledge of any Responsible Officer of Borrower, and (b) normal overseeing reviews of the Gaming Authorities) pending against, or to the knowledge of any Responsible Officer of Borrower, threatened in writing against, Borrower or any of its Restricted Subsidiaries before any Governmental Authority or private arbitrator that (i) either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or (ii) as of the Closing Date only, challenges the validity or enforceability of any of the Credit Documents.

SECTION 8.04. No Breach; No Default

(a) None of the execution, delivery and performance by any Credit Party of any Credit Document to which it is a party nor the consummation of the transactions herein and therein contemplated (including the Transactions) do or will (i) conflict with or result in a breach of, or require any consent (which has not been obtained and is in full force and effect) under (x) any Organizational Document of any Credit Party or (y) subject to Section 13.13, any applicable Requirement of Law (including, without limitation, any Gaming Law) or (z) any order, writ, injunction or decree of any Governmental Authority binding on any Credit Party or (ii) constitute (with due notice or lapse of time or both) a default under any such Contractual Obligation or (iii) result in or require the creation or imposition of any Lien (except for the Liens created pursuant to the Security Documents and other Permitted Liens) upon any Property of any Credit Party pursuant to the terms of any such Contractual Obligation, except with respect to (i)(y), (i)(z), (ii) or (iii) which would not reasonably be expected to result in a Material Adverse Effect.

(b) No Default or Event of Default has occurred and is continuing.

SECTION 8.05. Action. Borrower and each Restricted Subsidiary has all necessary corporate or other organizational power, authority and legal right to execute, deliver and perform its obligations under each Credit Document to which it is a party and to consummate the transactions herein and therein contemplated; the execution, delivery and performance by Borrower and each Restricted Subsidiary of each Credit Document to which it is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all necessary corporate, partnership or other organizational action on its part; and this Agreement has been duly and validly executed and delivered by each Credit Party and constitutes, and each of the Credit Documents to which it is a party when executed and delivered by such Credit Party will constitute, its legal, valid and binding obligation, enforceable against each Credit Party in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws of general applicability from time to time in effect affecting the enforcement of creditors' rights and remedies and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 8.06. Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority or any securities exchange are necessary for the execution, delivery or performance by Borrower or any Restricted Subsidiary of the Credit Documents to which it is a party or for the legality, validity or enforceability hereof or thereof or for the consummation of the Transactions, except for: (i) authorizations, approvals or consents of, and filings or registrations with any Governmental Authority or any securities exchange previously obtained, made, received or issued, (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents, (iii) the delivery of executed copies of this Agreement, the Security Agreement and the Notes executed on the Closing Date to the relevant Gaming Authorities, (iv) the filings referred to in Section 8.14, (v) satisfaction of or waiver by the Gaming Authorities of any qualification requirement on the part of the Lenders who do not otherwise qualify, (vi) prior approval of the Transactions by the Gaming Authorities, which approval has been obtained on or prior to the Closing Date, (vii) consents, authorizations and filings that have been obtained or made and are in full force

and effect or the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect, (viii) any required approvals (including prior approvals) of the requisite Gaming Authorities that any Agent, Lender or participant is required to obtain from, or any required filings with, requisite Gaming Authorities to exercise their respective rights and remedies under this Agreement and the other Credit Documents (as set forth in Section 13.13) and (ix) prior approval from the Nevada Gaming Commission of the pledge of any Pledged Nevada Gaming Interests (as defined in the Security Agreement).

SECTION 8.07. ERISA and Employee Benefit Plan Matters. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Except as set forth on Schedule 8.07, as of the Closing Date, no member of the ERISA Group maintains or contributes to any Pension Plan. Each ERISA Entity is in compliance with the presently applicable provisions of ERISA and the Code with respect to each Employee Benefit Plan (other than to the extent such failure to comply would not reasonably be expected to have a Material Adverse Effect). Except as would not reasonably be expected to result in a Material Adverse Effect, no ERISA Entity has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

SECTION 8.08. Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) all Tax returns, statements, reports and forms required to be filed with any Governmental Authority by, or with respect to, Borrower and each of its Restricted Subsidiaries have been timely filed (taking into account any applicable extensions) in accordance with all applicable laws; (ii) Borrower and each of its Restricted Subsidiaries has timely paid or made provision for payment of all Taxes shown as due and payable on such returns that have been so filed or that are otherwise due and payable, including in its capacity as a withholding agent (other than Taxes which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP; and (iii) Borrower and each of its Restricted Subsidiaries has made adequate provision in accordance with GAAP for all Taxes payable by Borrower or such Restricted Subsidiary that are not yet due and payable. Neither Borrower nor any of its Restricted Subsidiaries has received written notice of any proposed or pending Tax assessment, audit or deficiency against Borrower or such Restricted Subsidiary that would in the aggregate reasonably be expected to have a Material Adverse Effect.

SECTION 8.09. Investment Company Act. Neither Borrower nor any of its Restricted Subsidiaries is an “investment company,” or a company “controlled” by an “investment company” required to be regulated under the Investment Company Act of 1940, as amended.

SECTION 8.10. Environmental Matters. Except as set forth on Schedule 8.10 or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: (i) each of Borrower and its Restricted Subsidiaries and each of their businesses, operations and Real Property is in material compliance with, and each has no liability under, any Environmental Law; (ii) each of Borrower and its Restricted Subsidiaries has obtained all Permits material to, and required for, the conduct of their businesses and operations, and the ownership, operation and use of their assets, all as currently conducted, under any Environmental Law; (iii) there has been no Release or threatened Release of Hazardous Material on, at, under or from any real property or facility presently or formerly owned, leased or operated by Borrower or any of its Restricted Subsidiaries that would reasonably be expected to result in liability to Borrower or any of its Restricted Subsidiaries under any Environmental Law; (iv) there is no Environmental Action pending or, to the knowledge of any Responsible Officer of Borrower or any of its Restricted Subsidiaries, threatened, against Borrower or any of its Restricted Subsidiaries or, relating to real property currently or formerly owned, leased or operated by Borrower or any of its Restricted Subsidiaries or relating to the operations of Borrower or its Restricted Subsidiaries; and (v) no circumstances exist that would reasonably be expected to form the basis of an Environmental Action against Borrower or any of its Restricted Subsidiaries, or any of their Real Property, facilities or assets.

SECTION 8.11. Use of Proceeds

(a) Borrower will use the proceeds of:

- (i) Term Facility Loans and Revolving Loans made on the Closing Date to finance the Transactions and for general corporate purposes (including Capital Expenditures with respect to the Wynn Massachusetts Project) and for any other purposes not prohibited by this Agreement, and
- (ii) Revolving Loans and Term Loans made after the Closing Date for working capital, capital expenditures, Permitted Acquisitions (and other Acquisitions not prohibited hereunder) and general corporate purposes and for any other purposes not prohibited by this Agreement (including Capital Expenditures with respect to the Wynn Massachusetts Project).

(b) Neither Borrower nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock. No part of the proceeds of any extension of credit (including any Loans and Letters of Credit) hereunder will be used directly or indirectly and whether immediately, incidentally or ultimately to purchase or carry any Margin Stock or to extend credit to others for such purpose or to refund Indebtedness originally incurred for such purpose or for any other purpose, in each case, that entails a violation of, or is inconsistent with, the provisions of Regulation T, Regulation U or Regulation X. The pledge of any Equity Interests by any Credit Party pursuant to the Security Agreement does not violate such regulations.

SECTION 8.12. Subsidiaries

(a) Schedule 8.12(a) sets forth a true and complete list of the following: (i) all the Subsidiaries of Borrower as of the Closing Date; (ii) the name and jurisdiction of incorporation or organization of each such Subsidiary as of the Closing Date; and (iii) as to each such Subsidiary, the percentage and number of each class of Equity Interests of such Subsidiary owned by Borrower and its Subsidiaries as of the Closing Date.

(b) Schedule 8.12(b) sets forth a true and complete list of all the Immaterial Subsidiaries as of the Closing Date.

(c) Schedule 8.12(c) sets forth a true and complete list of all the Unrestricted Subsidiaries as of the Closing Date.

SECTION 8.13. Ownership of Property; Liens. Except as set forth on Schedule 8.13, (a) Borrower and each of its Restricted Subsidiaries has good and valid title to, or a valid (with respect to Real Property) leasehold interest in (or subleasehold interest in or other right to occupy), all assets and Property (including Mortgaged Real Property) (tangible and intangible) owned or occupied by it except where the failure to have such title would not reasonably be expected to result in a Material Adverse Effect and (b) all such assets and Property are subject to no Liens other than Permitted Liens. All of the assets and Property owned by, leased to or used by Borrower and each of its Restricted Subsidiaries in its respective businesses are in good operating condition and repair in all material respects (ordinary wear and tear and casualty and force majeure excepted) except in each case where the failure of such asset to meet such requirements would not reasonably be expected to result in a Material Adverse Effect.

SECTION 8.14. Security Interest; Absence of Financing Statements; Etc. The Security Documents, once executed and delivered, will create, in favor of Collateral Agent for the benefit of the Secured Parties, as security for the obligations purported to be secured thereby, a valid and enforceable security interest in and Lien upon all of the Collateral (subject to applicable Gaming Laws and any applicable provisions set forth in the Security Documents with respect to limitations or exclusions from the requirement to perfect the security interests and Liens on the collateral described therein), and upon (i) filing, recording, registering or taking such other actions as may be necessary with the appropriate Governmental Authorities (including payment of applicable filing and recording taxes), (ii) the taking of possession or control by Collateral Agent of the Pledged Collateral with respect to which a security interest may be perfected only by possession or control which possession or control shall be given to Collateral Agent to the extent possession or control by Collateral Agent is required by the Security Agreement and (iii) delivery of the applicable documents to Collateral Agent in accordance with the provisions of the applicable Security Documents, for the benefit of the Secured Parties, such security interest shall be a perfected security interest in and Lien upon all of the Collateral (subject to any applicable provisions set forth in the Security Documents with respect to limitations or exclusions from the requirement to perfect the security interests and Liens on the collateral described therein) superior to and prior to the rights of all third Persons and subject to no Liens, in each case, other than Permitted Liens.

SECTION 8.15. Licenses and Permits. Except as set forth on Schedule 8.15, Borrower and each of its Restricted Subsidiaries hold all material governmental permits, licenses, authorizations, consents and approvals necessary for Borrower and its Restricted Subsidiaries to own, lease, and operate their respective Properties and to operate their respective businesses as presently conducted (collectively, the “**Permits**”), except for Permits the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

SECTION 8.16. Disclosure. The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of any Credit Party to any Secured Party in connection with this Agreement and the other Credit Documents or included or delivered pursuant thereto, but in each case excluding all projections and general industry or economic data, whether prior to or after the date of this Agreement, when taken as a whole and giving effect to all supplements and updates, do not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements herein or therein, in light of the circumstances under which they were made, not materially misleading. The projections and *pro forma* financial information furnished at any time by any Credit Party to any Secured Party pursuant to this Agreement have been prepared in good faith based on assumptions believed by 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 and no Credit Party, however, makes any representation as to the ability of any Company to achieve the results set forth in any such projections.

SECTION 8.17. Solvency. As of each Funding Date (i) with respect to representations made as of the Closing Date, immediately prior to and immediately following the consummation of the Transactions and the extensions of credit to occur on the Closing Date and (ii) with respect to representations made as of any other Funding Date, immediately following the extensions of credit to occur on such Funding Date, Borrower (on a consolidated basis with its Restricted Subsidiaries) is and will be Solvent (after giving effect to Section 6.07).

SECTION 8.18. Intellectual Property. Except as set forth on Schedule 8.18, Borrower and each of its Restricted Subsidiaries owns or possesses adequate licenses or otherwise has the right to use all of the patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, trade secrets, know-how and processes (collectively, “**Intellectual Property**”) (including, as of the Closing Date, all Intellectual Property listed in Schedules 9(a), 9(b) and 9(c) to the Initial Perfection Certificate) that are necessary for the operation of its business as presently conducted except where failure to own or have such right would not reasonably be expected to have a Material Adverse Effect and, as of the Closing Date, all registrations listed in Schedules 9(a), 9(b) and 9(c) to the Initial Perfection Certificate are valid and in full force and effect, except where the invalidity of such registrations would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 8.18, as of the Closing Date, no claim is pending or, to the knowledge of any Responsible Officer of Borrower, threatened to the effect that Borrower or any of its Restricted Subsidiaries infringes or conflicts with the asserted rights of any other Person under any material Intellectual Property, except for such claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 8.18, as of the Closing Date, no claim is pending or, to the knowledge of any Responsible Officer of Borrower, threatened to the effect that any such material Intellectual Property owned or licensed by Borrower or any of its Restricted Subsidiaries or which Borrower or any of its Restricted Subsidiaries otherwise has the right to use is invalid or unenforceable, except for such claims that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 8.19. Regulation H. Except for the Real Property listed on Schedule 8.19 attached hereto, as of the Closing Date, 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.

SECTION 8.20. Insurance. Borrower and each of its Restricted Subsidiaries are insured by insurers of recognized financial responsibility (determined as of the date such insurance was obtained) against such losses and risks (other than wind and flood damage) and in such amounts as are prudent and customary in the businesses in which

it is engaged, except to the extent that such insurance is not available on commercially reasonable terms. Borrower and each of its Restricted Subsidiaries maintain all insurance required by Flood Insurance Laws (but shall not, for the avoidance of doubt, be required to obtain insurance with respect to wind and flood damage unless and to the extent required by such Flood Insurance Laws).

SECTION 8.21. Real Estate

(a) Schedule 8.21(a) sets forth a true, complete and correct list of all material Real Property owned and all material Real Property leased by Borrower or any of its Restricted Subsidiaries as of the Closing Date, including a brief description thereof, including, in the case of leases, the street address (to the extent available) and landlord name.

(b) Except as set forth on Schedule 8.21(b), as of the Closing Date, to the best of knowledge of any Responsible Officer of Borrower no Taking has been commenced or is contemplated with respect to all or any portion of the Real Property or for the relocation of roadways providing access to such Real Property that either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

SECTION 8.22. Anti-Terrorism Law

(a) No Credit Party and, to the knowledge of any Responsible Officer of Borrower, none of its Affiliates, or any broker or other agent of any Credit Party acting in any capacity in connection with the Loans or Letters of Credit, is in violation in any material respect of any Requirement of Law relating to terrorism or money laundering (“**Anti-Terrorism Laws**”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the “**Patriot Act**”).

(b) No Credit Party and, to the knowledge of any Responsible Officer of Borrower, no Affiliate, officer, director, employee or broker or other agent of any Credit Party acting or benefiting in any capacity in connection with the Loans or Letter of Credit is any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order;

(v) a Person that is named as a “specially designated national and blocked Person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“**OFAC**”) at its official website or any replacement website or other replacement official publication of such list, or that is owned 50% or more by any such Persons; or

(vi) a Person that is located, organized or resident in a Designated Jurisdiction.

SECTION 8.23. Anti-Corruption Laws/Bribery. Neither Borrower, nor any of its Subsidiaries nor, to the knowledge of any Responsible Officer of Borrower, none of its Affiliates, directors, brokers or agents acting in any capacity in connection with the Loans or Letters of Credit, is in violation in any material respect of any Requirement of Law relating to any anti-bribery or anti-corruption laws or regulations in any applicable jurisdiction.

SECTION 8.24. Labor Matters. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (a) there are no strikes or other labor disputes against Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of Borrower, threatened and (b) the hours worked by and payments made to employees of Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters.

ARTICLE IX.

AFFIRMATIVE COVENANTS

Each Credit Party, for itself and on behalf of its Restricted Subsidiaries, covenants and agrees with Administrative Agent, Collateral Agent and Lenders that until the Obligations have been Paid in Full, (and each Credit Party covenants and agrees that it will cause its Restricted Subsidiaries to observe and perform the covenants herein set forth applicable to any such Restricted Subsidiary):

SECTION 9.01. Existence; Business Properties

(a) Borrower and each of its Restricted Subsidiaries shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except in a transaction permitted by Section 10.05 or, in the case of any Restricted Subsidiary, where the failure to perform such obligations, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Borrower and each of its Restricted Subsidiaries shall do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; comply with all applicable Requirements of Law (including any and all Gaming Laws and any and all zoning, building, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect and at all times maintain and preserve all of its property and keep such property in good repair, working order and condition (ordinary wear and tear and casualty and force majeure excepted) except where the failure to do so individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect; *provided, however*, that nothing in this Section 9.01(b) shall prevent (i) sales, conveyances, transfers or other dispositions of assets, consolidations or mergers by or involving any Company or any other transaction in accordance with Section 10.05; (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by any Company of any rights, permits, authorizations, copyrights, trademarks, trade names, franchises, licenses and patents that such Company reasonably determines are not useful to its business.

SECTION 9.02. Insurance

(a) Borrower and its Restricted Subsidiaries shall maintain with insurers of recognized financial responsibility (determined at the time such insurance is obtained) not Affiliates of Borrower insurance on its Property in at least such amounts and against at least such risks as are customarily insured against by companies engaged in the same or a similar business and operating similar properties in localities where Borrower or the applicable Restricted Subsidiary operates; and furnish to Administrative Agent, upon written request, information as to the insurance carried; *provided* that Borrower and its Restricted Subsidiaries shall not be required to maintain insurance with respect to wind and flood damage on any property for any insurance coverage period unless, and to the extent, such insurance is required by an applicable Requirement of Law. The Collateral Agent shall be named as an additional insured on all third-party liability insurance policies of Borrower and each of its Restricted Subsidiaries (other than directors and officers liability

insurance, insurance policies relating to employment practices liability, crime or fiduciary duties, kidnap and ransom insurance policies, and insurance as to fraud, errors and omissions), and Collateral Agent shall be named as mortgagee/loss payee on all property insurance policies of each such Person.

(b) If any portion of any Mortgaged Real Property is at any time is located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then Borrower shall, or shall cause the applicable Credit Party to (i) to the extent required pursuant to Flood Insurance Laws, maintain, or cause to be maintained, with a financially sound and reputable insurer (determined at the time such insurance is obtained), flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to such Flood Insurance Laws and (ii) deliver to Administrative Agent evidence of such compliance in form and substance reasonably acceptable to Administrative Agent.

SECTION 9.03. Taxes. Borrower and each of its Restricted Subsidiaries shall timely file all Tax returns, statements, reports and forms required to be filed by it and pay and discharge before the same shall become delinquent all Taxes imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent; provided, however, that (a) such payment and discharge shall not be required with respect to any such Taxes so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and Borrower and each of its Subsidiaries shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) such filing or payment and discharge shall not be required in the event the failure to file or make payment and discharge would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 9.04. Financial Statements, Etc. Borrower shall deliver to Administrative Agent for distribution by Administrative Agent to the Lenders (unless a Lender expressly declines in writing to accept):

(a) **Quarterly Financials.** As soon as available and in any event within 45 days (or, in the case of each fiscal quarter ending prior to the first full fiscal quarter following the fiscal quarter in which the earlier of the Wynn Las Vegas Reorganization or the Wynn Massachusetts Project Opening Date occurs, within 75 days following the end of such fiscal quarter) after the end of each of the first three quarterly fiscal periods of each fiscal year beginning with the fiscal quarter ending March 30, 2015, consolidated statements of operations, cash flows and stockholders' equity of Consolidated Companies for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related consolidated balance sheet of Consolidated Companies as at the end of such period, setting forth in each case in comparative form the corresponding consolidated statements of operations, cash flows and stockholders' equity for the corresponding period in the preceding fiscal year to the extent such financial statements are available, accompanied by a certificate of a Responsible Officer of Borrower, which certificate shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition, results of operations and cash flows of Consolidated Companies in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments and except for the absence of footnotes);

(b) **Annual Financials.** As soon as available and in any event within 90 days after the end of each fiscal year beginning with the fiscal year ending December 31, 2014 (*provided* that, in respect of any fiscal year ending prior to the earlier of the Wynn Las Vegas Reorganization or the Wynn Massachusetts Project Opening Date, such information shall be delivered as soon as available and in any event within 105 days after the end of such fiscal year), consolidated statements of operations, cash flows and stockholders' equity of Consolidated Companies for such year and the related consolidated balance sheet of Consolidated Companies as at the end of such year, setting forth in each case in comparative form the corresponding information as of the end of and for the preceding fiscal year to the extent such financial statements are available, and, in the case of such consolidated financial statements, accompanied by an opinion, without a going concern or similar qualification or exception as to scope (other than any going concern or similar qualification or exception related to the maturity or refinancing of Indebtedness under the Credit Documents or Credit Agreement Refinancing Indebtedness or prospective compliance with the financial maintenance covenants), thereon of Ernst & Young LLP or other independent certified public accountants of recognized national standing which opinion shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition, results of operations and cash flows of Consolidated Companies as at the end of, and for, such fiscal year in conformity with GAAP, consistently applied (except as noted therein);

(c) **Compliance Certificate.** At the time Borrower furnishes each set of financial statements pursuant to Section 9.04(a) or Section 9.04(b), a certificate of a Responsible Officer of Borrower in the form of Exhibit E hereto (I) to the effect that no Default has occurred and is continuing (or, if any Default has occurred and is continuing, describing the same in reasonable detail and describing the action that the Companies have taken and propose to take with respect thereto) and (II) from and after the Initial Test Date, setting forth in reasonable detail the computations necessary to determine whether Borrower and its Restricted Subsidiaries are in compliance with Section 10.08 as of the end of the respective fiscal quarter or fiscal year; *provided* that if such certificate demonstrates an Event of Default with respect to the financial maintenance covenants set forth in Section 10.08, Borrower may deliver, prior to or together with such certificate, a notice of intent to cure (a “**Notice of Intent to Cure**”) pursuant to Section 11.03 to the extent permitted thereunder;

(d) **Notice of Default.** Promptly after any Responsible Officer of any Company knows that any Default has occurred, a notice of such Default, breach or violation describing the same in reasonable detail and a description of the action that the Companies have taken and propose to take with respect thereto;

(e) **Environmental Matters.** Written notice of any claim, release of Hazardous Material, condition, circumstance, occurrence or event arising under Environmental Law which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(f) **Annual Budgets.** Beginning with the fiscal year of Borrower commencing on January 1, 2015, as soon as practicable and in any event within 10 days after the approval thereof by the Board of Directors of Borrower (but not later than 90 days (or, if prior to the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, 105 days) after the beginning of each fiscal year of Borrower), a consolidated plan and financial forecast for such fiscal year, including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Consolidated Companies for such fiscal year and for each quarter of such fiscal year, together with an Officer’s Certificate containing an explanation of the assumptions on which such forecasts are based and stating that such plan and projections have been prepared using assumptions believed in good faith by management of Borrower to be reasonable at the time made (it being recognized by the Lenders that such plan and projections are not to be viewed as fact and that actual results during the period or periods covered by such plan and projections may differ from the forecasted results set forth therein by a material amount and no Company makes any representation as to the ability of any Company to achieve the results set forth in any such plan or projections);

(g) **Auditors’ Reports.** Promptly upon receipt thereof, copies of all annual, interim or special reports issued to Borrower or any Restricted Subsidiary by independent certified public accountants in connection with each annual, interim or special audit of Borrower’s or such Restricted Subsidiary’s books made by such accountants, including any management letter commenting on Borrower’s or such Restricted Subsidiary’s internal controls issued by such accountants to management in connection with their annual audit; *provided, however*, that such reports shall only be made available to Administrative Agent and to those Lenders who request such reports through Administrative Agent;

(h) **Casualty and Damage to Collateral; Perfection Certificate Updates.**

(i) Prompt written notice of any Casualty Event or other insured damage to any material portion of the Collateral; and

(ii) Each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 9.04(b), a certificate of a Responsible Officer of Borrower setting forth the information required pursuant to Schedules 1(a), 1(b), 1(c), 2, 3, 4(a), 4(b), 5, 6, 7(a), 7(b), 7(c), 8, and 9 to the Perfection Certificate or confirming that there has been no change in such information since the date of the Initial Perfection Certificate or the date of the most recent certificate delivered pursuant to this Section 9.04(h)(ii);

(i) **Notice of Material Adverse Effect or Covenant Suspension Period.** Written notice (i) of the occurrence of any event or occurrence that has had or would reasonably be expected to have a Material Adverse Effect or (ii) Borrower’s determination of the commencement or termination of a Covenant Suspension Period;

(j) **ERISA Information.** Promptly after the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect, a written notice specifying the nature thereof, what action the Companies or other ERISA Entity have taken, are taking or propose to take with respect thereto, and, when known, any action taken or threatened by the IRS, Department of Labor, PBGC or Multiemployer Plan sponsor with respect thereto; and

(k) **Miscellaneous.** Promptly, such financial information, reports, documents and other information with respect to Borrower or any of its Restricted Subsidiaries as Administrative Agent or the Required Lenders may from time to time reasonably request; *provided* that, notwithstanding the foregoing, nothing in this Section 9.04 shall require delivery of financial information, reports, documents or other information which constitutes attorney work product or is subject to confidentiality agreements or to the extent disclosure thereof would reasonably be expected to result in loss of attorney client privilege with respect thereto.

Reports and documents required to be delivered pursuant to Section 9.04 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such reports and/or documents, or provides a link thereto on Borrower's website on the Internet at the website address specified below Borrower's name on the signature hereof or such other website address as provided in accordance with Section 13.02; or (ii) on which such reports and/or documents are posted on Borrower's behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website (including the website of the SEC) or whether sponsored by Administrative Agent); *provided* that: Borrower shall provide to Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such reports and/or documents and Administrative Agent shall post such reports and/or documents and notify (which may be by facsimile or electronic mail) each Lender of the posting of any such reports and/or documents. Notwithstanding anything contained herein, in every instance Borrower shall be required to provide the compliance certificate required by Section 9.04(c)(ii) to Administrative Agent in the form of an original paper copy or a .pdf or facsimile copy of the original paper copy.

Concurrently with the delivery of financial statements pursuant to Sections 9.04(a) and 9.04(b) above, in the event that, in the aggregate, the Unrestricted Subsidiaries account for greater than 10% of the Consolidated EBITDA of Borrower and its Subsidiaries on a consolidated basis with respect to the Test Period ended on the last day of the period covered by such financial statements, Borrower shall provide revenues, net income, Consolidated EBITDA (including the component parts thereof), Consolidated Indebtedness and cash and Cash Equivalents on hand of Borrower and its Restricted Subsidiaries, on the one hand, and (y) the Unrestricted Subsidiaries, on the other hand (with Consolidated EBITDA to be determined for such Unrestricted Subsidiaries as if references in the definition of Consolidated EBITDA were deemed to be references to the Unrestricted Subsidiaries).

Borrower hereby acknowledges that (a) Administrative Agent will make available to the Lenders and the L/C Lenders materials and/or information provided by or on behalf of Borrower hereunder (collectively, "**Borrower Materials**") by posting Borrower Materials on IntraLinks/IntraAgency or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," Borrower shall be deemed to have authorized Administrative Agent, the L/C Lenders and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Borrower or its securities for purposes of United States Federal and state securities laws (*provided* however, that to the extent such Borrower Materials constitute information of the type subject to Section 13.10, they shall be treated as set forth in Section 13.10); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

SECTION 9.05. Maintaining Records; Access to Properties and Inspections. Borrower and its Restricted Subsidiaries shall keep proper books of record and account in which entries true and correct in all material respects and in material conformity with GAAP and all material Requirements of Law are made. Borrower and its Restricted Subsidiaries will, subject to applicable Gaming Laws, permit any representatives designated by Administrative Agent to visit and inspect the financial records and the property of Borrower or such Restricted Subsidiary at reasonable times, upon reasonable notice and as often as reasonably requested, and permit any representatives designated by Administrative Agent to discuss the affairs, finances and condition of such Restricted Subsidiaries with the officers thereof and independent accountants therefor (provided Borrower has the opportunity to participate in such meetings); *provided* that, in the absence of a continuing Event of Default, only one such inspection by such representatives shall be permitted in any fiscal year (and such inspection shall be at Administrative Agent's expense). Notwithstanding anything to the contrary in this Agreement, no Company will be required to disclose, permit the inspection, examination or making of extracts, or discussion of, any document, information or other matter that (i) in respect of which disclosure to Administrative Agent (or its designated representative) is then prohibited by law or contract or (ii) is subject to attorney-client or similar privilege or constitutes attorney work product.

SECTION 9.06. Use of Proceeds; FCPA. Borrower shall use the proceeds of the Loans only for the purposes set forth in Section 8.11. No part of the proceeds of the Loans or Letters of Credit will be used by Borrower, directly or indirectly, and Borrower will not lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, in any case for the purpose of (i) any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any applicable law related to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977, as amended, (ii) funding, financing or facilitating any activities, transaction or business of or with any Person, or in any country or territory, that, at the time of such funding, is, subject to Sanctions or in any Designated Jurisdiction, or (iii) any other use that would result in a violation of Sanctions by any Person (including any Person participating in the Loans or Letters of Credit hereunder, whether as underwriter, advisor, investor, or otherwise). Borrower will maintain in effect and enforce policies and procedures designed to monitor compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with applicable Sanctions and laws related to bribery and anti-corruption.

SECTION 9.07. Compliance with Environmental Law. Borrower and its Restricted Subsidiaries shall (a) comply with Environmental Law, and will keep or cause all Real Property to be kept free of any Liens imposed under Environmental Law, unless, in each case, failure to do so would not reasonably be expected to have a Material Adverse Effect; (b) in the event of any Hazardous Material at, on, under or emanating from any Real Property which could result in liability under or a violation of any Environmental Law, in each case which would reasonably be expected to have a Material Adverse Effect, undertake, and/or cause any of their respective tenants or occupants to undertake, at no cost or expense to Administrative Agent, Collateral Agent or any Lender, an appropriate response (as reasonably determined by Borrower) to such event; *provided, however*, that no Company shall be required to comply with any order or directive which is being contested in good faith and by proper proceedings so long as it has maintained adequate reserves with respect to such compliance to the extent required in accordance with GAAP; and (c) at the written request of Administrative Agent, in its reasonable discretion, provide, at no cost or expense to Administrative Agent, Collateral Agent or any Lender, an environmental site assessment (including, without limitation, the results of any soil or groundwater or other testing conducted at Administrative Agent's request) concerning any Real Property now or hereafter owned, leased or operated by Borrower or any of its Restricted Subsidiaries, conducted by an environmental consulting firm proposed by such Credit Party and approved by Administrative Agent in its reasonable discretion indicating the presence or absence of Hazardous Material and the potential cost of any required action in connection with any Hazardous Material on, at, under or emanating from such Real Property; *provided, however*, that such request may be made only if (i) there has occurred and is continuing an Event of Default, or (ii) circumstances exist that reasonably could be expected to form the basis of an Environmental Action against Borrower or any Restricted Subsidiary or any Real Property of Borrower or any of its Restricted Subsidiaries which would reasonably be expected to have a Material Adverse Effect; if Borrower or any of its Restricted Subsidiaries fails to provide the same within sixty (60) days after such request was made (or in such longer period as may be approved by Administrative Agent, in its reasonable discretion), Administrative Agent may but is under no obligation to conduct the same, and Borrower or its Restricted Subsidiary shall grant and hereby grants to Administrative Agent and its agents, advisors and consultants access at reasonable times, and upon reasonable notice to Borrower, to such Real Property and specifically grants

Administrative Agent and its agents, advisors and consultants an irrevocable non-exclusive license, subject to the rights of tenants, to undertake such an assessment, all at no cost or expense to Administrative Agent, Collateral Agent or any Lender. Administrative Agent will use its commercially reasonable efforts to obtain from the firm conducting any such assessment usual and customary agreements to secure liability insurance and to treat its work as confidential and shall promptly provide Borrower with all documents relating to such assessment.

SECTION 9.08. Pledge of Property or Mortgage of Real Property

(a) Subject to compliance with applicable Gaming Laws, if, on or after the Closing Date any Credit Party shall acquire any Property (other than any Real Property or any Property that is subject to a Lien permitted under Section 10.02(i) or Section 10.02(k) to the extent and for so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of Liens securing the Obligations on such Property and to the extent such prohibition is not superseded by the applicable provisions of the UCC), including, without limitation, pursuant to any Permitted Acquisition, or as to which Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien and as to which the Security Documents are intended to cover, such Credit Party shall (subject to any applicable provisions set forth in the Security Agreement with respect to limitations on grant of security interests in certain types of assets or Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such assets or Pledged Collateral) promptly (i) execute and deliver to Collateral Agent such amendments to the Security Documents or such other documents as Collateral Agent deems necessary or advisable in order to grant to Collateral Agent, for the benefit of the Secured Parties, security interests in such Property and (ii) take all actions Collateral Agent deems necessary or advisable to grant to Collateral Agent, for the benefit of the Secured Parties, a perfected security interest (except to the extent limited by applicable Requirements of Law (including, without limitation, any Gaming Laws)), superior to and prior to the rights of all third Persons and subject to no Liens, in each case, other than Permitted Liens, in each case, to the extent such actions are required by the Security Agreement.

(b) If, on or after the Closing Date, any Credit Party (x) acquires, including, without limitation, pursuant to any Permitted Acquisition, a fee or leasehold interest in Real Property located in the United States which Real Property has a fair market value in excess of \$75.0 million or (y) develops a Facility on any fee or leasehold interest in Real Property located in the United States which Real Property (including the reasonably anticipated fair market value of the Facility or other improvements to be developed thereon) has a fair market value in excess of \$150.0 million, determined on an as-developed basis, in each case, with respect to which a Mortgage was not previously entered into in favor of Collateral Agent (in each case, other than to the extent such Real Property is subject to a Lien permitted under Section 10.02(i) or 10.02(k) securing Indebtedness to the extent and for so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of Liens securing the Obligations on such Real Property), such Credit Party shall, subject to clause (e) below, within ninety (90) days (or such longer period that is reasonably acceptable to Administrative Agent), (i) take such actions and execute such documents as Collateral Agent shall reasonably require to confirm the Lien of an existing Mortgage, if applicable, or to create a new Mortgage on such additional Real Property and (ii) cause to be delivered to Collateral Agent, for the benefit of the Secured Parties, all documents and instruments reasonably requested by Collateral Agent or as shall be necessary in the opinion of counsel to Collateral Agent to create on behalf of the Secured Parties a valid, perfected, mortgage Lien, subject only to Permitted Liens, including the following:

(1) a Mortgage in favor of Collateral Agent, for the benefit of the Secured Parties, in form for recording in the recording office of the jurisdiction where such Mortgaged Real Property is situated, together with such other documentation as shall be required to create a valid mortgage Lien under applicable law, which Mortgage and other documentation shall be reasonably satisfactory to Collateral Agent and shall be effective to create in favor of Collateral Agent for the benefit of the Secured Parties a valid, perfected, Mortgage Lien on such Mortgaged Real Property subject to no Liens other than Permitted Liens;

(2) with respect to each such Mortgaged Real Property, a policy or policies or marked-up unconditional binder of title insurance, as applicable, paid for by Borrower or its Restricted Subsidiaries, issued by a nationally recognized title insurance company insuring the Lien of each Mortgage entered into pursuant to clause (1) above as a valid first Lien on the Mortgaged Real Property described therein, free of any other Liens except Permitted Liens, together with such customary endorsements available on commercially

reasonable terms as the Collateral Agent may reasonably request; *provided*, that with respect to all Mortgaged Real Property acquired for the Wynn Massachusetts Project, Borrower and its Restricted Subsidiaries shall not be required to obtain title insurance policies related thereto in an amount greater than \$1,100.0 million in the aggregate;

(3) with respect to each such Mortgaged Real Property, Collateral Agent shall have received a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to such Mortgaged Real Property for which a Mortgage is delivered pursuant to clause (1) above (together with a notice about special flood hazard area status and flood disaster assistance duly executed by Borrower and the applicable Credit Party relating thereto);

(4) a survey of each Mortgaged Real Property in such form as shall (x) be required by the title company to remove the standard survey exceptions from the Title Policy with respect to such Mortgaged Real Property and (y) comply with the minimum detail requirements of the American Land Title Association and locate all improvements, public streets and recorded easements affecting such Mortgaged Real Property; and

(5) with respect to each Mortgage entered into pursuant to clause (1) above, opinions addressed to the Administrative Agent and the Collateral Agent for its benefit and for the benefit of the Secured Parties of (A) local counsel for Borrower or its Restricted Subsidiaries in each jurisdiction where such Mortgaged Property is located with respect to the enforceability of each such Mortgage and other matters customarily included in such opinions and (B) counsel for Borrower and its Restricted Subsidiaries regarding due authorization, execution and delivery of each such Mortgage, in each case, in form and substance reasonably satisfactory to the Administrative Agent;

provided, that notwithstanding the foregoing, the Credit Parties shall not be required to grant a Mortgage on (i) any leasehold interest in any Real Property entered into after the date hereof that has a fair market value (including the reasonably anticipated fair market value of the Facility or other improvements to be developed thereon) of less than \$300.0 million or a remaining term (including options to extend) of less than 10 years or (ii) any leasehold interest in any Real Property if after the exercise of commercially reasonable efforts by the Credit Parties (which shall not include the payment of consideration other than reasonable attorneys' fees and other expenses incidental thereto), the landlord under such lease has not consented to the granting of a Mortgage.

(c) Notwithstanding anything contained in Sections 9.08(a) and 9.08(b) to the contrary, in each case, it is understood and agreed that no Lien(s) and/or Mortgage(s) in favor of Collateral Agent on any after acquired Property of the applicable Credit Party shall be required to be granted or delivered at such time as provided in such Sections (as applicable) as a result of such Lien(s) and/or Mortgage(s) being prohibited by (i) the applicable Gaming Authorities or applicable Law; *provided, however*, that Borrower has used its commercially reasonable efforts to obtain such approvals or (ii) Contractual Obligation (except to the extent invalidated by the applicable provisions of the UCC).

(d) With respect to Lien(s) and/or Mortgage(s) relating to any Property acquired by any Credit Party on or after the Closing Date or any Property of any Additional Credit Party or with respect to any Guarantee of any Additional Credit Party, in each case that were not granted or delivered pursuant to Section 9.08(c) or to the second paragraph in Section 9.11, as the case may be, at such time as Borrower reasonably believes such prohibition no longer exists, Borrower shall (and with respect to any items requiring approval from Gaming Authorities, Borrower shall use commercially reasonable efforts to seek the approval from the applicable Gaming Authorities for such Lien(s), Mortgage(s) and/or Guarantee and, if such approval is so obtained), comply with Sections 9.08(a) and/or 9.08(b) or with Section 9.11, as the case may be.

(e) Notwithstanding anything to the contrary contained herein or in any other Loan Document, no actions shall be required pursuant to Section 9.08(b) with respect to any Real Property until May 31, 2015, after which time the Credit Parties shall have ninety (90) days (or such longer period that is reasonably acceptable to Administrative Agent) to satisfy the requirements of Section 9.08(b) with respect to any Real Property previously acquired.

SECTION 9.09. Security Interests; Further Assurances. Each Credit Party shall, promptly, upon the reasonable request of Collateral Agent, and so long as such request (or compliance with such request) does not violate any Gaming Law (or, if such request is subject to an approval by the Gaming Authority, Borrower hereby agrees to use commercially reasonable efforts to obtain such approval), at Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by Collateral Agent reasonably necessary or desirable to create, protect or perfect or for the continued validity, perfection and priority of the Liens on the Collateral covered or purported to be covered thereby (subject to any applicable provisions set forth in the Security Agreement with respect to limitations on grant of security interests in certain types of Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such Pledged Collateral and any applicable Requirements of Law including, without limitation, any Gaming Laws) subject to no Liens other than Permitted Liens; *provided* that, notwithstanding anything to the contrary herein or in any other Credit Document, in no event shall any Company be required to enter into control agreements with respect to its deposit accounts, securities accounts or commodity accounts. In the case of the exercise by Collateral Agent or the Lenders or any other Secured Party of any power, right, privilege or remedy pursuant to any Credit Document following the occurrence and during the continuation of an Event of Default which requires any consent, approval, registration, qualification or authorization of any Governmental Authority, Borrower and each of its Restricted Subsidiaries shall use commercially reasonable efforts to promptly execute and deliver all applications, certifications, instruments and other documents and papers that Collateral Agent or the Lenders may be so required to obtain.

SECTION 9.10. Wynn Las Vegas Reorganization. Borrower shall use commercially reasonable efforts to cause the Wynn Las Vegas Reorganization to occur; *provided* that immediately prior to giving effect to the consummation of the Wynn Las Vegas Reorganization, the aggregate amount of Indebtedness outstanding at Wynn Las Vegas and its Restricted Subsidiaries shall not exceed an amount equal to the sum of (a) the principal amount of the Wynn Las Vegas 2020 Notes as of the Closing Date, (b) the principal amount of any additional Indebtedness incurred substantially concurrently with the repayment or refinancing of all or a portion of the Wynn Las Vegas 2020 Notes, and (c) 105% of all Indebtedness (other than the Wynn Las Vegas 2020 Notes) outstanding at Wynn Las Vegas and its Restricted Subsidiaries as of the Closing Date.

SECTION 9.11. Additional Credit Parties. Upon (i) any Credit Party creating or acquiring any Subsidiary that is a Wholly Owned Restricted Subsidiary (other than any Excluded Subsidiary) after the Closing Date, (ii) any Wholly Owned Restricted Subsidiary of a Credit Party ceasing to be an Excluded Subsidiary (including, without limitation, an Immaterial Subsidiary being designated pursuant to Section 9.13 as an Excluded Immaterial Subsidiary) or (iii) any Revocation that results in an Unrestricted Subsidiary becoming a Wholly Owned Restricted Subsidiary (other than any Excluded Subsidiary) of a Credit Party (such Wholly Owned Restricted Subsidiary referenced in clause (i), (ii) or (iii) above, an "**Additional Credit Party**"), such Credit Party shall, assuming and to the extent that it does not violate any Gaming Law or assuming and to the extent it obtains the approval of the Gaming Authority to the extent such approval is required by applicable Gaming Laws (which Borrower hereby agrees to use commercially reasonable efforts to obtain), (A) cause each such Wholly Owned Restricted Subsidiary to promptly (but in any event within 45 days (or 95 days, in the event of any Discharge of any Indebtedness in connection with the acquisition of any such Subsidiary) after the later of such event described in clause (i), (ii) or (iii) above or receipt of such approval (or such longer period of time as Administrative Agent may agree to in its sole discretion), execute and deliver all such agreements, guarantees, documents and certificates (including Joinder Agreements, any amendments to the Credit Documents, lien searches and a Perfection Certificate) as Administrative Agent may reasonably request in order to have such Wholly Owned Restricted Subsidiary become a Guarantor and (B)(I) execute and deliver to Collateral Agent such amendments to or additional Security Documents as Collateral Agent deems necessary or advisable in order to grant to Collateral Agent for the benefit of the Secured Parties, a perfected security interest in the Equity Interests of such Additional Credit Party which are owned by any Credit Party and required to be pledged pursuant to the Security Agreement, (II) deliver to Collateral Agent the certificates (if any) representing such Equity Interests together with in the case of such Equity Interests, undated stock powers endorsed in blank, (III) cause such Additional Credit Party to take such actions necessary or advisable (including executing and delivering a Joinder Agreement) to grant to Collateral Agent for the benefit of the Secured Parties, a perfected security interest in the collateral described in (subject to any requirements set forth in the Security Agreement with respect to limitations on grant of security interests in certain types of assets or Pledged Collateral and limitations or exclusions from the requirement to perfect Liens on such Pledged Collateral

and excluding acts with respect to perfection of security interests and Liens not required under, or excluded from the requirements under, the Security Agreement) the Security Agreement and all other Property (limited, in the case of any first-tier Foreign Subsidiary or CFC Holdco, to 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of such Foreign Subsidiary or CFC Holdco) of such Additional Credit Party in accordance with the provisions of Section 9.08 hereof with respect to such Additional Credit Party, or as necessary under applicable law or as may be reasonably requested by Collateral Agent, and (IV) deliver to Collateral Agent all legal opinions reasonably requested by Collateral Agent with respect to such Additional Credit Party relating to the matters described above covering matters similar to those covered in the opinions delivered on the Closing Date; *provided*, however, that Borrower shall use its commercially reasonable efforts to obtain such approvals for any Mortgage(s) and Lien(s) (including pledge of the Equity Interests of such Subsidiary) to be granted by such Additional Credit Party and for the Guarantee of such Additional Credit Party as soon as reasonably practicable; *provided, further*, that, solely with respect of the Wynn Las Vegas Entities (including the Wynn Las Vegas Pledge), the requirements of subclause (B) above shall be subject to the limitations in any then outstanding Wynn Las Vegas Notes (*provided, however*, that (i) with respect to the Wynn Las Vegas Entities, the Borrower shall comply with the requirements of subclause (B) above to the maximum extent permitted by any then outstanding Wynn Las Vegas Notes, including, without limitation, Section 4.09 of the indenture governing the Wynn Las Vegas 2023 Notes and (ii) in connection with the Borrower's compliance with clause (i) of this proviso, (x) the Borrower and the Administrative Agent shall amend or otherwise modify, without the consent of any other party, the Security Documents to the extent necessary to effectuate such compliance) and (y) the Administrative Agent shall enter into such intercreditor agreements (in forms reasonably satisfactory to the ~~Administrative~~Administrative Agent) with respect to the Wynn Las Vegas Pledge with the holders of the Wynn Las Vegas Notes to the extent necessary to effectuate such ~~compliance~~compliance. All of the foregoing actions shall be at the sole cost and expense of the Credit Parties.

Notwithstanding the foregoing in this Section 9.11 to the contrary, it is understood and agreed that no Lien(s), Mortgage(s) and/or Guarantee of the applicable Additional Credit Party shall be required to be granted or delivered at such time as provided in the paragraph above in this Section 9.11 as a result of such Lien(s), Mortgage(s) and/or Guarantee being prohibited (i) by the applicable Gaming Authorities, any other applicable Governmental Authorities or applicable Law; *provided*, however, that Borrower has used its commercially reasonable efforts to obtain such approvals for such Lien(s), Mortgage(s) and/or Guarantee or (ii) any Contractual Obligation (except to the extent superseded by the applicable provisions of the UCC).

SECTION 9.12. Limitation on Designations of Unrestricted Subsidiaries

(a) Borrower may, on or after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, designate any Subsidiary of Borrower (other than a Subsidiary of Borrower which owns one or more Principal Assets) as an "Unrestricted Subsidiary" under this Agreement (a "**Designation**") only if:

- (i) no Default or Event of Default shall have occurred and be continuing at the time of or immediately after giving effect to such Designation;
- (ii) Borrower would be permitted under this Agreement to make an Investment at the time of Designation (assuming the effectiveness of such Designation) in an amount (the "**Designation Amount**") equal to the sum of (A) the fair market value of the Equity Interest of such Subsidiary owned by Borrower and/or any of the Restricted Subsidiaries on such date and (B) the aggregate amount of Indebtedness of such Subsidiary owed to Borrower and the Restricted Subsidiaries on such date; and
- (iii) after giving effect to such Designation, (x) prior to the Initial Test Date, the Consolidated Senior Secured Net Leverage Ratio calculated on a Pro Forma Basis shall not exceed 2.50 to 1.00 as of the most recent Calculation Date and (y) from and after the Initial Test Date, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date.

Upon any such Designation, Borrower and its Restricted Subsidiaries shall be deemed to have made an Investment in such Unrestricted Subsidiary in an amount equal to the Designation Amount.

(b) Borrower may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a “**Revocation**”), whereupon such Subsidiary shall then constitute a Restricted Subsidiary, if:

(i) no Default or Event of Default shall have occurred and be continuing at the time and immediately after giving effect to such Revocation;

(ii) after giving effect to such Revocation, (x) prior to the Initial Test Date, the Consolidated Senior Secured Net Leverage Ratio calculated on a Pro Forma Basis shall not exceed 2.50 to 1.00 as of the most recent Calculation Date and (y) from and after the Initial Test Date, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date; and

(iii) all Liens and Indebtedness of such Unrestricted Subsidiary and its Subsidiaries outstanding immediately following such Revocation would, if incurred at the time of such Revocation, have been permitted to be incurred for all purposes of this Agreement.

(c) All Designations and Revocations occurring after the Closing Date must be evidenced by an Officer’s Certificate of Borrower delivered to Administrative Agent with the Responsible Officer so executing such certificate certifying compliance with the foregoing provisions of Section 9.12(a) (in the case of any such Designations) and of Section 9.12(b) (in the case of any such Revocations).

(d) If Borrower designates a Guarantor as an Unrestricted Subsidiary in accordance with this Section 9.12, the Obligations of such Guarantor under the Credit Documents shall terminate and be of no further force and effect and all Liens granted by such Guarantor under the applicable Security Documents shall terminate and be released and be of no further force and effect, and all Liens on the Equity Interests and debt obligations of such Guarantor shall be terminated and released and of no further force and effect, in each case, without any action required by Administrative Agent or Collateral Agent. At Borrower’s request, Administrative Agent and Collateral Agent will execute and deliver any instrument evidencing such termination and Collateral Agent shall take all actions appropriate in order to effect such termination and release of such Liens and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). Any such foregoing actions taken by Administrative Agent and/or Collateral Agent shall be at the sole cost and expense of Borrower.

SECTION 9.13. Limitation on Designation of Immaterial Subsidiaries

(a) If for any reason the aggregate fair market value of the assets of all the Immaterial Subsidiaries exceeds the Immaterial Subsidiary Threshold Amount, then, promptly after the occurrence of such event that causes the aggregate fair market value of all Immaterial Subsidiaries to exceed the Immaterial Subsidiary Threshold Amount, Borrower shall designate (an “**Excluded Designation**”) one or more Immaterial Subsidiaries as no longer constituting Immaterial Subsidiaries for all purposes of this Agreement (an “**Excluded Immaterial Subsidiary**”) as may be necessary to ensure that the Immaterial Subsidiary Threshold is satisfied. Borrower may redesignate (a “**Redesignation**”) an Excluded Immaterial Subsidiary as constituting an Immaterial Subsidiary for purposes of this Agreement so long as such redesignated Excluded Immaterial Subsidiary is in compliance with the requirements of the definition of Immaterial Subsidiary and such Redesignation does not cause or otherwise result in the aggregate fair market value of the assets of all Immaterial Subsidiaries (after giving effect to the Redesignation of the Excluded Immaterial Subsidiary as an Immaterial Subsidiary) to exceed the Immaterial Subsidiary Threshold Amount. For purposes of this Section 9.13(a), fair market value shall be determined as of the most recent Calculation Date.

(b) Any such Excluded Designation or Redesignation must be evidenced by an Officer’s Certificate of Borrower delivered to Administrative Agent with the Responsible Officer executing such certificate certifying compliance with the foregoing provisions of Section 9.13(a).

(c) If Borrower redesignates an Excluded Immaterial Subsidiary as an Immaterial Subsidiary in accordance with this Section 9.13, so long as no Default or Event of Default exists, the Obligations of such Excluded Immaterial

Subsidiary (as a Guarantor) under the Credit Documents shall terminate and be of no further force and all Liens granted by such Excluded Immaterial Subsidiary (as a Guarantor) under the applicable Security Documents shall terminate and be released and be of no further force and effect, in each case, without any action required by Administrative Agent or Collateral Agent. At Borrower's request, Administrative Agent and Collateral Agent will execute and deliver any instrument evidencing such termination and Collateral Agent shall take all actions appropriate in order to effect the termination and release of such Lien and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). Any such foregoing actions taken by Administrative Agent and/or Collateral Agent shall be at the sole cost and expense of Borrower.

SECTION 9.14. Wynn Las Vegas Distributions. From and after the occurrence of the Wynn Las Vegas Reorganization and until the Wynn Las Vegas 2020 and 2022 Note Repayment and to the maximum extent permitted by the Wynn Las Vegas Notes and other Contractual Obligations and applicable law, Borrower shall cause Wynn Las Vegas to distribute to Borrower or such other Credit Parties on a quarterly basis all unrestricted cash and Cash Equivalents held by the Wynn Las Vegas Subsidiaries that are Restricted Subsidiaries other than such unrestricted cash and cash equivalents that in the good faith determination of Wynn Las Vegas is necessary or advisable to maintain with such Wynn Las Vegas Subsidiaries for general corporate purposes, including without limitation anticipated future Capital Expenditures.

SECTION 9.15. Ratings. Borrower shall use commercially reasonable efforts to obtain ratings from each of Moody's and S&P for the Term Facility Loans prior to the date that is 270 days after the Closing Date.

ARTICLE X.

NEGATIVE COVENANTS

Each Credit Party, for itself and on behalf of its Restricted Subsidiaries, covenants and agrees with the Administrative Agent, Collateral Agent and Lenders that until the Obligations have been Paid in Full (and each Credit Party covenants and agrees that it will cause its Restricted Subsidiaries to observe and perform the covenants herein set forth applicable to any such Restricted Subsidiary):

SECTION 10.01. Indebtedness. Borrower and its Restricted Subsidiaries will not incur any Indebtedness, except:

- (a) Indebtedness incurred pursuant to this Agreement and the other Credit Documents;
- (b) Indebtedness outstanding on the Closing Date and listed on Schedule 10.01, and any Permitted Refinancings thereof;
- (c) Indebtedness under any Swap Contracts (including, without limitation, any Interest Rate Protection Agreements); *provided* that such Swap Contracts are entered into for bona fide hedging activities and not for speculative purposes;
- (d) intercompany Indebtedness of Borrower and the Restricted Subsidiaries to Borrower or other Restricted Subsidiaries;
- (e) from and after the Wynn Las Vegas Reorganization, Indebtedness under the Wynn Las Vegas Notes, any other Indebtedness permitted pursuant to Section 9.10 and, if the Wynn Las Vegas 2020 Notes have not been refinanced prior to the Wynn Las Vegas Reorganization, the principal amount of any additional Indebtedness incurred substantially concurrently with the repayment or refinancing of all or a portion of the Wynn Las Vegas 2020 Notes and, in each case, Permitted Refinancings thereof;

(f) Indebtedness in respect of workers' compensation claims, self-insurance obligations, performance bonds, surety appeal or similar bonds, bank guarantees, warehouse receipts, completion guarantees, letters of credit and similar instruments provided by Borrower or any of its Restricted Subsidiaries in the ordinary course of its business (including to support Borrower's or any of its Restricted Subsidiaries' performance obligations, trade letters of credit and applications for Gaming Licenses or for the purposes referenced in this clause (f));

(g) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five (5) Business Days of its incurrence;

(h) Indebtedness (other than Indebtedness referred to in Section 10.01(b)) in respect of Purchase Money Obligations and Capital Lease Obligations and refinancings or renewals thereof in an aggregate principal amount not to exceed at any time outstanding \$150.0 million;

(i) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(j) guarantees by Borrower or Restricted Subsidiaries of Indebtedness otherwise permitted to be incurred by Borrower or any Restricted Subsidiary under this Section 10.01;

(k) Indebtedness of a Person that becomes a Subsidiary of Borrower or any of its Restricted Subsidiaries after the date hereof in connection with a Permitted Acquisition or other Acquisition permitted hereunder; *provided, however*, that such Indebtedness existed at the time such Person became a Subsidiary and was not created in anticipation or contemplation thereof, and Permitted Refinancings thereof;

(l) (i) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, Permitted Unsecured Indebtedness and Permitted Second Lien Indebtedness in an aggregate principal amount not to exceed \$1.0 billion prior to the Wynn Massachusetts Project Opening Date and \$1.5 billion from and after the Wynn Massachusetts Project Opening Date, so long as in any such case (x) prior to the Initial Test Date, immediately after giving effect to such Indebtedness, the Consolidated Senior Secured Net Leverage Ratio calculated on a Pro Forma Basis shall not exceed 2.50 to 1.00 as of the most recent Calculation Date, (y) from and after the Initial Test Date, immediately after giving effect to such Indebtedness Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date and (z) no Event of Default shall have occurred and be continuing after giving effect thereto and (ii) Permitted Refinancings of any Indebtedness incurred pursuant to clause (i) so long as (x) in the case of Permitted Refinancings of Permitted Second Lien Indebtedness, such Permitted Refinancings qualify as either Permitted Second Lien Indebtedness or Permitted Unsecured Indebtedness or (y) in the case of Permitted Refinancings of Permitted Unsecured Indebtedness, such Permitted Refinancings qualify as Permitted Unsecured Indebtedness;

(m) (i) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, Permitted First Lien Indebtedness in an aggregate principal amount not to exceed the sum of (A) \$250.0 million prior to the Wynn Massachusetts Project Opening Date and \$500.0 million from and after the Wynn Massachusetts Project Opening Date and (B) the aggregate principal amount of Development Financing (including Permitted Refinancings thereof) that no longer qualifies as Development Financing pursuant to clause (B) of the definition thereof, so long as in any such case (x) prior to the Initial Test Date, immediately after giving effect to such Indebtedness the Consolidated Senior Secured Net Leverage Ratio shall not exceed 2.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date, (y) from and after the Initial Test Date, immediately after giving effect to such Indebtedness Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date and (z) no Event of Default shall have occurred and be continuing after giving effect thereto, and (ii) Permitted Refinancings of any Indebtedness incurred pursuant to clause (i) so long as such Permitted Refinancings qualify as Permitted First Lien Indebtedness, Permitted Second Lien Indebtedness or Permitted Unsecured Indebtedness;

- (n) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, unsecured Indebtedness of the kind described in clause (d) of the definition of "Indebtedness" so long as, in the case of any such Indebtedness other than earn-out obligations, at the time of incurrence thereof, (i) no Event of Default shall have occurred and be continuing after giving effect thereto and (ii) (x) prior to the Initial Test Date, the Consolidated Senior Secured Net Leverage Ratio shall not exceed 2.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date and (y) from and after the Initial Test Date, Borrower and its Restricted Subsidiaries shall be in compliance with the Financial Maintenance Covenant (whether or not then in effect) on a Pro Forma Basis as of the most recent Calculation Date (whether or not then in effect);
- (o) Permitted Unsecured Refinancing Debt, Permitted First Priority Refinancing Debt and Permitted Second Priority Refinancing Debt;
- (p) Indebtedness of Restricted Subsidiaries that are Foreign Subsidiaries in an aggregate principal amount not to exceed (x) prior to the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, \$5.0 million and (y) thereafter, \$100.0 million at any time outstanding, so long as such Indebtedness is not guaranteed by any Credit Party;
- (q) Indebtedness of Borrower or any Restricted Subsidiary in an aggregate principal amount not to exceed as of the time of incurrence thereof \$75.0 million;
- (r) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;
- (s) Investments under Section 10.04(l), 10.04(q), 10.04(s) and 10.04(w) consisting of guarantees;
- (t) [Reserved];
- (u) Development Financing (including Permitted Refinancings thereof);
- (v) [Reserved];
- (w) Intercompany Contribution Indebtedness (it being acknowledged that Wynn Resorts may fund its obligations under the Completion Guaranty in the form of Intercompany Contribution Indebtedness); and
- (x) from and after the Wynn Las Vegas Reorganization, the incurrence of Indebtedness in an amount not to exceed the greater of (i) the Aircraft Note and (ii) 100% of the fair market value of the Aircraft, which in either case is secured only by Liens permitted by Section 10.02(ii).

For purposes of determining compliance with this Section 10.01, (A) Indebtedness need not be permitted solely by reference to one category of permitted Indebtedness described in Sections 10.01(a) through (x) but may be permitted in part under any combination thereof and (B) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of permitted Indebtedness described in Sections 10.01(a) through (x), Borrower shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 10.01 and will only be required to include the amount and type of such item of Indebtedness (or any portion thereof) in one of the above clauses and such item of Indebtedness (or any portion thereof) shall be treated as having been incurred or existing pursuant to only one of such clauses, provided, that all Indebtedness under this Agreement outstanding on the Closing Date shall at all times be deemed to have been incurred pursuant to clause (a) of this Section 10.01 and may not be reclassified. In addition, with respect to any Indebtedness that was permitted to be incurred hereunder on the date of such incurrence, any Increased Amount of such Indebtedness shall also be permitted hereunder after the date of such incurrence.

Additionally, for purposes of determining compliance with Section 10.01, if the use of proceeds from any incurrence, issuance or assumption of Indebtedness is to fund the refinancing of any Indebtedness, then such refinancing shall be deemed to have occurred substantially simultaneously with such incurrence, issuance or assumption so long as (1) such refinancing occurs on the same Business Day as such incurrence, issuance or assumption, (2) if such proceeds

will be offered (through a tender offer or otherwise) to the holders of such Indebtedness to be refinanced, the proceeds thereof are deposited with a trustee, agent or other representative for such holders pending the completion of such offer on the same Business Day as such incurrence, issuance or assumption (and such proceeds are ultimately used in the consummation of such offer or otherwise used to refinance Indebtedness), (3) if such proceeds will be used to fund the redemption, discharge or defeasance of such Indebtedness to be refinanced, the proceeds thereof are deposited with a trustee, agent or other representative for such Indebtedness pending such redemption, discharge or defeasance on the same Business Day as such incurrence, issuance or assumption or (4) the proceeds thereof are otherwise set aside to fund such refinancing pursuant to procedures reasonably agreed with the Administrative Agent.

SECTION 10.02. Liens. Neither Borrower nor any Restricted Subsidiary shall create, incur, grant, assume or permit to exist, directly or indirectly, any Lien on any Property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except (the “**Permitted Liens**”):

- (a) Liens for Taxes not yet due and payable or delinquent, or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP;
- (b) Liens in respect of property of Borrower or any Restricted Subsidiary imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, materialmen’s, landlord’s and mechanics’ liens, maritime liens and other similar Liens arising in the ordinary course of business (i) for amounts not yet overdue for a period of ninety (90) days, (ii) for amounts that are overdue for a period in excess of ninety (90) days that are being contested in good faith by appropriate proceedings (inclusive of amounts that remain unpaid as a result of bona fide disputes with contractors, including where the amount unpaid is greater than the amount in dispute), so long as adequate reserves have been established in accordance with GAAP or (iii) for amounts that are overdue for a period in excess of ninety (90) days not to exceed \$10.0 million in the aggregate;
- (c) Liens securing Indebtedness incurred pursuant to Section 10.01(b) and listed on Schedule 10.02; *provided, however*, that (i) such Liens do not encumber any Property of Borrower or any Restricted Subsidiary other than (x) any such Property subject thereto on the Closing Date, (y) after-acquired property that is affixed or incorporated into Property covered by such Lien and (z) proceeds and products thereof, and (ii) the amount of Indebtedness secured by such Liens does not increase, except as contemplated by Section 10.01(b);
- (d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, conditions, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness and (ii) individually or in the aggregate materially interfering with the conduct of the business of Borrower and its Restricted Subsidiaries, taken as a whole;
- (e) Liens arising out of judgments or awards not resulting in an Event of Default;
- (f) Liens (other than any Lien imposed by ERISA) (i) imposed by law or deposits made in connection therewith in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, rental obligations (limited, in the case of rental obligations, to security deposits and deposits to secure obligations for taxes, insurance, maintenance and similar obligations), utility services, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers or (iv) Liens on deposits made to secure Borrower’s or any of its Subsidiaries’ Gaming License applications or to secure the performance of surety or other bonds issued in connection therewith; *provided, however*, that to the extent such Liens are not imposed by Law, such Liens shall in no event encumber any Property other than cash and Cash Equivalents or, in the case of clause (iii), proceeds of insurance policies;

(g) Leases with respect to the assets or properties of any Credit Party or its respective Subsidiaries (including Leases of any portion of any Facility to persons who, either directly or through Affiliates of such persons, intend to operate or manage nightclubs, bars, restaurants, recreation areas, spas, pools, exercise or gym facilities, or entertainment or retail venues or similar, related or other establishments or facilities within any Facility), in each case entered into in the ordinary course of such Credit Party's or Subsidiary's business so long as each of the Leases entered into after the date hereof with respect to Real Property constituting Collateral (for purposes of clarification, excluding any such Leases on Real Property acquired in connection with an Acquisition (including the Wynn Las Vegas Reorganization)) are subordinate in all respects to the Liens granted and evidenced by the Security Documents and do not, individually or in the aggregate, (x) interfere in any material respect with the ordinary conduct of the business of the Credit Parties and their respective Subsidiaries, taken as a whole, or (y) materially impair the use (for its intended purposes) or the value of the Properties of the Credit Parties and their respective Subsidiaries, taken as a whole; *provided* that upon the request of Borrower, the Collateral Agent shall enter into a customary subordination and non-disturbance and attornment agreement in connection with any such Lease;

(h) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower or such Restricted Subsidiary in the ordinary course of business;

(i) Liens arising pursuant to Purchase Money Obligations or Capital Lease Obligations (and refinancings or renewals thereof), in each case, incurred pursuant to Section 10.01(h); *provided, however*, that (i) the Indebtedness secured by any such Lien (including refinancings thereof) does not exceed 100% of the cost of the property being acquired, constructed, improved or leased at the time of the incurrence of such Indebtedness *plus*, the fees and expenses related thereto (*plus*, in the case of refinancings, accrued interest on the Indebtedness refinanced and fees and expenses relating thereto) and (ii) any such Liens attach only to the property being financed pursuant to such Purchase Money Obligations or Capital Lease Obligations (or in the case of refinancings which were previously financed pursuant to such Purchase Money Obligations or Capital Lease Obligations) (and directly related assets, including proceeds and replacements thereof and proceeds of such financing and any account solely used to hold such proceeds) and do not encumber any other Property of Borrower or any Restricted Subsidiary (it being understood that all Indebtedness to a single lender shall be considered to be a single Purchase Money Obligation, whether drawn at one time or from time to time but that individual financings provided by one lender may be cross-collateralized to other financings provided by such lender and incurred under Section 10.01(h));

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by Borrower or any Restricted Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided, however*, that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens on assets of a Person existing at the time such Person is acquired or merged with or into or consolidated with Borrower or any Restricted Subsidiary (and not created in connection with or in anticipation or contemplation thereof); *provided, however*, that such Liens do not extend to assets not subject to such Liens at the time of acquisition (other than improvements and attachments thereon, accessions thereto and proceeds thereof) and are no more favorable to the lienholders than the existing Lien;

(l) in addition to Liens otherwise permitted by this Section 10.02, other Liens incurred with respect to any Indebtedness or other obligations of Borrower or any of its Subsidiaries; *provided, however*, that (A) the aggregate principal amount of such Indebtedness secured by such Liens shall not exceed as of the time of incurrence \$75.0 million in the aggregate, and (B) any such Liens on Collateral shall be junior or otherwise subordinated in all respects to any Liens in favor of Collateral Agent on any of the Collateral to the reasonable satisfaction of Administrative Agent;

(m) licenses of Intellectual Property granted by Borrower or any Restricted Subsidiary in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of Borrower and its Restricted Subsidiaries, taken as a whole;

- (n) Liens pursuant to the Credit Documents, including, without limitation, Liens related to Cash Collateralizations;
- (o) Liens associated with the Wynn Las Vegas Pledge;
- (p) Liens arising under applicable Gaming Laws; *provided, however*, that no such Lien constitutes a Lien securing repayment of Indebtedness for borrowed money;
- (q) (i) Liens pursuant to leases entered into for the purpose of, or with respect to, operating or managing Facilities, which Liens are limited to the leased property under the applicable lease and granted to the landlord under such lease for the purpose of securing the obligations of the tenant under such lease to such landlord and (ii) Liens on cash and Cash Equivalents (and on the related escrow accounts or similar accounts, if any) required to be paid to the lessors (or lenders to such lessors) under such leases or maintained in an escrow account or similar account pending application of such proceeds in accordance with the applicable lease;
- (r) Liens to secure Indebtedness incurred pursuant to Section 10.01(p); *provided* that such Liens do not encumber any Property of Borrower or any Restricted Subsidiary other than any Foreign Subsidiary;
- (s) Prior Mortgage Liens with respect to the applicable Mortgaged Real Property;
- (t) Liens on cash and Cash Equivalents deposited to Discharge, redeem or defease Indebtedness that was permitted to so be repaid;
- (u) Liens arising from precautionary UCC financing statements filings regarding operating leases or consignment of goods entered into in the ordinary course of business;
- (v) Liens on the Collateral securing (i) Permitted First Lien Indebtedness permitted under Section 10.01(m) or Permitted First Priority Refinancing Debt and, in each case, subject to the *Pari Passu* Intercreditor Agreement or (ii) Permitted Second Lien Indebtedness permitted under Sections 10.01(l) or 10.01(m) or Permitted Second Priority Refinancing Debt and, in each case, subject to the Second Lien Intercreditor Agreement (as “Second Priority Liens”);
- (w) [Reserved];
- (x) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement in respect of a Permitted Acquisition or Investment (including any other Acquisition) not prohibited by this Agreement;
- (y) in the case of any non-Wholly Owned Subsidiary or Joint Venture, any put and call arrangements or restrictions on disposition related to its Equity Interests set forth in its organizational documents or any related joint venture or similar agreement and, in the case of any Joint Venture, Liens on its Equity Interests securing obligations of such joint ventures;
- (z) Liens arising in connection with transactions relating to the selling, factoring or discounting of accounts receivable in the ordinary course of business;
- (aa) licenses, leases or subleases granted to other Persons not materially interfering with the conduct of the business of Borrower and its Subsidiaries taken as a whole;
- (bb) any interest or title of a lessor, sublessor, licensee or licensor under any lease or license agreement permitted by this Agreement;
- (cc) Liens securing obligations of any Person in respect of employee deferred compensation and benefit plans in connection with “rabbi trusts” or other similar arrangements;

(dd) Liens securing obligations in respect of trade-related letters of credit, bank guarantees or similar obligations permitted under Section 10.01 and covering the property (or the documents of title in respect of such property) financed by such letters of credit, bank guarantees or similar obligations and the proceeds and products thereof;

(ee) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit, bank guarantee or bankers' acceptance issued or created for the account of Borrower or any Subsidiary in the ordinary course of business; *provided* that such Lien secures only the obligations of Borrower or such Subsidiaries in respect of such letter of credit, bank guarantee or banker's acceptance to the extent permitted under Section 10.01;

(ff) Liens arising pursuant to Indebtedness incurred pursuant to Section 10.01(u) in an aggregate principal amount not to exceed \$250.0 million at any time outstanding, at the direction of Borrower subject to the *Pari Passu* Intercreditor Agreement or the Second Lien Intercreditor Agreement, as may be applicable;

(gg) Liens on the Aircraft Assets to secure Indebtedness of World Travel, LLC, which is permitted to be incurred pursuant to Section 10.01(x);

(hh) the filing of a reversion, subdivision or final map(s), record(s) of survey and/or amendments to any of the foregoing over Real Property the gross acreage and footprint of any applicable Mortgaged Real Property remains unaffected in any material respect; and

(ii) from and after the disposition or lease or sublease of any interest in Real Property otherwise permitted pursuant to this Agreement, any reciprocal easement or similar agreement entered into between Borrower or any Restricted Subsidiary and the acquirer or holder of such interest.

In connection with the granting of Liens of the types described in this Section 10.02 by Borrower of any of its Restricted Subsidiaries, Administrative Agent and Collateral Agent shall be authorized to take any actions deemed appropriate by it in connection therewith (including, without limitation, by entering into or amending appropriate lien subordination or intercreditor agreements). For purposes of determining compliance with this Section 10.02, (A) a Lien securing an item of Indebtedness need not be permitted solely by reference to one category of permitted Liens described in Sections 10.02(a) through (ii) but may be permitted in part under any combination thereof and (B) in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of permitted Liens described in Sections 10.02(a) through (ii), Borrower shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Lien securing such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant and will only be required to include the amount and type of such Lien or such item of Indebtedness (or any portion thereof) secured by such Lien in one of the above clauses and such Lien securing such item of Indebtedness (or any portion thereof) will be treated as being incurred or existing pursuant to only one of such clauses. In addition, with respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness.

SECTION 10.03. Reserved.

SECTION 10.04. Investments, Loans and Advances. Neither Borrower nor any Restricted Subsidiary will, directly or indirectly, make any Investment, except for the following:

(a) Investments outstanding on the Closing Date and identified on Schedule 10.04 and any Investments received in respect thereof without the payment of additional consideration (other than through the issuance of or exchange of Qualified Capital Stock);

(b) Investments in cash and Cash Equivalents (including Investments that were Cash Equivalents when made);

(c) Borrower may enter into Swap Contracts to the extent permitted by Section 10.01(c);

(d) Investments (i) by Borrower in any Restricted Subsidiary, (ii) by any Restricted Subsidiary in Borrower and (iii) by a Restricted Subsidiary in another Restricted Subsidiary; *provided* that, in each case, any intercompany loan (it being understood and agreed that intercompany receivables or advances made in the ordinary course of business do not constitute loans) in excess of \$20.0 million individually shall be evidenced by a promissory note and, to the extent that the payee, holder or lender of such intercompany loan is a Credit Party, such promissory note shall be pledged (and delivered) by such Credit Party to Collateral Agent on behalf of the Secured Parties;

(e) Borrower and its Restricted Subsidiaries may sell or transfer assets to the extent permitted by Section 10.05;

(f) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers or in settlement of delinquent or overdue accounts in the ordinary course of business;

(g) Investments made by Borrower or any Restricted Subsidiary with, or as a result of, consideration received in connection with an Asset Sale made in compliance with Section 10.05;

(h) Investments made to officers, directors and employees in the ordinary course of business not to exceed \$10.0 million in the aggregate at any time outstanding;

(i) Permitted Acquisitions;

(j) accounts receivable, security deposits, prepayments (including prepayments of expenses), credits and extensions of trade credit (including to gaming customers) in the ordinary course of business;

(k) Investments resulting from pledges and deposits permitted under Section 10.02;

(l) in addition to Investments otherwise permitted by this Section 10.04, from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, Investments by Borrower or any of its Restricted Subsidiaries; *provided* that (i) the amount of such Investments to be made pursuant to this Section 10.04(l) do not exceed the Available Amount determined at the time such Investment is made, (ii) immediately before and after giving effect thereto, no Event of Default has occurred and is continuing and (iii) (x) prior to the Initial Test Date, the Consolidated Senior Secured Net Leverage Ratio shall not exceed 2.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date and (y) from and after the Initial Test Date, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date; *provided* that if any Investment pursuant to this clause (l) is made in any person that is not a Restricted Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Restricted Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (l) for so long as such person continues to be a Restricted Subsidiary of Borrower;

(m) Intentionally Omitted;

(n) payments with respect to any Qualified Contingent Obligations, so long as, at the time such Qualified Contingent Obligation was incurred or, if earlier, the agreement to incur such Qualified Contingent Obligations was entered into, such Investment was permitted under this Agreement;

(o) Investments of a Restricted Subsidiary acquired after the Closing Date or of a Person merged or consolidated with or into Borrower or a Restricted Subsidiary, in each case in accordance with the terms of this Agreement to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(p) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(q) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, Investments in Unrestricted Subsidiaries in an amount as of the time of incurrence not to exceed \$100.0 million (plus (x) the amounts received by Borrower and its Restricted Subsidiaries with respect to such Investments (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts), and (y) reductions in the amount of such Investments as provided in the definition of “Investment”);

(r) the occurrence of a Reverse Trigger Event under any applicable Transfer Agreement;

(s) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, so long as immediately before and after giving effect thereto no Event of Default has occurred and is continuing and (x) prior to the Initial Test Date, the Consolidated Senior Secured Net Leverage Ratio shall not exceed 2.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date and (y) from and after the Initial Test Date, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make Investments in an aggregate amount not in excess of an amount equal to \$225.0 million (plus the amounts received by Borrower and its Restricted Subsidiaries with respect to such Investments (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts)) *minus* the aggregate amount of Restricted Payments made pursuant to Section 10.06(i)(i) and the aggregate amount of Junior Prepayments made pursuant to Section 10.09(a)(i); *provided* that if any Investment pursuant to this clause (s) is made in any person that is not a Restricted Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Restricted Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (s) for so long as such person continues to be a Restricted Subsidiary of Borrower;

(t) Investments to the extent that payment for such Investments is made with (or such Investments are received substantially contemporaneously in exchange for) Qualified Capital Stock of Borrower or any parent entity of Borrower;

(u) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(v) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing or other arrangements with other persons in the ordinary course of business; and

(w) Investments in Joint Ventures established to develop or operate nightclubs, bars, restaurants, recreation, exercise or gym facilities, or entertainment or retail venues or similar, related or other establishments or facilities within any Facility not to exceed as of the time of incurrence in the aggregate (x) prior to the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, \$5.0 million and (y) thereafter \$100.0 million (in each case plus the amounts received by Borrower and its Restricted Subsidiaries with respect to such Investments (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts));

(x) Borrower and its Restricted Subsidiaries may make Investments in an aggregate amount not in excess of an amount equal to \$50.0 million (plus the amounts received by Borrower and its Restricted Subsidiaries with respect to such Investments (including with respect to contracts related to such Investments and including principal, interest, dividends, distributions, sale proceeds, payments under contracts relating to such Investments or other amounts)) *minus* the aggregate amount of Restricted Payments made pursuant to Section 10.06(l) and the aggregate amount of Junior Prepayments made pursuant to Section 10.09(i); *provided* that if any Investment pursuant to this clause (x) is made in any person that is not a Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (x) for so long as such person continues to be a Subsidiary of Borrower; and

(y) in addition to Investments otherwise permitted by this Section 10.04, Investments by Borrower or any of its Restricted Subsidiaries; *provided* that the amount of such Investments to be made pursuant to this Section 10.04(y) do not exceed the Available Equity Amount determined at the time such Investment is made; *provided* that if any Investment pursuant to this clause (y) is made in any person that is not a Restricted Subsidiary of Borrower at the date of the making of such Investment and such person becomes a Restricted Subsidiary of Borrower after such date, such Investment shall, upon the election of Borrower, thereafter be deemed to have been made pursuant to clause (d) above and shall cease to have been made pursuant to this clause (y) for so long as such person continues to be a Restricted Subsidiary of Borrower.

Any Investment in any person other than a Restricted Subsidiary that is otherwise permitted by this Section 10.04 may be made through intermediate Investments in Subsidiaries that are not Restricted Subsidiaries and such intermediate Investments shall be disregarded for purposes of determining the outstanding amount of Investments pursuant to any clause set forth above. The amount of any Investment made other than in the form of cash or cash equivalents shall be the fair market value thereof (as determined by Borrower in good faith) valued at the time of the making thereof, and without giving effect to any subsequent write-downs or write-offs thereof.

SECTION 10.05. Mergers, Consolidations and Sales of Assets. Neither Borrower nor any Restricted Subsidiary will wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (other than solely to change the jurisdiction of organization or type of organization (to the extent in compliance with the applicable provisions of the Security Agreement)), or convey, sell, lease or sublease (as lessor or sublessor), transfer or otherwise dispose of all or substantially all of its business, property or assets, except for:

(a) Capital Expenditures by Borrower and the Restricted Subsidiaries;

(b) Sales or dispositions of used, worn out, obsolete or surplus Property or Property no longer useful in the business of Borrower by Borrower and the Restricted Subsidiaries in the ordinary course of business and the abandonment or other sale of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of Borrower and its Restricted Subsidiaries taken as a whole; and the termination or assignment of Contractual Obligations to the extent such termination or assignment does not have a Material Adverse Effect;

(c) Asset Sales by Borrower or any Restricted Subsidiary; *provided* that (i) at the time of such Asset Sale, no Event of Default then exists or would arise therefrom, (ii) Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of such consideration in the form of (x) cash or Cash Equivalents or (y) Permitted Business Assets (in each case, free and clear of all Liens at the time received other than Permitted Liens) (it being understood that for the purposes of clause (c)(ii)(x), the following shall be deemed to be cash: (A) any liabilities (as shown on Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Asset Sale and for which all of its Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by such Restricted Subsidiary from such transferee that are converted by such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred and eighty (180) days following the closing of the applicable disposition, (C) any Designated Non-Cash Consideration received in respect of such disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not in excess of \$75.0 million, with the fair market value of each item of Designated Non-Cash Consideration being measured at such date of receipt or such agreement, as applicable, and without giving effect to subsequent changes in value) and (iii) the Net Available Proceeds therefrom shall be applied as specified in Section 2.10(a)(iii);

(d) Liens permitted by Section 10.02, Investments may be made to the extent permitted by Sections 10.04 and Restricted Payments may be made to the extent permitted by Section 10.06;

(e) Borrower and the Restricted Subsidiaries may dispose of cash and Cash Equivalents;

- (f) Borrower and the Restricted Subsidiaries may lease (as lessor or sublessor) real or personal property to the extent permitted under Section 10.02;
- (g) licenses and sublicenses by Borrower or any of its Restricted Subsidiaries of software and Intellectual Property in the ordinary course of business shall be permitted;
- (h) (A) Borrower or any Restricted Subsidiary may transfer or lease property to or acquire or lease property from Borrower or any Restricted Subsidiary; *provided* that the sum of (x) the aggregate fair market value of all Property transferred by Borrower and Domestic Subsidiaries of Borrower that are Restricted Subsidiaries to Foreign Subsidiaries of Borrower under this clause (A) plus (y) all lease payments made by Borrower and Domestic Subsidiaries of Borrower that are Restricted Subsidiaries to Foreign Subsidiaries of Borrower in respect of leasing of property by Borrower and Domestic Subsidiaries of Borrower that are Restricted Subsidiaries from Foreign Subsidiaries shall not exceed in any fiscal year of Borrower, (x) prior to the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, \$5.0 million and (y) thereafter \$25.0 million; (B) any Restricted Subsidiary may merge or consolidate with or into Borrower (as long as Borrower is the surviving Person) or any Guarantor (as long as the surviving Person is, or becomes substantially concurrently with such merger or consolidation, a Guarantor); (C) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary (so long as, if either Restricted Subsidiary is a Guarantor, the surviving Person is, or becomes substantially concurrently with such merger or consolidation, a Guarantor); and (D) any Restricted Subsidiary may be voluntarily liquidated, voluntarily wound up or voluntarily dissolved (so long as any such liquidation or winding up does not constitute or involve an Asset Sale to any Person other than to Borrower or any other Restricted Subsidiary or any other owner of equity interests in such Restricted Subsidiary unless such Asset Sale is otherwise permitted pursuant to this Section 10.05); *provided, however*, that, in each case with respect to clauses (A), (B) and (C) of this Section 10.05(h) (other than in the case of a transfer to a Foreign Subsidiary permitted under clause (A) above), the Lien on such property granted in favor of Collateral Agent under the Security Documents shall be maintained in accordance with the provisions of this Agreement and the applicable Security Documents;
- (i) voluntary terminations of Swap Contracts and other assets or contracts in the ordinary course of business;
- (j) conveyances, sales, leases, transfers or other dispositions which do not constitute Asset Sales;
- (k) any taking by a Governmental Authority of assets or property, or any part thereof, under the power of eminent domain or condemnation;
- (l) Borrower and its Restricted Subsidiaries may make sales, transfers or other dispositions of property subject to a Casualty Event;
- (m) Borrower and its Restricted Subsidiaries may make sales, transfers or other dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (n) selling, factoring or discounting of accounts receivable (including defaulted receivables) in the ordinary course of business;
- (o) any merger, consolidation or amalgamation in order to effect a Permitted Acquisition;
- (p) any disposition of Equity Interests of a Subsidiary pursuant to an agreement or other obligation with or to a person from whom such Subsidiary was acquired or from whom such Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;
- (q) from and after the Wynn Las Vegas Reorganization, the transfer or sale or disposition of any Aircraft Assets; and

(r) any transfer of Equity Interests of any Restricted Subsidiary or any Gaming Facility in connection with the occurrence of a Trigger Event.

To the extent any Collateral is sold, transferred or otherwise disposed of as permitted by this Section 10.05 or in connection with a transaction approved by the Required Lenders, in each case, to a Person other than a Credit Party, so long as no Event of Default exists, such Collateral (unless sold to Borrower or a Guarantor) shall, except as set forth in the proviso to Section 10.05(h), be sold, transferred or otherwise disposed of free and clear of the Liens created by the Security Documents, and Collateral Agent shall take all actions appropriate or reasonably requested by Borrower in order to effect the foregoing at the sole cost and expense of Borrower and without recourse or warranty by Collateral Agent (including the execution and delivery of appropriate UCC termination statements and such other instruments and releases as may be necessary and appropriate to effect such release). To the extent any such sale, transfer or other disposition results in a Guarantor no longer constituting a Subsidiary of Borrower, so long as no Event of Default exists, the Obligations of such Guarantor and all obligations of such Guarantor under the Credit Documents shall terminate and be of no further force and effect, and each of Administrative Agent and Collateral Agent shall take such actions, at the sole expense of Borrower, as are appropriate or requested by Borrower in connection with such termination.

SECTION 10.06. Restricted Payments. Neither Borrower nor any of its Restricted Subsidiaries shall, directly or indirectly, declare or make any Restricted Payment at any time, except, without duplication, (a) Borrower or any Restricted Subsidiary may make Restricted Payments to the extent permitted pursuant to Section 2.09(b)(ii), (b) any Restricted Subsidiary of Borrower may declare and make Restricted Payments to Borrower or any Wholly Owned Subsidiary of Borrower which is a Restricted Subsidiary, (c) any Restricted Subsidiary of Borrower, if such Restricted Subsidiary is not a Wholly Owned Subsidiary, may declare and make Restricted Payments in respect of its Equity Interests to all holders of such Equity Interests generally so long as Borrower or its respective Restricted Subsidiary that owns such Equity Interest or interests in the Person making such Restricted Payments receives at least its proportionate share thereof (based upon its relative ownership of the subject Equity Interests and the terms thereof), (d) Borrower and its Restricted Subsidiaries may engage in transactions to the extent permitted by Section 10.04 and Section 10.05, (e) Borrower and its Restricted Subsidiaries may make Restricted Payments in respect of Disqualified Capital Stock issued in compliance with the terms hereof, (f) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, Borrower may repurchase (or make Restricted Payments in respect thereof) common stock or common stock options (including those issued by Wynn Resorts or such other parent entity of Borrower) from present or former officers, directors or employees (or heirs of, estates of or trusts formed by such Persons) of any Company or Wynn Resorts upon the death, disability, retirement or termination of employment of such officer, director or employee or pursuant to the terms of any stock option plan or like agreement; *provided, however*, that the aggregate amount of payments under this clause (f) shall not exceed \$10.0 million in any fiscal year of Borrower, (g) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, Borrower and its Restricted Subsidiaries may (i) repurchase (or make Restricted Payments in respect thereof) Equity Interests (including those issued by Wynn Resorts or such other parent entity of Borrower) to the extent deemed to occur upon exercise of stock options, warrants or rights in respect thereof to the extent such Equity Interests represent a portion of the exercise price of such options, warrants or rights in respect thereof and (ii) make payments in respect of (or make Restricted Payments in respect thereof) withholding or similar taxes payable or expected to be payable by any present or former member of management, director, officer, employee, or consultant of Borrower or any of its Subsidiaries or Wynn Resorts or such other parent entity of Borrower or family members, spouses or former spouses, heirs of, estates of or trusts formed by such Persons in connection with the exercise of stock options or grant, vesting or delivery of Equity Interests, (h) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, Borrower and its Restricted Subsidiaries may make Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or, warrants or rights or upon the conversion or exchange of or into Equity Interests, or payments or distributions to dissenting stockholders pursuant to applicable law (in each case, including with respect to Wynn Resorts or such other parent entity of Borrower), (i) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, so long as immediately before and after giving effect thereto no Event of Default has occurred and is continuing and (x) prior to the Initial Test Date, the Consolidated Senior Secured Net Leverage Ratio shall not exceed 2.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date and (y) from and after the Initial Test Date, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date, Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed (i) \$225.0 million, *minus* the aggregate amount of

Junior Prepayments made pursuant to Section 10.09(a)(i) and the aggregate amount of Investments made (and as calculated) pursuant to Section 10.04(s), plus (ii) the Available Amount, (j) to the extent constituting Restricted Payments, Borrower may make payments to counterparties under Swap Contracts entered into in connection with the issuance of convertible or exchangeable debt, (k) Borrower and its Restricted Subsidiaries may make Tax Payments to the direct or indirect owners of Borrower or any of the Restricted Subsidiaries, (l) Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed \$50.0 *minus* the aggregate amount of Junior Prepayments made pursuant to Section 10.09(i) and the aggregate amount of Investments made (and as calculated) pursuant to Section 10.04(x) million, (m) Borrower may pay Allocable Overhead to Wynn Resorts in respect of each Qualifying Project of Borrower and its Restricted Subsidiaries, (n) Borrower may pay Management Fees and IP Licensing Fees, (o) Borrower may make dividends or distributions to Wynn Resorts of amounts necessary for Wynn Resorts to pay amounts then due and payable under the Tax Indemnification Agreement, as in effect on the date of this Agreement; *provided, however*, that the aggregate amount of payments under this clause (o) shall not exceed \$20.0 million in any fiscal year of Borrower and (p) Borrower and its Restricted Subsidiaries may make Restricted Payments in an aggregate amount not to exceed the Available Equity Amount.

SECTION 10.07. Transactions with Affiliates. Neither Borrower nor any of its Restricted Subsidiaries shall 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 Borrower or any Restricted Subsidiary) involving aggregate consideration in excess of \$20.0 million unless such transaction (a) is required under this Agreement, or (b) is upon fair and reasonable terms no less favorable to Borrower or such Restricted Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate (such arm's length standard being deemed to have been satisfied if such transaction is approved by a majority of the Disinterested Directors of Borrower); *provided, however*, that notwithstanding the foregoing, Borrower and its Restricted Subsidiaries (i) may enter into indemnification and employment agreements and arrangements with directors, officers and employees (including for the provision of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans), subscription agreements or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with directors, officers and employees and any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees and, in each case any reasonable transactions pursuant thereto, (ii) may make Investments and Restricted Payments permitted hereunder, (iii) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, may enter into transactions with Unaffiliated Joint Ventures and Wholly Owned Subsidiaries of Unaffiliated Joint Ventures, in each case, relating to the provision of management services, overhead, sharing of customer lists and customer loyalty programs and, so long as in the ordinary course of business, the purchase or sale of goods, equipment, products, parts and services, (iv) may enter into agreements and other arrangements providing for the payment of Management Fees and IP Licensing Fees; (v) may issue, sell or transfer Equity Interests of Borrower to any parent entity, including in connection with capital contributions by such parent entity to Borrower or any Subsidiary; (vi) may enter into transactions undertaken for the purpose of improving the consolidated tax efficiency of any parent entity of Borrower, Borrower and/or the Subsidiaries (*provided* that such transactions, taken as a whole, are not materially adverse to Borrower and the Subsidiaries (as determined by Borrower in good faith)); (vi) may enter into any transaction subject to Section 13.05; (vii) may enter into any transactions described in the Tax Indemnification Agreement or on Schedule 10.07 or any amendment thereto or replacement thereof or similar arrangement to the extent such amendment, replacement or arrangement is not adverse to the Lenders when taken as a whole in any material respect (as determined by Borrower in good faith); (viii) may pay Allocable Overhead to Wynn Resorts in respect of each Qualifying Project of Borrower and its Restricted Subsidiaries; (ix) from and after the Wynn Las Vegas Reorganization, the transfer or sale or other disposition (including leasing or making available for use) of any Aircraft Assets; and (x) may incur any Indebtedness permitted pursuant to Section 10.01(w).

SECTION 10.08. Financial Covenant.

(a) **Maximum Consolidated Senior Secured Net Leverage Ratio.** Borrower shall not permit the Consolidated Senior Secured Net Leverage Ratio as of the last day of any fiscal quarter of Borrower commencing with the second

full fiscal quarter ending after the fiscal quarter in which the Wynn Massachusetts Project Opening Date occurs (the last day of such fiscal quarter, the “**Initial Test Date**”) to exceed 2.75 to 1.00.

(b) **Minimum Consolidated EBITDA.** Borrower shall not permit Consolidated EBITDA as of the last day of any fiscal quarter of Borrower commencing with the first full fiscal quarter ending after the fiscal quarter in which the Wynn Las Vegas Reorganization occurs and ending with the fiscal quarter prior to the fiscal quarter in which the Initial Test Date occurs to be less than \$200.0 million.

SECTION 10.09. Certain Payments of Indebtedness. None of Borrower or any of its Restricted Subsidiaries will, nor will they permit any Restricted Subsidiary to voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof (or within one year thereof) in any manner (it being understood that payments of regularly scheduled principal and interest shall be permitted) any Disqualified Capital Stock or Other Junior Indebtedness (including Intercompany Contribution Indebtedness) or make any payment in violation of any subordination terms or intercreditor agreement applicable to any such Indebtedness (such payments, “**Junior Prepayments**”), except (a) from and after the earlier of the Wynn Las Vegas Reorganization and the Wynn Massachusetts Project Opening Date, long as no Event of Default shall have occurred and be continuing or would result therefrom and (x) prior to the Initial Test Date, the Consolidated Senior Secured Net Leverage Ratio shall not exceed 2.50 to 1.00 on a Pro Forma Basis as of the most recent Calculation Date and (y) from and after the Initial Test Date, Borrower shall be in compliance on a Pro Forma Basis with the Financial Maintenance Covenant (whether or not then in effect) as of the most recent Calculation Date, Borrower may make Junior Prepayments in an aggregate amount not to exceed (i) \$225.0 million, *minus* the aggregate amount of Restricted Payments made pursuant to Section 10.06(i)(i) and the aggregate amount of Investments made (and as calculated) pursuant to Section 10.04(s), *plus* (ii) the Available Amount, (b) a Permitted Refinancing of any such Indebtedness (including through exchange offers and similar transactions), (c) the conversion of any such Indebtedness to Equity Interests (or exchange of any such Indebtedness for Equity Interests) of Borrower or any direct or indirect parent of Borrower (other than Disqualified Capital Stock), (d) with respect to intercompany subordinated indebtedness, to the extent consistent with the subordination terms thereof and permitted under this Section 10.09 (other than pursuant to this clause (d)), (e) exchanges of Indebtedness issued in private placements and resold in reliance on Regulation S or Rule 144A for Indebtedness having substantially equivalent terms pursuant to customary exchange offers, (f) prepayment, redemption, purchase, defeasance or satisfaction of Indebtedness of Persons acquired pursuant to, or Indebtedness assumed in connection with, Permitted Acquisition or Investment (including any other Acquisition) not prohibited by this Agreement, (g) Junior Prepayments made pursuant to Section 2.09(b)(ii), (h) Junior Prepayments in respect of intercompany Indebtedness owing to Borrower or its Restricted Subsidiaries will be permitted, (i) scheduled payments thereon necessary to avoid the Other Junior Indebtedness constituting “applicable high yield discount obligations” within the meaning of Section 163(i)(1) of the Code, (j) Borrower may make Junior Prepayments in an aggregate amount not to exceed \$50.0 million, *minus* the aggregate amount of Restricted Payments made pursuant to Section 10.06(l) and the aggregate amount of Investments made (and as calculated) pursuant to Section 10.04(x), (k) prepayments, redemptions, purchases, defeasance or satisfaction of Disqualified Capital Stock with the proceeds of any issuance of Disqualified Capital Stock permitted to be issued hereunder or in exchange for Disqualified Capital Stock or other Equity Interests permitted to be issued hereunder, and (l) Borrower may make Junior Prepayments in an aggregate amount not to exceed the Available Equity Amount.

SECTION 10.10. Limitation on Certain Restrictions Affecting Subsidiaries. None of Borrower or any of its Restricted Subsidiaries shall, directly or indirectly, create any consensual encumbrance or restriction on the ability of any Restricted Subsidiary (other than any Foreign Subsidiary or Immaterial Subsidiary) of Borrower to (a) pay dividends or make any other distributions on such Restricted Subsidiary’s Equity Interests or any other interest or participation in its profits owned by Borrower or any of its Restricted Subsidiaries, or pay any Indebtedness or any other obligation owed to Borrower or any of its Restricted Subsidiaries, (b) make Investments in or to Borrower or any of its Restricted Subsidiaries, (c) transfer any of its Property to Borrower or any of its Restricted Subsidiaries or (d) in the case of any Guarantor, guarantee the Obligations hereunder or, in the case of any Credit Party, subject its portion of the Collateral to the Liens securing the Obligations in favor of the Secured Parties, except that each of the following shall be permitted: (i) any such encumbrances or restrictions existing under or by reason of (x) applicable Law (including any Gaming Law and any regulations, order or decrees of any Gaming Authority or other applicable Governmental Authority) or (y) the Credit Documents, (ii) restrictions on the transfer of Property, or the granting of Liens on Property, in each case, subject to Permitted Liens, (iii) customary restrictions on subletting or assignment of any lease or sublease

governing a leasehold interest of any Company, (iv) restrictions on the transfer of any Property, or the granting of Liens on Property, subject to a contract with respect to an Asset Sale or other transfer, sale, conveyance or disposition permitted under this Agreement, (v) restrictions contained in the existing Indebtedness listed on Schedule 10.01 and Permitted Refinancings thereof, *provided*, that the restrictive provisions in any such Permitted Refinancing, taken as a whole and as determined by Borrower in good faith, are not materially more restrictive than the restrictive provisions in the Indebtedness being refinanced, (vi) restrictions contained in Indebtedness of Persons acquired pursuant to, or assumed in connection with, Permitted Acquisitions or other Acquisitions not prohibited hereunder after the Closing Date and Permitted Refinancings thereof, *provided*, that the restrictive provisions in any such Permitted Refinancing, taken as a whole and as determined by Borrower in good faith, are not materially more restrictive than the restrictive provisions in the Indebtedness being refinanced and such restrictions are limited to the Persons or assets being acquired and of the Subsidiaries of such Persons and their assets, (vii) with respect to clauses (a), (b) and (c) above, restrictions contained in any Permitted Unsecured Indebtedness and Permitted Refinancings thereof, or any Permitted Second Lien Indebtedness and Permitted Refinancings thereof, or any Permitted First Lien Indebtedness and Permitted Refinancings thereof, or any other Indebtedness permitted hereunder, in each case, taken as a whole and as determined by Borrower in good faith, to the extent not materially more restrictive than those contained in this Agreement, (viii) with respect to clauses (a), (b) and (c) above, restrictions contained in any Indebtedness permitted hereunder, in each case, taken as a whole and as determined by Borrower in good faith, to the extent not materially more restrictive than those contained in this Agreement, (ix) customary restrictions in joint venture arrangements or management contracts; *provided*, that such restrictions are limited to the assets of such joint ventures and the Equity Interests of the Persons party to such joint venture arrangements or the assignment of such management contract, as applicable, (x) customary non-assignment provisions or other customary restrictions arising under licenses, leases and other contracts entered into in the ordinary course of business; *provided*, that such restrictions are limited to the assets subject to such licenses, leases and contracts and the Equity Interests of the Persons party to such licenses and contracts, (xi) restrictions contained in Indebtedness of Foreign Subsidiaries incurred pursuant to Section 10.01 and Permitted Refinancings thereof; *provided* that such restrictions apply only to the Foreign Subsidiaries incurring such Indebtedness and their Subsidiaries (and the assets thereof), (xii) restrictions contained in Indebtedness used to finance, or incurred for the purpose of financing (including Development Financing), Expansion Capital Expenditures and/or Investments, Capital Expenditures or other expenditures with respect to Development Projects and Permitted Refinancings thereof, *provided*, that such restrictions apply only to the asset (or the Person owning such asset) being financed pursuant to such Indebtedness, (xiii) restrictions contained in subordination provisions applicable to intercompany debt owed by the Credit Parties; *provided*, that such intercompany debt is subordinated to the Obligations on terms at least as favorable to the Lenders as the subordination of such intercompany debt to any other obligations as determined by Borrower in good faith, (xiv) from and after the Wynn Las Vegas Reorganization, restrictions contained in the documentation governing the Wynn Las Vegas Notes and Permitted Refinancings thereof (so long as the restrictions in any such Permitted Refinancing, taken as a whole and as determined by Borrower in good faith, are no more restrictive in any material respect than those in the Wynn Las Vegas 2023 Notes) and (xv) from and after the Wynn Las Vegas Reorganization, restrictions contained in the Aircraft Note, *provided*, that such restrictions apply only to the asset (or the Person owning such asset) being financed pursuant to such Indebtedness.

SECTION 10.11. Limitation on Lines of Business. Neither Borrower nor any Restricted Subsidiary shall directly or indirectly engage to any material extent (determined on a consolidated basis) in any line or lines of business activity other than Permitted Business.

SECTION 10.12. Limitation on Changes to Fiscal Year. Neither Borrower nor any Restricted Subsidiary shall change its fiscal year end to a date other than December 31 of each year (*provided* that any Restricted Subsidiary acquired or formed, or Person designated as an Unrestricted Subsidiary, in each case, after the Closing Date may change its fiscal year to match the fiscal year of Borrower).

ARTICLE XI.

EVENTS OF DEFAULT

SECTION 11.01. Events of Default. If one or more of the following events (herein called “**Events of Default**”) shall occur and be continuing:

(a) any representation or warranty made or deemed made by or on behalf of Borrower or any other Credit Party pursuant to any Credit Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty or statement of fact made or deemed made by or on behalf of Borrower or any other Credit Party in any report, certificate, financial statement or other instrument furnished pursuant to any Credit Document, shall prove to have been false or misleading (i) in any material respect, if such representation and warranty is not qualified as to “materiality,” “Material Adverse Effect” or similar language, or (ii) in any respect, if such representation and warranty is so qualified, in each case when such representation or warranty is made, deemed made or furnished;

(b) default shall be made in the payment of (i) any principal of any Loan or the reimbursement with respect to any Reimbursement Obligation when and as the same shall become due and payable (whether at the stated maturity upon prepayment or repayment or by acceleration thereof or otherwise) or (ii) any interest on any Loans when and as the same shall become due and payable, and such default under this clause (ii) shall continue unremedied for a period of five (5) Business Days;

(c) default shall be made in the payment of any fee or any other amount (other than an amount referred to in (b) above) due under any Credit Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five (5) Business Days;

(d) default shall be made in the due observance or performance by Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in Section 9.01(a) (with respect to Borrower only), 9.04(d), 9.06, 9.10 or in Article X (provided in the case of Section 10.08 only, in no case shall any default in the due observance or performance thereof during a Covenant Suspension Period constitute a Default or Event of Default);

(e) default shall be made in the due observance or performance by Borrower or any of its Restricted Subsidiaries of any covenant, condition or agreement contained in any Credit Document (other than those specified in Section 11.01(b), 11.01(c) or 11.01(d)) and, unless such default has been waived, such default shall continue unremedied for a period of thirty (30) days (or 60 days if such default results solely from an Immaterial Subsidiary’s or a Foreign Subsidiary’s failure to observe or perform any such covenant, condition or agreement) after written notice thereof from Administrative Agent to Borrower;

(f) Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations), when and as the same shall become due and payable (after giving effect to any applicable grace period), or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness or any event or condition occurs, if the effect of any failure or occurrence referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee on its or their behalf (with or without the giving of notice but giving effect to applicable grace periods) to cause, such Indebtedness (other than Qualified Contingent Obligations) to become due, or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise) or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made prior to its stated maturity; *provided, however*, that (x) clauses (i) and (ii) shall not apply to any offer to repurchase, prepay or redeem Indebtedness of a Person acquired in an Acquisition permitted hereunder, to the extent such offer is required as a result of, or in connection with, such Acquisition, (y) any event or condition causing or permitting the holders of any Indebtedness to cause such Indebtedness to be converted into Qualified Capital Stock (including any such event or condition which, pursuant to its terms may, at the option of Borrower, be satisfied in cash in lieu of conversion into Qualified Capital Stock) shall not constitute an Event of Default pursuant to this paragraph (f) and (z) it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds \$125.0 million at any one time;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction in either case under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, in each case seeking (i) relief in respect of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary), or of a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary); (ii) the appointment of a receiver, trustee, custodian,

sequestrator, conservator or similar official for Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary); or (iii) the winding-up or liquidation of Borrower or of its Restricted Subsidiaries (other than any Immaterial Subsidiary); and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in Section 11.01(g); (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or for a substantial part of the property or assets of Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) in any proceeding under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership, or similar law; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate (except as permitted hereunder);

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$125.0 million (to the extent not covered by third party insurance) shall be rendered against Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary) or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action (to the extent such action is not effectively stayed) shall be legally taken by a judgment creditor to levy upon assets or properties of Borrower or any of its Restricted Subsidiaries to enforce any such judgment;

(j) an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, would reasonably be expected to result in a Material Adverse Effect;

(k) with respect to any material Collateral, any security interest and Lien purported to be created by the applicable Security Document shall cease to be in full force and effect, or shall cease to give Collateral Agent, for the benefit of the Secured Parties, the first priority Liens and rights, powers and privileges in each case purported to be created and granted under such Security Document in favor of Collateral Agent, or shall be asserted by any Credit Party or any Affiliate thereof not to be a valid, perfected (except as otherwise provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby, in each case, other than as a result of an act of the Administrative Agent, the Collateral Agent or any other Secured Party;

(l) any Guarantee shall cease to be in full force and effect or any of the Guarantors repudiates, or attempts to repudiate, any of its obligations under any of the Guarantees (except to the extent such Guarantee ceases to be in effect in connection with any transaction permitted pursuant to Sections 9.12 or 10.05);

(m) any Credit Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Credit Party seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Credit Party shall repudiate or deny that it has any liability or obligation for the payment of principal or interest purported to be created under any Credit Document;

(n) there shall have occurred a Change of Control;

(o) there shall have occurred a License Revocation by any Gaming Authority in one or more jurisdictions in which Borrower or any of its Restricted Subsidiaries owns or operates Gaming Facilities, which License Revocation (in the aggregate with any other License Revocations then in existence) would reasonably be expected to have a Material Adverse Effect (for purposes of clarification, without giving effect to the first proviso to the definition of Material Adverse Effect); *provided, however*, that such License Revocation continues for at least thirty (30) consecutive days

after the earlier of (x) the date of cessation of the affected operations as a result of such License Revocation and (y) the date that none of Borrower, nor any of its Restricted Subsidiaries nor the Lenders receive the net cash flows generated by any such operations; or

(p) the provisions of any *Pari Passu* Intercreditor Agreement or Second Lien Intercreditor Agreement shall, in whole or in part, following such *Pari Passu* Intercreditor Agreement or Second Lien Intercreditor Agreement being entered into, terminate, cease to be effective or cease to be legally valid, binding and enforceable against the Persons party thereto, except in accordance with its terms;

then, and in every such event (other than an event described in Section 11.01(g) or 11.01(h) with respect to Borrower), and at any time thereafter during the continuance of such event, Administrative Agent, at the request of the Required Lenders, shall, by notice to Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments, (ii) declare the Loans and Reimbursement Obligations then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans and Reimbursement Obligations so declared to be due and payable, together with accrued interest thereon and any unpaid accrued fees and all other liabilities and Obligations of Borrower accrued hereunder and under any other Credit Document (other than Swap Contracts and Cash Management Agreements), shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein or in any other Credit Document (other than Swap Contracts and Cash Management Agreements) to the contrary notwithstanding; (iii) exercise any other right or remedy provided under the Credit Documents or at law or in equity and (iv) direct Borrower to pay (and Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower, to pay) to Collateral Agent at the Principal Office such additional amounts of cash, to be held as security by Collateral Agent for L/C Liabilities then outstanding, equal to the aggregate L/C Liabilities then outstanding; and in any event described in Section 11.01(g) or 11.01(h) above with respect to Borrower, the Commitments shall automatically terminate and the principal of the Loans and Reimbursement Obligations then outstanding, together with accrued interest thereon and any unpaid accrued fees and all other liabilities and Obligations of Borrower accrued hereunder and under any other Credit Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein or in any other Credit Document to the contrary notwithstanding. Notwithstanding anything to the contrary, if the only Event of Default then having occurred and continuing is an Event of Default with respect to the financial maintenance covenants set forth in Section 10.08, then the Administrative Agent may not take any of the actions set forth in this Section 11.01 during the period commencing on the date that the Administrative Agent receives a Notice of Intent to Cure and ending on the Cure Expiration Date with respect thereto in accordance with and to the extent permitted by Section 11.03.

SECTION 11.02. Application of Proceeds. The proceeds received by Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by Collateral Agent of its remedies, or otherwise received after acceleration of the Loans, shall be applied, in full or in part, together with any other sums then held by Collateral Agent pursuant to this Agreement, promptly by Collateral Agent as follows:

(a) *First*, to the payment of all reasonable costs and expenses, fees, commissions and Taxes of such sale, collection or other realization including compensation to Administrative Agent and Collateral Agent and their respective agents and counsel, and all expenses, liabilities and advances made or incurred by Administrative Agent or Collateral Agent in connection therewith and all amounts for which Administrative Agent or Collateral Agent, as applicable is entitled to indemnification pursuant to the provisions of any Credit Document;

(b) *Second*, to the payment of all other reasonable costs and expenses of such sale, collection or other realization and of any receiver of any part of the Collateral appointed pursuant to the applicable Security Documents including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith;

(c) *Third*, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash, *pro rata*, of interest and other amounts constituting Obligations (other than principal, reimbursement obligations in respect of L/C Liabilities and obligations to Cash Collateralize L/C Liabilities) and any fees, premiums

and scheduled periodic payments due under Obligations arising under Secured Cash Management Agreements and Swap Contracts that constitute Secured Obligations (as defined in the Security Agreement) and any interest accrued thereon, in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(d) *Fourth*, to the indefeasible payment in full in cash, *pro rata*, of principal amount of the Obligations and any premium thereon (including reimbursement obligations in respect of L/C Liabilities and obligations to Cash Collateralize L/C Liabilities) and any breakage, termination or other payments under Obligations arising under Secured Cash Management Agreements and Swap Contracts that constitute Secured Obligations (as defined in the Security Agreement) and any interest accrued thereon; and

(e) *Fifth*, the balance, if any, to the Person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (c) of this Section 11.02, the Credit Parties shall remain liable, jointly and severally, for any deficiency.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Credit Swap Contracts shall be excluded from the application described above if Administrative Agent has not received written notice thereof, together with such supporting documentation as Administrative Agent may request, from the applicable Cash Management Bank or Swap Provider, as the case may be. Each Cash Management Bank or Swap Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent and the Collateral Agent pursuant to the terms of Article XII hereof for itself and its Affiliates as if a “Lender” party hereto.

SECTION 11.03 Borrower’s Right to Cure. Notwithstanding anything to the contrary contained in Section 10.08, in the event that Borrower shall fail to comply with the financial maintenance covenants set forth in Section 10.08, any equity contribution (in the form of common equity or other equity having terms reasonably acceptable to the Administrative Agent) made or contributed to Borrower, or cash proceeds of Intercompany Contribution Indebtedness incurred by Borrower, after the last day of any fiscal quarter and on or prior to the day that is ten (10) Business Days after the day on which financial statements are required to be delivered for that fiscal quarter (such date, the “**Cure Expiration Date**”) will, at the request of Borrower, be included in the calculation of Consolidated EBITDA solely for the purposes of determining compliance with such financial maintenance covenants at the end of such fiscal quarter and any subsequent period that includes such fiscal quarter (any such equity contribution or cash proceeds, a “**Specified Equity Contribution**”); *provided* that (a) no Lender shall be required to make any extension of credit during the ten (10) Business Day period referred to above if Borrower has not received the proceeds of such Specified Equity Contribution, (b) Borrower shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Consolidated EBITDA with respect to any fiscal quarter unless, after giving effect to such requested Specified Equity Contribution, there will be a period of at least two (2) fiscal quarters in the Relevant Four Fiscal Quarter Period in which no Specified Equity Contribution has been made and there shall be no more than five (5) Specified Equity Contributions in total, (c) the amount of any Specified Equity Contribution and the use of proceeds therefrom will be no greater than the amount required to cause Borrower to be in compliance with such financial maintenance covenants, (d) all proceeds of Specified Equity Contributions will be disregarded for all other purposes under the Credit Documents (including calculating Consolidated EBITDA for purposes of determining basket levels and other items governed by reference to Consolidated EBITDA, and for purposes of negative covenants (other than such financial maintenance covenants)), (e) the proceeds of each Specified Equity Contributions shall have been contributed to Borrower as equity solely in exchange for Qualified Capital Stock of Borrower or as Intercompany Contribution Indebtedness and (f) there shall be no reduction in Indebtedness (whether on a pro forma basis or otherwise) with the proceeds of any Specified Equity Contribution for purposes of determining compliance with such financial maintenance covenants for the fiscal quarter for which such Specified Equity Contribution was made.

ARTICLE XII.

AGENTS

SECTION 12.01. Appointment. Each of the Lenders hereby irrevocably appoints DB to act on its behalf as the Administrative Agent and the Collateral Agent hereunder and under the other Credit Documents, and authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent or the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto, including pursuant to regulatory requirements of any Gaming Authority consistent with the intents and purposes of this Agreement and the other Credit Documents. DB is hereby appointed Auction Manager hereunder, and each Lender hereby authorizes the Auction Manager to act as its agent in accordance with the terms hereof and of the other Credit Documents; *provided*, that Borrower shall have the right to select and appoint a replacement Auction Manager from time to time by written notice to Administrative Agent, and any such replacement shall also be so authorized to act in such capacity. Each Lender agrees that the Auction Manager shall have solely the obligations in its capacity as the Auction Manager as are specifically described in this Agreement and shall be entitled to the benefits of Article XII, as applicable. Each of the Lenders hereby irrevocably authorize each of the Agents (other than the Administrative Agent, Collateral Agent and the Auction Manager) to take such action on its behalf under the provisions of this Agreement and the other Credit 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 Credit Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agents and the Lenders, and neither Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of the provisions of this Article XII, except to the extent set forth in this Section 12.01, Section 12.06 and Section 12.07(b). It is understood and agreed that the use of the term “agent” herein or in any other Credit Documents (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

SECTION 12.02. Rights as a Lender. Any Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender (if applicable) as any other Lender and may exercise the same as though it were not an Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as such Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 12.03. Exculpatory Provisions. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and each Agent’s duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, no Agent:

- (a) shall be subject to any fiduciary or other implied duties with respect to any Credit Party, any Lender or any other Person, regardless of whether a Default has occurred and is continuing;
- (b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Credit Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and
- (c) shall, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any of Borrower or any of its respective Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or, such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 13.04) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. No Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given in writing to such Agent by Borrower or a Lender.

No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article VII or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

The Administrative Agent shall not be responsible for, and shall not incur any liability with respect to, determining whether any assignee or potential assignee of the Loans or Commitments hereunder is a Competitor or a Disqualified Lender. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBO Rate" or with respect to any comparable or successor rate thereto.

SECTION 12.04. Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 12.05. Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub agents appointed by such Agent. Each Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of each Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that an Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub-agents.

SECTION 12.06. Resignation of Administrative Agent and Collateral Agent.

(a) The Administrative Agent and Collateral Agent may at any time give notice of their resignation to the Lenders and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the prior written consent of Borrower (unless an Event of Default specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower has occurred and is continuing) to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after

the retiring Administrative Agent and Collateral Agent gives notice of their resignation (or such earlier day as shall be agreed by the Required Lenders and Borrower (unless an Event of Default specified in Section 11.01(b) or 11.01(c) or an Event of Default specified in Section 11.01(g) or 11.01(h) with respect to Borrower has occurred and is continuing)) (the “**Resignation Effective Date**”), then the retiring Administrative Agent and Collateral Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent and Collateral Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent and Collateral Agent is a Defaulting Lender pursuant to clause (iii) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and Collateral Agent and, in consultation with Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent or Collateral Agent on behalf of the Secured Parties under any of the Credit Documents, the retiring or removed Administrative Agent or Collateral Agent, as applicable, shall continue to hold such collateral security until such time as a successor Administrative Agent and Collateral Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent or Collateral Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent or the Collateral Agent shall instead be made by or to each Secured Party directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent and Collateral Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent and Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent and Collateral Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent or Collateral Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent and Collateral Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Borrower to a successor Administrative Agent and Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent’s and Collateral Agent’s resignation or removal hereunder and under the other Credit Documents, the provisions of this Article and Section 13.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent and Collateral Agent, their sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent and Collateral Agent was acting as Administrative Agent or Collateral Agent.

(d) Any resignation by DB as Administrative Agent and Collateral Agent pursuant to this Section shall also constitute its resignation as L/C Lender. If DB resigns as an L/C Lender, it shall retain all the rights, powers, privileges and duties of an L/C Lender hereunder with respect to all of its Letters of Credit outstanding as of the effective date of its resignation as L/C Lender and all L/C Liability with respect thereto, including the right to require the Revolving Lenders to make ABR Loans or fund risk participations in Unreimbursed Amounts pursuant to Sections 2.03(e) and (f). Upon the appointment by Borrower of a successor L/C Lender hereunder and such successor’s acceptance of such appointment (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Lender, (b) the retiring L/C Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Credit Documents, and (c) the successor L/C Lender shall issue letters of credit in substitution for the Letters of Credit of the retiring L/C Lender, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Lender to effectively assume the obligations of the retiring L/C Lender with respect to such Letters of Credit.

SECTION 12.07. Nonreliance on Agents and Other Lenders

(a) Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender acknowledges that in connection with Borrower Loan Purchases, (i) Borrower may purchase or acquire Term Loans or Revolving Loans hereunder from the Lenders from time to time, subject to the restrictions set forth in the definition of Eligible Assignee and in Section 13.05(d), (ii) Borrower currently may have, and later may come into possession of, information regarding such Term Loans or Revolving Loans or the Credit Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to enter into an assignment of such Loans hereunder (“**Excluded Information**”), (iii) such Lender has independently and without reliance on any other party made such Lender’s own analysis and determined to enter into an assignment of such Loans and to consummate the transactions contemplated thereby notwithstanding such Lender’s lack of knowledge of the Excluded Information and (iv) Borrower shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against Borrower, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information; *provided, however*, that the Excluded Information shall not and does not affect the truth or accuracy of the representations or warranties of Borrower in the Standard Terms and Conditions set forth in the applicable assignment agreement. Each Lender further acknowledges that the Excluded Information may not be available to Administrative Agent, Auction Manager or the other Lenders hereunder.

SECTION 12.08. Indemnification. The Lenders agree to reimburse and indemnify each Agent in its capacity as such ratably according with its “percentage” as used in determining the Required Lenders at such time or, if the Commitments have terminated and all Loans have been repaid in full, as determined immediately prior to such termination and repayment (with such “percentages” to be determined as if there are no Defaulting Lenders), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, reasonable expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Obligations) be imposed on, incurred by or asserted against such Agent in its capacity as such in any way relating to or arising out of this Agreement or any other Credit Document, or any documents contemplated by or referred to herein or the transactions contemplated hereby or any action taken or omitted to be taken by such Agent under or in connection with any of the foregoing, but only to the extent that any of the foregoing is not paid by Borrower or any of its Subsidiaries; *provided, however*, that no Lender shall be liable to any Agent for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (x) resulting primarily from the gross negligence, or willful misconduct of such Agent (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (y) relating to or arising out of the Fee Letter. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The agreements in this Section 12.08 shall survive the payment of all Obligations.

SECTION 12.09. No Other Duties. Anything herein to the contrary notwithstanding, none of the Administrative Agent, Collateral Agent, Documentation Agent, Syndication Agents, Lead Arrangers, or Arrangers shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, the Collateral Agent, an L/C Lender, the Auction Manager or a Lender hereunder.

SECTION 12.10. Holders. Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as

the case may be, shall have been filed with Administrative Agent. Any request, authority or consent of any Person or entity who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee, assignee or indorsee, as the case may be, of such Note or of any Note or Notes issued in exchange therefor.

SECTION 12.11. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Liability shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Liabilities and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties under Sections 2.03, 2.05 and 13.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender (and each Secured Party by accepting the benefits of the Collateral) to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.03, 2.05 and 13.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Secured Party to authorize the Administrative Agent to vote in respect of the claim of any Secured Party in any such proceeding.

SECTION 12.12. Collateral Matters

(a) Each Lender (and each other Secured Party by accepting the benefits of the Collateral) authorizes and directs Collateral Agent to enter into the Security Documents for the benefit of the Secured Parties and to hold and enforce the Liens on the Collateral on behalf of the Secured Parties. Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents. The Lenders hereby authorize Collateral Agent to take the actions set forth in Section 13.04(g). Upon request by Administrative Agent at any time, the Lenders will confirm in writing Collateral Agent's authority to release particular types or items of Collateral pursuant to Section 13.04(g).

(b) Collateral Agent shall have no obligation whatsoever to the Lenders, the other Secured Parties or any other Person to assure that the Collateral exists or is owned by any Credit Party or is cared for, protected or insured or that the Liens granted to Collateral Agent pursuant to the applicable Security Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to Collateral Agent in Section 12.01 or in this Section 12.12 or in any of the Security Documents, it being understood and agreed that in respect of the Collateral or any part thereof, or any act, omission or event related thereto, Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given Collateral Agent's own interest in the Collateral or any part thereof as one of the Lenders and that Collateral Agent

shall have no duty or liability whatsoever to the Lenders or the other Secured Parties, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

SECTION 12.13. Withholding Tax. To the extent required by any applicable Requirement of Law, the Administrative Agent may withhold from any payment to any Lender, an amount equivalent to any applicable withholding tax. Without limiting or expanding the provisions of Section 5.06, each Lender shall, indemnify the relevant Administrative Agent (to the extent that Administrative Agent has not already been reimbursed by the Credit Parties and without limiting or expanding the obligation of the Credit Parties to do so), and shall make payable in respect thereof within thirty (30) calendar days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for Administrative Agent) incurred by or asserted against Administrative Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of Administrative Agent to properly withhold tax from amounts paid to or for the account of such Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Security Document against any amount due Administrative Agent under this Section 12.13. The agreements in this Section 12.13 shall survive the resignation and/or replacement of Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of any Loans and all other amounts payable hereunder.

SECTION 12.14. Secured Cash Management Agreements and Swap Contracts. Except as otherwise expressly set forth herein or in any Security Document, no Cash Management Bank or Swap Provider that obtains the benefits of Section 11.02, Article VI or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Credit Documents. Notwithstanding any other provision of this Article XII to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Swap Contracts unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Swap Provider, as the case may be.

ARTICLE XIII

MISCELLANEOUS

SECTION 13.01. Waiver. No failure on the part of Administrative Agent, Collateral Agent or any other Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Credit Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

SECTION 13.02. Notices

(a) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile or electronic mail). All such written notices shall be mailed certified or registered mail, faxed or delivered to the applicable address, telecopy or facsimile number or (subject to Section 13.02(b) below) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

- (i) if to any Credit Party, any Agent, and L/C Lender to the address, facsimile number, electronic mail address or telephone number specified for such Person below its name on the signature pages hereof;
- (ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person below its name on the signature pages hereof or, in the case of any assignee Lender, the applicable Assignment Agreement.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 13.02(b) below, shall be effective as provided in such Section 13.02(b).

(b) **Electronic Communications.** Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent; *provided, however*, that the foregoing shall not apply to notices to any Lender pursuant to Article II, Article III or Article IV if such Lender has notified Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Each Agent or any Credit Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an electronic mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail address or other written acknowledgement); *provided, however*, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address (as described in the foregoing clause (i)) of notification that such notice or communication is available and identifying the website address therefor.

(c) **Change of Address, Etc.** Each Credit Party, each Agent and each L/C Lender may change its respective address, facsimile number, electronic mail address or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number, electronic mail address or telephone number for notices and other communications hereunder by notice to Borrower, Administrative Agent and each L/C Lender.

(d) **Reliance by Agents and Lenders.** Agents and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing and Letter of Credit Requests) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify each Indemnitee from all Losses resulting from the reliance by such Indemnitee on each notice purportedly given by or on behalf of Borrower (except to the extent resulting from such Indemnitee's own gross negligence, bad faith or willful misconduct or material breach of any Credit Document) and believed by such Indemnitee in good faith to be genuine. All telephonic notices to and other communications with Administrative Agent or Collateral Agent may be recorded by Administrative Agent or Collateral Agent, as the case may be, and each of the parties hereto hereby consents to such recording.

(e) **The Platform.** THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent or any of their respective Affiliates, directors, officers,

employees, counsel, agents, trustees, investment advisors and attorneys-in-fact (collectively, the “**Agent Parties**”) have any liability to Borrower, any other Credit Party, any Lender, any L/C Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Borrower’s or Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or material breach of any Credit Document by, such Agent Party; *provided* however, that in no event shall any Agent Party have any liability to Borrower, any other Credit Party, any Lender, any L/C Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

SECTION 13.03. Expenses, Indemnification, Etc.

(a) The Credit Parties, jointly and severally, agree to pay or reimburse:

(i) Agents for all of their reasonable and documented out-of-pocket costs and expenses (including, but limited to in the case of counsel, the reasonable fees, expenses and disbursements of one primary legal counsel for Lenders and Agents selected by Administrative Agent and one local counsel in each applicable jurisdiction reasonably deemed necessary by Agents and any “ClearPar” costs and expenses) in connection with (1) the negotiation, preparation, execution and delivery of the Credit Documents and the extension and syndication of credit (including the Loans and Commitments) hereunder and (2) the negotiation, preparation, execution and delivery of any modification, supplement, amendment or waiver of any of the terms of any Credit Document (whether or not consummated or effective) requested by the Credit Parties;

(ii) each Agent and each Lender for all reasonable and documented out-of-pocket costs and expenses of such Agent or Lender (*provided* that any legal expenses shall be limited to the reasonable fees, expenses and disbursements of one primary legal counsel for Lenders and Agents selected by Administrative Agent and of one local counsel in each applicable jurisdiction reasonably deemed necessary by Agents) (and solely in the case of an actual or perceived conflict of interest, where the Persons affected by such conflict inform Borrower in writing of the existence of an actual or perceived conflict of interest prior to retaining additional counsel, one additional of each such counsel for each group of similarly situated Secured Parties)) in connection with (1) any enforcement or collection proceedings resulting from any Event of Default, including all manner of participation in or other involvement with (x) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (y) judicial or regulatory proceedings and (z) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated), (2) following the occurrence and during the continuance of an Event of Default, the enforcement of any Credit Document and (3) the enforcement of this Section 13.03; and

(iii) Administrative Agent or Collateral Agent, as applicable but without duplication, for all reasonable and documented costs, expenses, assessments and other charges (including reasonable fees and disbursements of one counsel in each applicable jurisdiction) incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Credit Document or any other document referred to therein.

Without limiting the rights of any Agent under this Section 13.03(a), each Agent, promptly after a request of Borrower from time to time, will advise Borrower of an estimate of any amount anticipated to be incurred by such Agent and reimbursed by Borrower under this Section 13.03(a).

(b) The Credit Parties, jointly and severally, hereby agree to indemnify each Agent, each Lender and their respective Affiliates, directors, trustees, officers, employees, representatives, advisors, partners and agents (each, an “**Indemnitee**”) from, and hold each of them harmless against, any and all Losses incurred by, imposed on or asserted against any of them directly or indirectly arising out of or by reason of or relating to the negotiation, execution, delivery, performance, administration or enforcement of any Credit Document, any of the transactions contemplated by the Credit Documents (including the Transactions), any breach by any Credit Party of any representation, warranty, covenant or other agreement contained in any Credit Document in connection with any of the Transactions, the use or proposed

use of any of the Loans or Letters of Credit, the issuance of or performance under any Letter of Credit or, the use of any collateral security for the Obligations (including the exercise by any Agent or Lender of the rights and remedies or any power of attorney with respect thereto or any action or inaction in respect thereof), including all amounts payable by any Lender pursuant to Section 12.08, but excluding (i) any such Losses relating to matters referred to in Sections 5.01 or 5.06 (which shall be the sole remedy in respect of matters referred to therein), (ii) any such Losses arising from the gross negligence, bad faith or willful misconduct or material breach of any Credit Documents by such Indemnitee or its Related Indemnified Persons (as determined by a court of competent jurisdiction in a final and non-appealable decision) and (iii) any such Losses relating to any dispute between and among Indemnitees that does not involve an act or omission by any Company (other than any claims against Administrative Agent, Collateral Agent, any other agent or bookrunner named on the cover page hereto or any L/C Lender, in each case, acting in such capacities or fulfilling such roles). For purposes of this Section 13.03(b), a “Related Indemnified Person” of an Indemnitee means (1) any controlling person or controlled affiliate of such Indemnitee, (2) the respective directors, officers, or employees of such Indemnitee or any of its controlling persons or controlled Affiliates and (3) the respective agents of such Indemnitee or any of its controlling persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnitee, controlling person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling person in this sentence pertains to a controlled Affiliate or controlling person involved in the performance of the Indemnitee’s obligations under the facilities.

Without limiting the generality of the foregoing, the Credit Parties, jointly and severally, will indemnify each Agent, each Lender and each other Indemnitee from, and hold each Agent, each Lender and each other Indemnitee harmless against, any Losses incurred by, imposed on or asserted against any of them arising under any Environmental Law as a result of (i) the past, present or future operations of any Company (or any predecessor-in-interest to any Company), (ii) the past, present or future condition of any site or facility owned, operated, leased or used at any time by any Company (or any such predecessor-in-interest) to the extent such Losses arise from or relate to the parties’ relationship under the Credit Documents or to any Company’s (or such predecessor-in-interest’s) (A) ownership, operation, lease or use of such site or facility or (B) any aspect of the respective business or operations of such parties, and, in each case shall include, without limitation, any and all such Losses for which any Company could be found liable, or (iii) any Release or threatened Release of any Hazardous Materials at, on, under or from any such site or facility to the extent such Losses arise from or relate to the parties’ relationship under the Credit Documents or to any Company’s (or such predecessor-in-interest’s) (A) ownership, operation, lease or use of such site or facility or (B) any aspect of the respective business or operations of such parties, and, in each case shall include, without limitation, any and all such Losses for which any Company could be found liable, including any such Release or threatened Release that shall occur during any period when any Agent or Lender shall be in possession of any such site or facility following the exercise by such Agent or Lender, as the case may be, of any of its rights and remedies hereunder or under any of the Security Documents; *provided, however*, that the indemnity hereunder shall be subject to the exclusions from indemnification set forth in the preceding sentence.

To the extent that the undertaking to indemnify and hold harmless set forth in this Section 13.03 or any other provision of any Credit Document providing for indemnification is unenforceable because it is violative of any law or public policy or otherwise, the Credit Parties, jointly and severally, shall contribute the maximum portion that each of them is permitted to pay and satisfy under applicable law to the payment and satisfaction of all indemnified liabilities incurred by any of the Persons indemnified hereunder.

To the fullest extent permitted by applicable law, no party hereto shall assert, and the parties hereto hereby waive, any claim against any Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; *provided* that nothing contained in this sentence shall limit the Credit Parties’ indemnity and reimbursement obligations to the extent set forth in this Section 13.03 (including the Credit Parties’ indemnity and reimbursement obligations to indemnify the Indemnitees for indirect, special, punitive or consequential damage that are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder). No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection

with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence, bad faith or willful misconduct or material breach of any Credit Document by such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

SECTION 13.04. Amendments and Waiver.

(a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be amended, modified, changed or waived, unless such amendment, modification, change or waiver is in writing signed by the respective Credit Parties party thereto and the Required Lenders (or Administrative Agent with the consent of the Required Lenders); *provided, however*, that no such amendment, modification, change or waiver shall (and any such amendment, modification, change or waiver set forth below in clauses (i) through (vi) of this Section 13.04(a) shall only require the approval of the Agents and/or Lenders whose consent is required therefor pursuant to such clauses):

(i) extend the date for any scheduled payment of principal on any Loan or Note or extend the stated maturity of any Letter of Credit beyond any R/C Maturity Date (unless such Letter of Credit is required to be cash collateralized or otherwise backstopped (with a letter of credit on customary terms) to the Administrative Agent's and applicable L/C Lender's reasonable satisfaction or the participations therein are required to be assumed by Lenders that have Revolving Commitments which extend beyond such R/C Maturity Date) or extend the termination date of any of the Commitments, or reduce the rate or extend the time of payment of interest (other than as a result of any waiver of the applicability of any post-default increase in interest rates) or fees thereon, or forgive or reduce the principal amount thereof, without the consent of each Lender directly affected thereby (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (i), notwithstanding the fact that such amendment or modification actually results in such a reduction);

(ii) release (x) all or substantially all of the Collateral (except as provided in the Security Documents) under all the Security Documents or (y) all or substantially all of the Guarantors from the Guarantees, without the consent of each Lender;

(iii) amend, modify, change or waive (x) any provision of Section 11.02 or this Section 13.04 without the consent of each Lender, (y) any other provision of any Credit Document or any other provision of this Agreement that expressly provides that the consent of all Lenders is required, without the consent of each Lender or (z) any provision of any Credit Document that expressly provides that the consent of the Required Tranche Lenders of a particular Tranche or Required Revolving Lenders is required, without the consent of the Required Tranche Lenders of such Tranche or the Required Revolving Lenders, as the case may be (in each case, except for technical amendments with respect to additional extensions of credit (including Extended Term Loans or Extended Revolving Loans) pursuant to this Agreement which afford the benefits or protections to such additional extensions of credit of the type provided to the Term Loans and/or the Revolving Commitments and Revolving Loans, as applicable);

(iv) (x) reduce the percentage specified in the definition of Required Lenders or Required Tranche Lenders or otherwise amend the definition of Required Lenders or Required Tranche Lenders without the consent of each Lender or (y) reduce the percentage specified in the definition of Required Revolving Lenders or otherwise amend the definition of Required Revolving Lenders without the consent of each Revolving Lender (*provided* that, (x) no such consent shall be required for technical amendments with respect to additional extensions of credit pursuant to this Agreement, and (y) with the consent of the Required Lenders, additional extensions of credit (including Extended Term Loans and Extended Revolving Loans) pursuant to this Agreement may be included in the determination of the Required Lenders, Required Tranche Lenders and/or Required Revolving Lenders on substantially the same basis as the extensions of Loans and Commitments are included on the Closing Date);

(v) amend, modify, change or waive Section 4.02 or Section 4.07(b) in a manner that would alter the *pro rata* sharing of payments required thereby, without the consent of each Lender directly affected thereby (except for technical amendments with respect to additional extensions of credit (including Extended Term Loans or Extended Revolving Loans) pursuant to this Agreement which afford the protections to such additional extensions of credit of the type provided to the Term Loans and/or the Revolving Commitments and Revolving Loans, as applicable);

(vi) impose any greater restriction on the ability of any Lender under a Tranche to assign any of its rights or obligations hereunder without the written consent of the Required Tranche Lenders for such Tranche; or

(vii) amend, modify, change or waive any provision in Section 7.02 or waive any Default or Event of Default (or amend any Credit Document to effectively waive any Default or Event of Default), excluding any general waiver of any Default or Event of Default by the Required Lenders (as opposed to a waiver only for the purpose of making such extension of credit), if the effect of such amendment, modification, change or waiver would require Lenders under a Tranche to fund its Loans when such Lenders would otherwise not be required to do so, without the written consent of the Required Tranche Lenders for such Tranche;

provided, further, that no such amendment, modification, change or waiver shall (A) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the total Commitments or Total Revolving Commitments or a waiver of a mandatory prepayment shall not constitute an increase of the Commitment of any Lender), (B) without the consent of each L/C Lender, amend, modify, change or waive any provision of Section 2.03 or alter such L/C Lender's rights or obligations with respect to Letters of Credit, (C) without the consent of any applicable Agent, amend, modify, change or waive any provision as same relates to the rights or obligations of such Agent, (D) amend, modify, change or waive Section 2.10(b) in a manner that by its terms adversely affects the rights in respect of prepayments due to Lenders holding Loans of one Tranche differently from the rights of Lenders holding Loans of any other Tranche without the prior written consent of the Required Tranche Lenders of each adversely affected Tranche (such consent being in lieu of the consent of the Required Lenders required above in this Section 13.04(a)) (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement (including Extended Term Loans or Extended Revolving Loans) so that such additional extensions may share in the application of prepayments (or commitment reductions) with any Tranche of Term Loans or Revolving Loans, as applicable); *provided, however*, the Required Lenders may waive, in whole or in part, any prepayment so long as the application, as between Tranches, of any portion of such prepayment which is still required to be made is not altered or (E) amend or modify the definition of "Alternate Currency" or Section 1.05 without the prior written consent of all the Revolving Lenders (such consent being in lieu of the consent of the Required Lenders required above in this Section 13.04(a)). Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender, (y) the principal and accrued and unpaid interest of such Defaulting Lender's Loans shall not be reduced or forgiven (other than as a result of any waiver of the applicability of any post-default increase in interest rates), nor shall the date for any scheduled payment of any such amounts be postponed, without the consent of such Defaulting Lender (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (y), notwithstanding the fact that such amendment or modification actually results in such a reduction) and (z) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender (other than in the case of a consent by the Administrative Agent to permit Borrower and its Subsidiaries to purchase Revolving Commitments (and Revolving Loans made pursuant thereto) of Defaulting Lenders in excess of the amount permitted pursuant to Section 13.04(h)).

In addition, notwithstanding the foregoing, the Fee Letter may only be amended or changed, or rights or privileges thereunder waived, only by the parties thereto in accordance with the respective provisions thereof.

(b) If, in connection with any proposed amendment, modification, change or waiver of or to any of the provisions of this Agreement, the consent of the Required Lenders (or in the case of a proposed amendment, modification, change or waiver affecting a particular Class or Tranche, the Lenders holding a majority of the Loans and Commitments with respect to such Class or Tranche) is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clause (A) or (B) below, to either:

(A) replace each such non-consenting Lender or Lenders (or, at the option of Borrower, if such non-consenting Lender's consent is required with respect to a particular Class or Tranche of Loans (or related Commitments), to replace only the Classes or Tranches of Commitments and/or Loans of such non-consenting Lender with respect to which such Lender's individual consent is required (such Classes or Tranches, the "**Affected Classes**") with one or more Replacement Lenders, so long as, at the time of such replacement, each such Replacement Lender consents to the proposed amendment, modification, change or waiver; *provided, further*, that (i) at the time of any such replacement, the Replacement Lender shall enter into one or more Assignment Agreements (and with all fees payable pursuant to Section 13.05(b) to be paid by the Replacement Lender) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, and in each case L/C Interests of, the Replaced Lender (or, at the option of Borrower if the respective Lender's consent is required with respect to less than all Tranches of Loans (or related Commitments), the Commitments, outstanding Loans and L/C Interests of the Affected Classes), (ii) at the time of any replacement, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender (other than any Loans not being acquired by the Replacement Lender), (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in the Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being acquired and (C) all accrued, but theretofore unpaid, fees and other amounts owing to the Lender with respect to the Loans being so assigned and (iii) all obligations of Borrower owing to such Replaced Lender (other than those specifically described in clause (ii) above in respect of Replaced Lenders for which the assignment purchase price has been, or is concurrently being, paid, and other than those relating to Loans or Commitments not being acquired by the Replacement Lender, but including any amounts which would be paid to a Lender pursuant to Section 5.05 if Borrower were prepaying a LIBOR Loan), as applicable, shall be paid in full to such Replaced Lender, as applicable, concurrently with such replacement. Upon the execution of the respective Assignment Agreement, the payment of amounts referred to in clauses (i), (ii) and (iii) above, as applicable, the receipt of any consents that would be required for an assignment of the subject Loans and Commitments to such Replacement Lender in accordance with Section 13.05, the Replacement Lender, if any, shall become a Lender hereunder and the Replaced Lender, as applicable, shall cease to constitute a Lender hereunder and be released of all its obligations as a Lender, except with respect to indemnification provisions applicable to such Lender under this Agreement, which shall survive as to such Lender and, in the case of any Replaced Lender, except with respect to Loans, Commitments and L/C Interests of such Replaced Lender not being acquired by the Replacement Lender; *provided*, that if the applicable Replaced Lender does not execute the Assignment Agreement within three (3) Business Days after Borrower's request, execution of such Assignment Agreement by the Replaced Lender shall not be required to effect such assignment; or

(B) terminate such non-consenting Lender's Commitment and/or repay Loans held by such Lender (or, if such non-consenting Lender's consent is required with respect to a particular Class or Tranche of Loans, the Commitment and Loans of the Affected Class) and, if applicable, Cash Collateralize its applicable R/C Percentage of the L/C Liability, in either case, upon three (3) Business Days' (or such shorter period as is acceptable to Administrative Agent) prior written notice to Administrative Agent at the Principal Office (which notice Administrative Agent shall promptly transmit to each of the Lenders). Any such prepayment of the Loans or termination of the Commitments of such Lender shall be made together with accrued and unpaid interest, fees and other amounts owing to such Lender (including all amounts, if any, owing pursuant to Section 5.05) (or if the applicable consent requires approval of all Lenders of a particular Tranche but not all Lenders, then Borrower shall terminate all Commitments and/or repay all Loans, in each case together with payment of all accrued and unpaid interest, fees and other amounts owing to such Lender (including all amounts, if any, owing pursuant to Section 5.05) under such Tranche), so long as (i) in the case of the repayment of Revolving Loans of any Lender pursuant to this Section 13.04(b)(B), (A) the Revolving Commitment of such Lender is terminated concurrently with such repayment and (B) such Lender's R/C Percentage of all outstanding Letters of Credit is Cash Collateralized or backstopped by Borrower in a manner reasonably satisfactory to Administrative Agent and the L/C Lenders. Immediately upon any repayment of Loans by Borrower pursuant to this Section 13.04(b) (B), such Loans repaid or acquired pursuant hereto shall be cancelled for all purposes and no longer outstanding (and may not be resold, assigned or participated out by Borrower) for all purposes

of this Agreement and all other Credit Documents (*provided*, that such purchases and cancellations shall not constitute prepayments or repayments of the Loans for any purpose hereunder (except for purposes of Section 2.09(c))), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document; *provided, however*, that, unless the Commitments which are terminated and Loans which are repaid pursuant to this clause (B) are immediately replaced in full at such time through the addition of new Lenders or the increase of the Commitments and/or outstanding Loans of existing Lenders (who in each case must consent thereto), then, in the case of any action pursuant to this clause (B), the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto;

provided, that Borrower shall not have the right to replace a Lender, or terminate the Commitments of or repay the Loans of a Lender under this Section 13.04(b), solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to clauses (A) through (F) of the second proviso to Section 13.04(a).

(c) Administrative Agent and Borrower may (without the consent of Lenders) amend any Credit Document to the extent (but only to the extent) necessary to reflect the existence and terms of Other Term Loans, Other Revolving Loans, Extended Term Loans and Extended Revolving Loans. Notwithstanding anything to the contrary contained herein, such amendment shall become effective without any further consent of any other party to such Credit Document. In addition, upon the effectiveness of any Refinancing Amendment, Administrative Agent, Borrower and the Lenders providing the relevant Credit Agreement Refinancing Indebtedness may amend this Agreement to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Other Term Loans, Other Revolving Loans, Other Revolving Commitments and/or Other Term Loan Commitments). Administrative Agent and Borrower may effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to effect the terms of any Refinancing Amendment. Administrative Agent and Collateral Agent may enter into amendments to this Agreement and the other Credit Documents with Borrower as may be necessary in order to establish new tranches or sub-tranches in respect of the Loans and/or Commitments extended pursuant to Section 2.13 or incurred pursuant to Sections 2.12 or 2.15 and such technical amendments as may be necessary or appropriate in the reasonable opinion of Administrative Agent and Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with Section 2.13, Section 2.12 or Section 2.15.

(d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, Administrative Agent and Borrower (a) to add one or more additional credit facilities to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Credit Documents with the Term Loans (or any Tranche thereof in the case of additional Term Loans) and the Revolving Loans (or any Tranche of Revolving Commitments in the case of additional Revolving Loans or Revolving Commitments) and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(e) Notwithstanding anything to the contrary herein, (i) any Credit Document may be waived, amended, supplemented or modified pursuant to an agreement or agreements in writing entered into by Borrower and Administrative Agent (without the consent of any Lender) solely to effect administrative changes that are not adverse to any Lender or to correct administrative errors or omissions or to cure an ambiguity, defect or error (including, without limitation, to revise the legal description of any Mortgaged Real Property based on surveys), or to grant a new Lien for the benefit of the Secured Parties or extend an existing Lien over additional property or to make modifications which are not materially adverse to the Lenders and are requested or required by Gaming Authorities or Gaming Laws and (ii) any Credit Document may be waived, amended, supplemented or modified pursuant to an agreement or

agreements in writing entered into by Borrower and Administrative Agent (without the consent of any Lender) to permit any changes requested or required by any Governmental Authority that are not materially adverse to the Lenders (including any changes relating to qualifications as a permitted holder of debt, licensing or limits on Property that may be pledged as Collateral or available remedies). Notwithstanding anything to the contrary herein, (A) additional extensions of credit consented to by Required Lenders shall be permitted hereunder on a ratable basis with the existing Loans (including as to proceeds of, and sharing in the benefits of, Collateral and sharing of prepayments), (B) Collateral Agent shall enter into the *Pari Passu* Intercreditor Agreement upon the request of Borrower in connection with the incurrence of Permitted First Priority Refinancing Debt or Permitted First Lien Indebtedness (and Permitted Refinancings thereof that qualify as Permitted First Lien Indebtedness) (or any amendments and supplements thereto in connection with the incurrence of additional Permitted First Priority Refinancing Debt, Permitted First Lien Indebtedness (and Permitted Refinancings thereof that qualify as Permitted First Lien Indebtedness), and (C) Collateral Agent shall enter into the Second Lien Intercreditor Agreement upon the request of Borrower in connection with the incurrence of Permitted Second Priority Refinancing Debt or Permitted Second Lien Indebtedness (and Permitted Refinancings thereof that qualify as Permitted Second Lien Indebtedness) (or any amendments and supplements thereto in connection with the incurrence of additional Permitted Second Priority Refinancing Debt or Permitted Second Lien Indebtedness (and Permitted Refinancings thereof that qualify as Permitted Second Lien Indebtedness).

(f) Notwithstanding anything to the contrary herein, the applicable Credit Party or Parties and Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Credit Document) enter into any amendment or waiver of any Credit Document, or enter into any new agreement or instrument, without the consent of any other Person, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Requirements of Law or to release any Collateral which is not required under the Security Documents.

(g) Notwithstanding anything to the contrary herein, Administrative Agent and Collateral Agent shall (A) release any Lien granted to or held by Administrative Agent or Collateral Agent upon any Collateral (i) upon Payment in Full of the Obligations (other than (x) obligations under any Swap Contracts as to which acceptable arrangements have been made to the satisfaction of the relevant counterparties and (y) Cash Management Agreements not yet due and payable), (ii) upon the sale, transfer or other disposition of Collateral to the extent required pursuant to the last paragraph in Section 10.05 (and Administrative Agent or Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Credit Party upon its reasonable request without further inquiry) to any Person other than a Credit Party, (iii) if approved, authorized or ratified in writing by the Required Lenders (or all of the Lenders to the extent required by Section 13.04(a)), (iv) if the property subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under its Guarantee pursuant to Section 6.08, (v) constituting Equity Interests in or property of an Unrestricted Subsidiary, (vi) subject to Liens permitted under Sections 10.02(i) or 10.02(k), in each case, to the extent the documents governing such Liens do not permit such Collateral to secure the Obligations, or (vii) as otherwise may be provided herein or in the relevant Security Documents, and (B) consent to and enter into (and execute documents permitting the filing and recording, where appropriate) the grant of easements and covenants and subordination rights with respect to real property, conditions, restrictions and declarations on customary terms, and subordination, non-disturbance and attornment agreements on customary terms reasonably requested by Borrower with respect to leases entered into by Borrower and its Restricted Subsidiaries, to the extent requested by Borrower and not materially adverse to the interests of the Lenders.

(h) If any Lender is a Defaulting Lender, Borrower shall have the right to terminate such Defaulting Lender's Revolving Commitment and repay the Loans related thereto as provided below so long as Borrower Cash Collateralizes or backstops such Defaulting Lender's applicable R/C Percentage of the L/C Liability to the reasonable satisfaction of the L/C Issuer and the Administrative Agent; *provided* that such terminations of Revolving Commitments shall not exceed 20% of the initial aggregate principal amount of the Revolving Commitments on the Closing Date; *provided, further*, that Borrower and its Subsidiaries may terminate additional Revolving Commitments of Defaulting Lenders and repay the Loans related thereto pursuant to this Section 13.04(h) with the consent of the Administrative Agent. At the time of any such termination and/or repayment, and as a condition thereto, the Replaced Lender shall receive an amount equal to the sum of (A) the principal of, and all accrued interest on, all outstanding Loans of such Lender

provided pursuant to such Revolving Commitments, (B) all Reimbursement Obligations (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternate Currency) owing to such Lender, together with all then unpaid interest with respect thereto at such time, in the event Revolving Loans or Revolving Commitments owing to such Lender are being repaid and terminated or acquired, as the case may be, and (C) all accrued, but theretofore unpaid, fees owing to the Lender pursuant to Section 2.05 with respect to the Loans being so repaid, as the case may be and all other obligations of Borrower owing to such Replaced Lender (other than those relating to Loans or Commitments not being terminated or repaid) shall be paid in full to such Defaulting Lender concurrently with such termination. At such time, unless the respective Lender continues to have outstanding Loans or Commitments hereunder, such Lender shall no longer constitute a "Lender" for purposes of this Agreement, except with respect to indemnifications under this Agreement (including, without limitation, Sections 4.02, 5.01, 5.03, 5.05, 5.06 and 13.03), which shall survive as to such repaid Lender. Immediately upon any repayment of Loans by Borrower pursuant to this Section 13.04(h), such Loans repaid pursuant hereto shall be cancelled for all purposes and no longer outstanding (and may not be resold, assigned or participated out by Borrower) for all purposes of this Agreement and all other Credit Documents (*provided*; that such purchases and cancellations shall not constitute prepayments or repayments of the Loans (including, without limitation, pursuant to Section 2.09, Section 2.10 or Article IV) for any purpose hereunder), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document.

SECTION 13.05. Benefit of Agreement; Assignments; Participations.

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, no Credit Party may assign or transfer any of its rights, obligations or interest hereunder or under any other Credit Document (it being understood that a merger or consolidation not prohibited by this Agreement shall not constitute an assignment or transfer) without the prior written consent of all of the Lenders and *provided, further*, that, although any Lender may transfer, assign or grant participations in its rights hereunder, such Lender shall remain a "Lender" for all purposes hereunder (and may not transfer or assign all or any portion of its Commitments, Loans or related Obligations hereunder except as provided in Section 13.05(b)) and the participant shall not constitute a "Lender" hereunder; and *provided, further*, that no Lender shall transfer, assign or grant any participation (w) to a natural person, (x) to a Competitor (unless consented to by Borrower), (y) to a Disqualified Lender (unless consented to by Borrower) or (z) under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Credit Document except to the extent such amendment or waiver would (i) extend the date for any scheduled payment on, or the final scheduled maturity of, any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond any applicable R/C Maturity Date (unless such Letter of Credit is required to be cash collateralized or otherwise backstopped (with a letter of credit on customary terms) to the applicable L/C Lender's and the Administrative Agent's reasonable satisfaction or the participations therein are required to be assumed by Lenders that have commitments which extend beyond such R/C Maturity Date)) in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the total Commitments or Total Revolving Commitments or of a mandatory prepayment shall not constitute a change in the terms of such participation, that an increase in any Commitment (or the available portion thereof) or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof and that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (i), notwithstanding the fact that such amendment or modification actually results in such a reduction), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or other Credit Document to which it is a party or (iii) release all or substantially all of the Collateral under all of the Security Documents (except as expressly provided in the Credit Documents) supporting the Loans or Letters of Credit hereunder in which such participant is participating. In the case of any such participation, the participant shall not have any rights under this Agreement or any of the other Credit Documents (the participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant

relating thereto). Subject to the last sentence of this paragraph (a), Borrower agrees that each participant shall be entitled to the benefits of Sections 5.01, and 5.06 (subject to the obligations and limitations of such Sections, including Section 5.06(b), (c) and (d) (it being understood that the documentation required under Section 5.06(b), (c) and (d) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 13.05. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 4.07 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and related interest amounts) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of a Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. A participant shall not be entitled to receive any greater payment under Sections 5.01 or 5.06 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the entitlement to a greater payment results from any change in applicable Laws after the date the participant became a participant.

(b) No Lender (or any Lender together with one or more other Lenders) may assign all or any portion of its Commitments, Loans and related outstanding Obligations (or, if the Commitments with respect to the relevant Tranche have terminated, outstanding Loans and Obligations) hereunder, except to one or more Eligible Assignees (treating any fund that invests in loans and any other fund that invests in loans and is managed or advised by the same investment advisor of such fund or by an Affiliate of such investment advisor as a single Eligible Assignee) with the consent of Administrative Agent and in the case of an assignment of Revolving Loans or Revolving Commitments, the consent of each L/C Lender and, so long as no Event of Default pursuant to Section 11.01(b) or 11.01(c), or, with respect to Borrower, 11.01(g) or 11.01(h), has occurred and is continuing, Borrower (each such consent not to be unreasonably withheld or delayed); *provided* that (x) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and Loans at the time owing to it, the aggregate amount of the Commitments or Loans subject to such assignment shall not be less than \$5.0 million; (y) no such consent of Borrower shall be necessary in the case of (i) an assignment of Revolving Loans or Revolving Commitments by a Revolving Lender to another Revolving Lender and (ii) an assignment of Term Facility Loans by a Lender to (A) its parent company and/or any Affiliate of such Lender which is at least 50% owned by such Lender or its parent company or (B) one or more other Lenders or any Affiliate of any such other Lender which is at least 50% owned by such other Lender or its parent company (*provided* that any fund that invests in loans and is managed or advised by the same investment advisor of another fund which is a Lender (or by an Affiliate of such investment advisor) shall be treated as an Affiliate that is at least 50% owned by such other Lender or its parent company for the purposes of this sub-clause (x)(ii)(B)), or (C) in the case of any Lender that is a fund that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor of any Lender or by an Affiliate of such investment advisor, and (y) Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after having received notice thereof. Notwithstanding the foregoing, so long as no Event of Default pursuant to Section 11.01(b) or 11.01(c), or, with respect to Borrower, 11.01(g) or 11.01(h), has occurred and is continuing, no assignment will be permitted to any Lender that will result in such Lender holding, collectively with its Affiliates (including any Person deemed to be an Affiliate for purposes of sub-clause (x)(ii)(B) above), Loans and Commitments having an aggregate principal amount of \$100.0 million, or greater, without the prior written consent of Borrower (such consent not to be unreasonably withheld, conditioned or delayed); *provided* that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after a Responsible Officer has received notice thereof. Each assignee shall become a party to this Agreement as a Lender by execution of an Assignment Agreement; *provided* that (I) Administrative Agent shall, unless it otherwise agrees in its sole discretion, receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of \$3,500, (II) no such transfer or assignment will be effective until recorded by Administrative Agent on the Register pursuant to Section 2.08, and (III) such assignments may be made on a pro rata basis among Commitments and/or Loans (and related Obligations).

To the extent of any assignment permitted pursuant to this Section 13.05(b), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments and outstanding Loans (*provided* that such assignment shall not release such Lender of any claims or liabilities that may exist against such Lender at the time of such assignment). At the time of each assignment pursuant to this Section 13.05(b) to a Person which is not already a Lender hereunder, the respective assignee Lender shall, to the extent legally eligible to do so, provide to Borrower and Administrative Agent the appropriate Internal Revenue Service Forms and other information as described in Sections 5.06(b) and 5.06(d), as applicable. To the extent that an assignment of all or any portion of a Lender's Commitments, Loans and related outstanding Obligations pursuant to Section 2.11, Section 13.04(b)(B) or this Section 13.05(b) would, under the laws in effect at the time of such assignment, result in increased costs under Section 5.01 or 5.03 from those being charged by the respective assigning Lender prior to such assignment, then Borrower shall not be obligated to pay such increased costs (although Borrower, in accordance with and pursuant to the other provisions of this Agreement, shall be obligated to pay any other increased costs of the type described above resulting from Changes in Law after the date of the respective assignment).

(c) Nothing in this Agreement shall prevent or prohibit any Lender from pledging or assigning a security interest in its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment of a security interest to a Federal Reserve Bank or other central banking authority. No pledge pursuant to this Section 13.05(c) shall release the transferor Lender from any of its obligations hereunder or permit the pledgee to become a lender hereunder without otherwise complying with Section 13.05(b).

(d) Notwithstanding anything to the contrary contained in this Section 13.05 or any other provision of this Agreement, Borrower and its Subsidiaries may, but shall not be required to, purchase (x) outstanding Loans pursuant to the Auction Procedures established for each such purchase in an auction managed by Auction Manager and (y) outstanding Term Loans through open market purchases, subject solely to the following conditions:

(i) (x) with respect to any Borrower Loan Purchase pursuant to the Auction Procedures, at the time of the applicable Purchase Notice (as defined in Exhibit N), no Event of Default under Section 11.01(a) or 11.01(b) or, with respect to Borrower, Section 11.01(g) or 11.01(h), has occurred and is continuing or would result therefrom, and (y) with respect to any Borrower Loan Purchase consummated through an open market purchase, at the time of the applicable assignment, no Event of Default under Section 11.01(a) or 11.01(b) or, with respect to Borrower, Section 11.01(g) or 11.01(h) has occurred and is continuing or would result therefrom;

(ii) immediately upon any Borrower Loan Purchase, the Loans purchased pursuant thereto shall be cancelled for all purposes and no longer outstanding (and may not be resold, assigned or participated out by Borrower) for all purposes of this Agreement and all other Credit Documents (*provided*; that such purchases and cancellations shall not constitute prepayments or repayments of the Loans (including, without limitation, pursuant to Section 2.09, Section 2.10 or Article IV) for any purpose hereunder), including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document, (C) the providing of any rights to Borrower as a Lender under this Agreement or any other Credit Document, and (D) the determination of Required Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document;

(iii) with respect to each Borrower Loan Purchase, Administrative Agent shall receive (x) if such Borrower Loan Purchase is consummated pursuant to the Auction Procedures, a fully executed and completed Borrower Assignment Agreement effecting the assignment thereof, and (y) if such Borrower Loan Purchase is consummated pursuant to an open market purchase, a fully executed and completed Open Market Assignment and Assumption Agreement effecting the assignment thereof;

(iv) with respect to any Borrower Loan Purchase of Revolving Loans under any Revolving Facility (x) there shall occur a corresponding reduction in the Revolving Commitments of each applicable Revolving Lender and (y) after giving effect to such Borrower Loan Purchase, there shall be sufficient aggregate Revolving Commitments among the Revolving Lenders to apply to the aggregate amount of L/C Liabilities outstanding as of such date, unless Borrower shall concurrently with the payment of the purchase price by

Borrower for such Revolving Loans, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.16 in the amount of any such excess L/C Liabilities;

(v) open market purchases of Term Loans by Borrower and its Subsidiaries shall not in the aggregate exceed 25% of the sum of the initial aggregate principal amount of the Term Loans on the Closing Date; and

(vi) Borrower may not use the proceeds of any Revolving Loan to fund the purchase of outstanding Loans pursuant to this Section 13.05(d).

The assignment fee set forth in Section 13.05(b) shall not be applicable to any Borrower Loan Purchase consummated pursuant to this Section 13.05(d).

(e) Each Lender who is an Affiliate of Borrower (excluding (x) Borrower and its Subsidiaries and (y) any Debt Fund Affiliate Lenders) (each, an “**Affiliate Lender**”); it being understood that (x) neither Borrower nor any of its Subsidiaries may be Affiliate Lenders and (y) Debt Fund Affiliate Lenders and Affiliate Lenders may be lenders in accordance with this Section 13.05 subject, in the case of Affiliate Lenders, to this Section 13.05(e) and Section 13.05(f)), in connection with any (i) consent (or decision not to consent) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Credit Document, (ii) other action on any matter related to any Credit Document or (iii) direction to the Administrative Agent, Collateral Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Credit Document, agrees that, except with respect to any amendment, modification, waiver, consent or other action (1) described in clauses (i) through (vi) of Section 13.04(a) or (2) that adversely affects such Affiliate Lender (in its capacity as a Lender) in a disproportionately adverse manner as compared to other Lenders, such Affiliate Lender shall be deemed to have voted its interest as a Lender without discretion in such proportion as the allocation of voting with respect to such matter by Lenders who are not Affiliate Lenders. Each Affiliate Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Affiliate Lender’s attorney-in-fact, with full authority in the place and stead of such Affiliate Lender and in the name of such Affiliate Lender, from time to time in the Administrative Agent’s discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this clause (e).

(f) Notwithstanding anything to the contrary in this Agreement, no Affiliate Lender shall have any right to (i) attend (including by telephone) any meeting or discussions (or portion thereof) among the Administrative Agent or any Lender to which representatives of Borrower are not then present, (ii) receive any information or material prepared by Administrative Agent or any Lender or any communication by or among Administrative Agent and/or one or more Lenders, except to the extent such information or materials have been made available to Borrower or its representatives, (iii) make or bring (or participate in, other than as a passive participant in or recipient of its pro rata benefits of) any claim, in its capacity as a Lender, against Administrative Agent, the Collateral Agent or any other Lender with respect to any duties or obligations or alleged duties or obligations of such Agent or any other such Lender under the Credit Documents, (iv) purchase any Term Loan if, immediately after giving effect to such purchase, Affiliate Lenders in the aggregate would own Term Loans with an aggregate principal amount in excess of 25% of the aggregate principal amount of all Term Loans then outstanding or (v) purchase any Revolving Loans or Revolving Credit Commitments.

SECTION 13.06. Survival. The obligations of the Credit Parties under Sections 5.01, 5.05, 5.06, 13.03 and 13.20, the obligations of each Guarantor under Section 6.03, and the obligations of the Lenders and Administrative Agent under Sections 5.06 and 12.08, in each case shall survive the repayment of the Loans and the other Obligations and the termination of the Commitments and, in the case of any Lender that may assign any interest in its Commitments, Loans or L/C Interest (and any related Obligations) hereunder, shall (to the extent relating to such time as it was a Lender) survive the making of such assignment, notwithstanding that such assigning Lender may cease to be a “Lender” hereunder. In addition, each representation and warranty made, or deemed to be made by a notice of any extension of credit, herein or pursuant hereto shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the Notes and the making of any extension of credit hereunder, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty.

SECTION 13.07. Captions. The table of contents and captions and Section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

SECTION 13.08. Counterparts; Interpretation; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Credit Documents, constitute the entire contract among the parties thereto relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, other than the Fee Letter, which are not superseded and survive solely as to the parties thereto (to the extent provided therein). This Agreement shall become effective when the Closing Date shall have occurred, and this Agreement shall have been executed and delivered by the Credit Parties and when Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 13.09. Governing Law; Submission to Jurisdiction; Waivers; Etc.

(a) **GOVERNING LAW.** THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND ANY CLAIMS, CONTROVERSIES, DISPUTES, OR CAUSES OF ACTION (WHETHER ARISING UNDER CONTRACT LAW, TORT LAW OR OTHERWISE) BASED UPON OR RELATING TO THIS AGREEMENT OR THE OTHER CREDIT DOCUMENTS (EXCEPT AS TO ANY OTHER CREDIT DOCUMENT, AS EXPRESSLY SET FORTH IN SUCH OTHER CREDIT DOCUMENT), SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW PRINCIPLES THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

(b) **SUBMISSION TO JURISDICTION.** EACH CREDIT PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER AT LAW OR IN EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY OF THEIR RESPECTIVE AFFILIATES, OR ANY OF THE PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ADVISORS OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER CREDIT DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT AGAINST ANY CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE

OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 13.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) **WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 13.10. Confidentiality. Each Agent and each Lender agrees to keep information obtained by it pursuant to the Credit Documents confidential in accordance with such Agent's or such Lender's customary practices and agrees that it will only use such information in connection with the transactions contemplated hereby and not disclose any of such information other than (a) to such Agent's or such Lender's employees, representatives, directors, attorneys, auditors, agents, professional advisors, trustees or Affiliates who are advised of the confidential nature thereof and instructed to keep such information confidential or to any direct or indirect, actual or prospective, creditor or contractual counterparty in swap agreements or derivative or securitization transactions or such creditor's or contractual counterparty's professional advisor (so long as such creditor, contractual counterparty or professional advisor to such creditor or contractual counterparty agrees in writing to be bound by the provision of this Section 13.10, such Agent or such Lender being liable for any breach of confidentiality by any Person described in this clause (a) and with respect to disclosures to Affiliates to the extent disclosed by such Lender to such Affiliate), (b) to the extent such information presently is or hereafter becomes available to such Agent or such Lender on a non-confidential basis from a Person not an Affiliate of such Agent or such Lender not known to such Agent or such Lender to be violating a confidentiality obligation by such disclosure, (c) to the extent disclosure is required by any Law, subpoena or judicial order or process (*provided* that notice of such requirement or order shall be promptly furnished to Borrower unless such notice is legally prohibited) or requested or required by bank, securities, insurance or investment company regulations or auditors or any administrative body or commission (including the Securities Valuation Office of the NAIC) to whose jurisdiction such Agent or such Lender is subject, (d) to any rating agency to the extent required in connection with any rating to be assigned to such Agent or such Lender; *provided* that prior notice thereof is furnished to Borrower, (e) to pledgees under Section 13.05(c), assignees, participants, prospective assignees or prospective participants, in each case who agree in writing to be bound by the provisions of this Section 13.10 (it being understood that any electronically recorded agreement from any Person listed above in this clause (e) in respect to any electronic information (whether posted or otherwise distributed on Intralinks or any other electronic distribution system) shall satisfy the requirements of this clause (e)), (f) in connection with the exercise of remedies hereunder or under any Credit Document or to the extent required in connection with any litigation with respect to the Loans or any Credit Document or (g) with Borrower's prior written consent.

SECTION 13.11. Independence of Representations, Warranties and Covenants. The representations, warranties and covenants contained herein shall be independent of each other and no exception to any representation, warranty or covenant shall be deemed to be an exception to any other representation, warranty or covenant contained herein unless expressly provided, nor shall any such exception be deemed to permit any action or omission that would be in contravention of applicable law.

SECTION 13.12. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

SECTION 13.13. Gaming Laws.

(a) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, this Agreement and the other Credit Documents are subject to the Gaming Laws and the laws involving the sale, distribution and possession of alcoholic beverages and/or tobacco, as applicable (the “**Liquor Laws**”). Without limiting the foregoing, Administrative Agent, each other Agent, each Lender and each participant acknowledges that (i) it is the subject of being called forward by any Gaming Authority or any Governmental Authority enforcing the Liquor Laws (the “**Liquor Authority**”), in each of their discretion, for licensing or a finding of suitability or to file or provide other information, and (ii) all rights, remedies and powers under this Agreement and the other Credit Documents, including with respect to Pledged Collateral and the entry into and ownership and operation of the Gaming Facilities, and the possession or control of gaming equipment, alcoholic beverages or a gaming or liquor license, may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Gaming Laws and Liquor Laws and only to the extent that required approvals (including prior approvals) are obtained from the requisite Governmental Authorities.

(b) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, Administrative Agent, each other Agent, each Lender and each participant agrees to cooperate with each Gaming Authority and each Liquor Authority (and, in each case, to be subject to Section 2.11) in connection with the administration of their regulatory jurisdiction over Borrower and the other Credit Parties, including, without limitation, the provision of such documents or other information as may be requested by any such Gaming Authorities and/or Liquor Authorities relating to Administrative Agent, any other Agent, any of the Lenders or participants, Borrower and its Subsidiaries or to the Credit Documents.

(c) Notwithstanding anything to the contrary in this Agreement or any other Credit Document, to the extent any provision of this Agreement or any other Credit Document excludes any assets from the scope of the Pledged Collateral, or from any requirement to take any action to make effective or perfect any security interest in favor of Collateral Agent or any other Secured Party in the Pledged Collateral, the representations, warranties and covenants made by Borrower or any Restricted Subsidiary in this Agreement with respect to the creation, perfection or priority (as applicable) of the security interest granted in favor of Collateral Agent or any other Secured Party (including, without limitation, Article VIII of this Agreement) shall be deemed not to apply to such assets.

(d) The Collateral Agent, Administrative Agent, Secured Parties and their respective successors and assignees are subject to being called forward by the Gaming Authorities, in their discretion, for licensing or findings of suitability in order to remain entitled to the benefits of this Agreement or any other Credit Document.

SECTION 13.14. USA Patriot Act. Each Lender that is subject to the Act (as hereinafter defined) to the extent required hereby, notifies Borrower and the Guarantors that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Act**”), it is required to obtain, verify and record information that identifies Borrower and the Guarantors, which information includes the name and address of Borrower and the Guarantors and other information that will allow such Lender to identify Borrower and the Guarantors in accordance with the Act, and Borrower and the Guarantors agree to provide such information from time to time to any Lender.

SECTION 13.15. Judgment Currency.

(a) Borrower’s obligations hereunder and under the other Credit Documents to make payments in Dollars (the “**Obligation Currency**”) shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by Administrative Agent, Collateral Agent, the respective L/C Lender or the respective Lender of the full amount of the Obligation Currency expressed to be payable to Administrative Agent, Collateral Agent, such L/C Lender or such Lender under this Agreement or the other Credit Documents. If, for the

purpose of obtaining or enforcing judgment against Borrower in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the “**Judgment Currency**”) an amount due in the Obligation Currency, the conversion shall be made at the Dollar Equivalent thereof and, in the case of other currencies the rate of exchange (as quoted by Administrative Agent or if Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by Administrative Agent) determined, in each case, as of the day on which the judgment is given (such day being hereinafter referred to as the “**Judgment Currency Conversion Date**”).

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion and the date of actual payment of the amount due by Borrower, Borrower covenants and agrees to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate or exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining the Dollar Equivalent or any other rate of exchange for this Section 13.15, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

SECTION 13.16. Waiver of Claims. Notwithstanding anything in this Agreement or the other Credit Documents to the contrary, the Credit Parties hereby agree that Borrower shall not acquire any rights as a Lender under this Agreement as a result of any Borrower Loan Purchase and may not make any claim as a Lender against any Agent or any Lender with respect to the duties and obligations of such Agent or Lender pursuant to this Agreement and the other Credit Documents; *provided, however*, that, for the avoidance of doubt, the foregoing shall not impair Borrower’s ability to make a claim in respect of a breach of the representations or warranties or obligations of the relevant assignor in a Borrower Loan Purchase, including in the standard terms and conditions set forth in the assignment agreement applicable to a Borrower Loan Purchase.

SECTION 13.17. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), Borrower and each other Credit Party acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers and the Lenders are arm’s-length commercial transactions between Borrower, each other Credit Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers and the Lenders, on the other hand, (B) each of Borrower and the other Credit Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) Borrower and each other Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (ii) (A) the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, any other Credit Party or any of their respective Affiliates, or any other Person and (B) none of the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers or the Lenders has any obligation to Borrower, any other Credit Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents or in other written agreements between the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers or any Lender on one hand and Borrower, any other Credit Party or any of their respective Affiliates on the other hand; and (iii) the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, or conflict with, those of Borrower, the other Credit Parties and their respective Affiliates, and none of the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers or the Lenders has any obligation to disclose any of such interests to Borrower, any other Credit Party

or any of their respective Affiliates. Each Credit Party agrees that nothing in the Credit Documents will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers and the Lenders, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. To the fullest extent permitted by law, each of Borrower and each other Credit Party hereby waives and releases any claims that it may have against the Administrative Agent, the Collateral Agent, the Documentation Agent, the Syndication Agents, the Lead Arrangers, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby (other than any agency or fiduciary duty expressly set forth in an any engagement letter referenced in clause (ii)(A)).

SECTION 13.18. Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Credit Party or any other obligor under any of the Credit Documents or the Swap Contracts or (with respect to the exercise of rights against the collateral) Cash Management Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Credit Party, without the prior written consent of Administrative Agent. The provisions of this Section 13.18 are for the sole benefit of the Agents and Lenders and shall not afford any right to, or constitute a defense available to, any Credit Party.

SECTION 13.19. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents (collectively, the "**Charges**") shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. To the extent permitted by applicable Law, the interest and other Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 13.19 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender. Thereafter, interest hereunder shall be paid at the rate(s) of interest and in the manner provided in this Agreement, unless and until the rate of interest again exceeds the Maximum Rate, and at that time this Section 13.19 shall again apply. In no event shall the total interest received by any Lender pursuant to the terms hereof exceed the amount that such Lender could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Rate. If the Maximum Rate is calculated pursuant to this Section 13.19, such interest shall be calculated at a daily rate equal to the Maximum Rate divided by the number of days in the year in which such calculation is made. If, notwithstanding the provisions of this Section 13.19, a court of competent jurisdiction shall finally determine that a Lender has received interest hereunder in excess of the Maximum Rate, Administrative Agent shall, to the extent permitted by applicable Law, promptly apply such excess in the order specified in this Agreement and thereafter shall refund any excess to Borrower or as a court of competent jurisdiction may otherwise order.

SECTION 13.20. Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to any Agent, any L/C Lender or any Lender, or any Agent, any L/C Lender or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent, such L/C Lender or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and the Agents', the L/C Lender's and the Lenders' Liens, security interests, rights, powers and remedies under this Agreement and each Credit Document shall continue in full force and effect, and (b) each Lender severally agrees to pay to Administrative Agent upon demand its applicable share of any amount so

recovered from or repaid by any Agent or L/C Lender, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. In such event, each Credit Document shall be automatically reinstated (to the extent that any Credit Document was terminated) and Borrower shall take (and shall cause each other Credit Party to take) such action as may be requested by Administrative Agent, the L/C Lenders and the Lenders to effect such reinstatement.

[Signature Pages Follow]

~~[Signature Page to Credit Agreement]~~

[\[LA\4300174.5\]](#)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

WYNN AMERICA, LLC

By:

Name:

Title:

Address for Notices for Borrower and each Subsidiary

Guarantor:

[•]

[•]

[•]

[•]

Contact Person:

Facsimile No.:

Telephone No.:

Email:

SUBSIDIARY GUARANTORS:

▶▶ [TO BE UPDATED AS APPROPRIATE]

For each of the foregoing entities:

By:

Name:

Title:

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent

By:

Name:

Title:

Address for Notices:

Contact Person:

Facsimile No.:

Telephone No.:

Email:

DEUTSCHE BANK AG NEW YORK BRANCH, as Collateral Agent

By:

Name:

Title:

Address for Notices:

Contact Person:

Facsimile No.:
Telephone No.:
Email:

DEUTSCHE BANK AG NEW YORK BRANCH, as L/C Lender

By:
Name:

Title:

Address for Notices:

Contact Person:
Facsimile No.:
Telephone No.:
Email:

[•], as Lender

By:
Name:

Title:

Address for Notices:

Contact Person:
Facsimile No.:
Telephone No.:
Email:

REVOLVING COMMITMENTS

Lender	Revolving Commitment
Total Revolving Commitments:	\$375,000,000.00

HA3747366.12

TERM FACILITY COMMITMENTS

Lender	Term Facility Commitment
Total Term Facility Commitments:	\$875,000,000.00

AMORTIZATION PAYMENTS

TERM FACILITY LOANS

FORM OF NOTICE OF BORROWING

Date: []

To: Administrative Agent under the Credit Agreement, dated as of November 20, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among Wynn America, LLC (“**Borrower**”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent and as Collateral Agent, and the other parties party thereto.

Ladies and Gentlemen:

The undersigned Borrower refers to the Credit Agreement (the terms defined therein, being used herein as defined therein), hereby gives you [irrevocable] notice pursuant to 2.02, [2.03(e)] and 4.05 of the Credit Agreement that Borrower desires to make a borrowing (the “**Proposed Borrowing**”) under the Credit Agreement, and in that connection sets forth below the information relating to the Proposed Borrowing:

(A) Proposed Borrowing:

(i) The Business Day of the Proposed Borrowing is [_____];

(ii) The aggregate amount of the Proposed Borrowing is \$[_____];

(iii) The Proposed Borrowing shall consist of:

[a \$[_____] Revolving Loan, which shall initially be [an ABR Loan][a LIBOR Loan]; [The amount of Revolving Loans that are requested to be LIBOR Loans are requested to have the following Interest Period(s): [___]],

[a \$[_____] Term Facility Loan made from the Tranche A Term Facility Commitments, which shall initially be [an ABR Loan][a LIBOR Loan], [The amount of such Term Loans that are requested to be LIBOR Loans are requested to have the following Interest Period(s): [___]];

[a \$[_____] Term Facility Loan made from the Tranche B Term Facility Commitments, which shall initially be [an ABR Loan][a LIBOR Loan], [The amount of such Term Loans that are requested to be LIBOR Loans are requested to have the following Interest Period(s): [___]];

[a \$[_____] Term Facility Loan made from the Tranche C Term Facility Commitments, which shall initially be [an ABR Loan][a LIBOR Loan], [The amount of such Term Loans that are requested to be LIBOR Loans are requested to have the following Interest Period(s): [___]]; and

(iv) The proceeds of the Proposed Borrowing are to be deposited into the account or accounts described in the letter attached hereto and in the respective amounts set forth therein.

(B) Borrower hereby represents and warrants that both immediately before and immediately after giving effect to the Proposed Borrowing and the intended use thereof:

(i) [Each of the representations and warranties made by the Credit Parties in Article VIII of the Credit Agreement and by each Credit Party in each other Credit Document to which it is a party is true and correct in all material respects on and as of the date of the making of such Proposed Borrowing with the same force and effect as if made on and as of such date (it being understood and agreed that any such representation or warranty which by its terms is made as of an earlier date is true and correct in all material respects only as such earlier date, and that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language is true and correct in all respects on the applicable date); and]

(ii) [No Default or Event of Default shall have occurred and be continuing;]

(iii) [the aggregate amount of all Revolving Loans outstanding (after giving effect to the requested Revolving Loan) does not exceed the amount of the Equity Contributions made on or prior to the date hereof; and]

(iv) The sum of the aggregate amount of the outstanding Revolving Loans, *plus* the aggregate outstanding L/C Liabilities does not exceed the Total Revolving Commitments then in effect.

[(C) This Notice of Borrowing is conditioned upon [____].]

[Signature Page Follows]

WYNN AMERICA, LLC

By: _____

Name:

Title:

LENDER AGREEMENT AND CONSENT – CONSENTING LENDERS

Reference is hereby made to the First Amendment to Credit Agreement, dated as of November 5, 2015 (the “**Amendment Agreement**”; capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Amendment Agreement), by and among Wynn America, LLC, a Nevada limited liability company, the Guarantors party thereto and Deutsche Bank AG New York Branch, as Administrative Agent for (and on behalf of) the Lenders under the Existing Credit Agreement referred to below and, after giving effect to the Amendment Agreement, the Amended Credit Agreement and as Collateral Agent for the Secured Parties (as defined under the Existing Credit Agreement and, after giving effect to the Amendment Agreement, the Amended Credit Agreement).

By its signature below, the undersigned hereby (a) consents and agrees to the terms and conditions of the Amendment Agreement (including the amendments to the Existing Credit Agreement attached to the Amendment Agreement as the Amended Credit Agreement), (b) authorizes Administrative Agent to execute the Amendment Agreement and to execute the other amendments, modifications, supplements, instruments or agreements entered into in accordance with the Amendment Agreement; and (c) represents that it is a Lender under the Existing Credit Agreement. [Further, by its signature below, the undersigned hereby agrees that the Term Facility Availability Period with respect to such Lender’s Term Facility Commitments as in effect immediately prior to the Agreement Effective Date shall be (please check the applicable box):

Extension Option 1: the period from and including the Closing Date through and including the earlier of March 30, 2016 and the date of termination of the Tranche B Term Facility Commitments.

Extension Option 2: the period from and including the Closing Date through and including the earlier of June 30, 2016 and the date of termination of the Tranche C Term Facility Commitments.]

The undersigned hereby agrees that this Consenting Lender Agreement and the Amended Credit Agreement (which shall be deemed to have been executed by the undersigned as if it were a direct party thereto) shall be binding upon the undersigned and each of its successors and any participants and assigns of its Loans or Commitments under the Existing Credit Agreement (it being understood that any such participation or assignment shall be made in accordance with Section 13.05 of the Existing Credit Agreement), and may not be revoked or withdrawn. The undersigned agrees that it shall notify any potential successor or any participant or assignee of any of its Loans or Commitments under the Existing Credit Agreement of the effectiveness of this Consenting Lender Agreement prior to consummating any such transfer, assignment or participation, subject to Section 13.10 of the Existing Credit Agreement. This Consenting Lender Agreement shall be irrevocable and remain in full force and effect until the Agreement Effective Date shall have occurred.

[Remainder of this page intentionally left blank]

[NAME OF INSTITUTION], as a Consenting Lender

By: _____

Name:

Title:

[If a second signature is necessary:

By: _____

Name:

Title:]

LA\4299489.6

Certification of the Chief Executive Officer**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Stephen A. Wynn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2015

/s/ Stephen A. Wynn

Stephen A. Wynn
Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)

Certification of the Chief Financial Officer**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Stephen Cootey, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2015

/s/ Stephen Cootey

Stephen Cootey

Chief Financial Officer and Treasurer

(Principal Financial and Accounting Officer)

**Certification of CEO and CFO Pursuant to
18 U.S.C. Section 1350, as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q of Wynn Resorts, Limited (the "Company") for the quarter ended September 30, 2015 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Stephen A. Wynn, as Chief Executive Officer of the Company and Stephen Cootey, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of their knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Stephen A. Wynn

Name: Stephen A. Wynn
Title: Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)
Date: November 6, 2015

/s/ Stephen Cootey

Name: Stephen Cootey
Title: Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)
Date: November 6, 2015

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Wynn Resorts, Limited and will be retained by Wynn Resorts, Limited and furnished to the Securities and Exchange Commission or its staff upon request.