

**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, 2005

OR

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

For the transition period \_\_\_\_\_ 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 Number)

**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 is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

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 November 6, 2005</u>
Common stock, \$0.01 par value	99,522,767

WYNN RESORTS, LIMITED AND SUBSIDIARIES

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**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(amounts in thousands, except share data)  
(unaudited)

	September 30, 2005	December 31, 2004
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 552,880	\$ 330,261
Restricted cash and investments	97,709	115,301
Receivables, net	55,455	227
Inventories	33,355	757
Prepaid expenses	20,863	4,683
<b>Total current assets</b>	<b>760,262</b>	<b>451,229</b>
Restricted cash and investments	339,308	827,066
Property and equipment, net	2,597,904	1,987,032
Water rights.	6,400	6,400
Trademark	1,000	1,000
Deferred financing costs	99,833	88,565
Macau gaming concession, net	39,913	41,700
Deposits and other assets	93,930	61,220
Investment in unconsolidated affiliates	4,214	—
<b>Total assets</b>	<b>\$ 3,942,764</b>	<b>\$ 3,464,212</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 750	\$ 718
Current portion of land concession obligation	8,984	9,483
Accounts and construction payable	66,977	86,520
Accrued interest	33,336	12,081
Accrued compensation and benefits	36,124	11,110
Other accrued expenses	41,241	9,918
Customer deposits and other related liabilities	34,744	1,006
Construction retention	25,890	39,117
<b>Total current liabilities</b>	<b>248,046</b>	<b>169,953</b>
Construction retention	8,633	21,140
Long-term debt	2,098,016	1,600,328
Long-term land concession obligation	19,218	27,640
Other long-term liabilities	64	860
<b>Total liabilities</b>	<b>2,373,977</b>	<b>1,819,921</b>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value \$0.01; authorized 40,000,000 shares; zero shares issued and outstanding	—	—
Common stock, par value \$0.01; authorized 400,000,000 shares; 99,323,794 and 98,983,344 shares issued and outstanding	993	990
Additional paid-in capital	1,972,209	1,951,906
Deferred compensation—restricted stock	(17,334)	(4,079)
Accumulated other comprehensive income	14,431	10,007
Accumulated deficit	(401,512)	(314,533)
<b>Total stockholders' equity</b>	<b>1,568,787</b>	<b>1,644,291</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 3,942,764</b>	<b>\$ 3,464,212</b>

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

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**  
(amounts in thousands, except per share data)  
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
<b>Operating revenues:</b>				
Casino	\$ 123,049	\$ —	\$ 221,764	\$ —
Rooms	61,393	—	106,026	—
Food and beverage	61,211	—	109,266	—
Entertainment, retail and other	42,057	1	76,716	195
	<u>287,710</u>	<u>1</u>	<u>513,772</u>	<u>195</u>
Gross revenues	287,710	1	513,772	195
Less promotional allowances	(36,269)	—	(61,203)	—
	<u>251,441</u>	<u>1</u>	<u>452,569</u>	<u>195</u>
<b>Operating costs and expenses:</b>				
Casino	53,388	—	95,668	—
Rooms	16,120	—	27,900	—
Food and beverage	42,477	—	76,184	—
Entertainment, retail and other	28,699	(7)	48,966	68
General and administrative	44,814	5	75,827	297
Provision for doubtful accounts	2,043	—	10,642	—
Pre-opening costs	7,147	21,525	88,616	52,543
Depreciation and amortization	37,886	1,904	67,505	3,727
Property charges and other	6,052	788	6,161	1,300
	<u>238,626</u>	<u>24,215</u>	<u>497,469</u>	<u>57,935</u>
Total operating costs and expenses	238,626	24,215	497,469	57,935
Equity in income from unconsolidated affiliates	463	—	714	—
	<u>13,278</u>	<u>(24,214)</u>	<u>(44,186)</u>	<u>(57,740)</u>
Operating income (loss)	13,278	(24,214)	(44,186)	(57,740)
<b>Other income/(expense):</b>				
Interest income	7,467	1,844	20,632	4,975
Interest expense, net	(34,935)	(336)	(63,425)	(533)
Loss on early extinguishment of debt	—	—	—	(25,628)
	<u>(27,468)</u>	<u>1,508</u>	<u>(42,793)</u>	<u>(21,186)</u>
Other income (expense), net	(27,468)	1,508	(42,793)	(21,186)
Minority interest	—	—	—	1,054
Net loss	(14,190)	(22,706)	(86,979)	(77,872)
Change in fair value of interest rate swaps	6,146	(8,925)	8,033	(2,938)
Comprehensive loss	<u>\$ (8,044)</u>	<u>\$ (31,631)</u>	<u>\$ (78,946)</u>	<u>\$ (80,810)</u>
<b>Basic and diluted earnings per common share:</b>				
Net loss:				
Basic	\$ (0.14)	\$ (0.26)	\$ (0.89)	\$ (0.92)
Diluted	\$ (0.14)	\$ (0.26)	\$ (0.89)	\$ (0.92)
Weighted average common shares outstanding:				
Basic	98,472	88,063	98,245	84,543
Diluted	98,472	88,063	98,245	84,543

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

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

	Nine Months Ended September 30,	
	2005	2004
<b>Cash flows from operating activities:</b>		
Net loss	\$ (86,979)	\$ (77,872)
<b>Adjustments to reconcile net loss to net cash provided by (used in) operating activities:</b>		
Depreciation and amortization	67,505	3,727
Minority interest	—	(1,054)
Amortization of deferred compensation	3,665	2,738
Amortization and writeoff of deferred financing costs	6,337	20,075
Provision for doubtful accounts	10,642	—
Property charges and other	6,161	1,300
Equity in income of unconsolidated affiliates	(714)	—
Incidental operations	—	3,438
Increase (decrease) in cash from changes in:		
Receivables, net	(65,870)	(67)
Inventories and prepaid expenses	(49,574)	(1,404)
Accounts payable and accrued expenses	123,513	14,203
<b>Net cash provided by (used in) operating activities</b>	<b>14,686</b>	<b>(34,916)</b>
<b>Cash flows from investing activities:</b>		
Capital expenditures, net of construction payables	(739,850)	(731,736)
Restricted cash and investments	505,350	6,265
Investment in unconsolidated affiliates	(3,500)	—
Other assets	(23,533)	(22,178)
Proceeds from sale of equipment	109	33,868
<b>Net cash used in investing activities</b>	<b>(261,424)</b>	<b>(713,781)</b>
<b>Cash flows from financing activities:</b>		
Exercise of stock options	1,772	213
Proceeds from issuance of common stock	—	271,250
Third party fees	—	(3,283)
Proceeds from issuance of long-term debt	517,186	480,955
Principal payments of long-term debt	(19,534)	(122,616)
Payments on long-term land concession obligation	(8,921)	—
Payment of deferred financing costs	(21,146)	(10,128)
<b>Net cash provided by financing activities</b>	<b>469,357</b>	<b>616,391</b>
<b>Cash and cash equivalents:</b>		
Increase (decrease) in cash and cash equivalents	222,619	(132,306)
Balance, beginning of period	330,261	341,552
<b>Balance, end of period</b>	<b>\$ 552,880</b>	<b>\$ 209,246</b>

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)**

**1. Organization and Basis of Presentation**

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries, "Wynn Resorts" or the "Company"), was formed in June 2002 and consummated an initial public offering on October 25, 2002. Wynn Resorts' predecessor, Valvino Lamore, LLC ("Valvino"), was formed on April 21, 2000 as a Nevada limited liability company to purchase the Desert Inn Resort and Casino (the "Desert Inn") for the site of the Company's first casino resort in Las Vegas, Nevada, hereinafter referred to as "Wynn Las Vegas."

In June 2002, Valvino's indirect subsidiary, Wynn Resorts (Macau), S.A. ("Wynn Macau, S.A."), entered into an agreement with the government of the Macau Special Administrative Region of the People's Republic of China ("Macau"), granting Wynn Macau, S.A. the right to construct and operate one or more casino gaming properties in Macau. Wynn Macau, S.A.'s first casino resort in Macau is hereinafter referred to as "Wynn Macau."

The Company commenced operations with the opening of Wynn Las Vegas on April 28, 2005. The construction and development of Wynn Macau and the development of the Company's expansion of Wynn Las Vegas, known as "Encore at Wynn Las Vegas" or "Encore," are ongoing. For the periods presented prior to April 28, 2005, the Company was solely a development stage company.

The accompanying condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Investments in the 50%-owned joint ventures operating the Ferrari and Maserati automobile dealership and the Brioni mens' retail clothing store inside Wynn Las Vegas are accounted for under the equity method. All significant intercompany accounts and transactions have been eliminated.

The accompanying condensed consolidated financial statements have been prepared by the Company, without audit, 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, 2005 are not necessarily indicative of results to be expected for the full fiscal year. These financial statements should be read in conjunction with the consolidated financial statements and notes thereto of the Company as of and for the year ended December 31, 2004, included in the Company's Annual Report on Form 10-K.

Certain amounts in the condensed consolidated financial statements for the three and nine months ended September 30, 2004 have been reclassified to conform to the 2005 presentation. Art gallery, retail and water revenues for the three and nine months ended September 30, 2004, were all classified as entertainment, retail and other revenues for the three and nine months ended September 30, 2005. The cost of water and the cost of retail sales for the three and nine months ended September 30, 2004, were all classified as entertainment, retail and other expenses for the three and nine months ended September 30, 2005. In addition, the loss on sale of assets of \$63,000 and \$575,000 for the three and nine months ended September 30, 2004 and the loss on incidental operations for the three and nine months ended September 30, 2004 were both reclassified as property charges and other for the three and nine months ended September 30, 2005. These reclassifications had no effect on the previously reported net loss.

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

**2. Summary of Significant Accounting Policies**

*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. At September 30, 2005, approximately 57% of the Company’s receivables were due from customers residing in foreign countries. Business or economic conditions or other significant events in these countries could affect the collectibility of such receivables.

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

As of September 30, 2005, the Company had total accounts receivable of \$55.4 million, net of a reserve for bad debts of \$10.4 million. Casino marker receivables, hotel receivables and other receivables as of September 30, 2005 totaled \$50.2 million, \$9.6 million and \$6.0 million, respectively.

*Revenue recognition and promotional allowances*

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. Hotel, food and beverage, entertainment and other operating revenues are recognized when services are performed. Advance deposits on rooms and advance ticket sales are recorded as deferred revenues until services are provided to the customer.

Revenues are recognized net of certain sales incentives in accordance with the Emerging Issues Task Force (“EITF”) consensus on Issue 01-9, “Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor’s Products).” EITF 01-9 requires that sales incentives be recorded as a reduction of revenue; consequently, the Company’s casino revenues are reduced by discounts and points earned in customer loyalty programs, such as the players club loyalty program.

The retail value of accommodations, food and beverage, and other services furnished to guests without charge is included in gross revenue and then deducted as promotional allowances. The estimated cost of providing such promotional allowances for both the three and nine months ended September 30, 2005 is primarily included in casino expenses as follows (amounts in thousands):

	<b>Three Months Ended September 30, 2005</b>	<b>Nine Months Ended September 30, 2005</b>
Rooms	\$ 6,504	\$ 10,654
Food & beverage	13,370	23,351
Entertainment, retail and other	3,871	6,129
	<b>\$ 23,745</b>	<b>\$ 40,134</b>

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

*Advertising Costs*

The Company expenses advertising costs the first time the advertising runs. Advertising expenses incurred in development periods are included in preopening expenses. Since the opening of Wynn Las Vegas on April 28, 2005, advertising costs relating to Wynn Las Vegas have been included in general and administrative expenses, while any advertising expenses relating to Wynn Macau or Encore continue to be included in preopening expenses. Total advertising expenses were \$3.2 million and \$14.2 million, respectively, for the three and nine months ended September 30, 2005. Advertising expenses were \$740,000 and \$1.8 million, respectively, for the three and nine months ended September 30, 2004.

*Recently Issued Accounting Standards*

In December 2004, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards (“SFAS”) No. 123(R), “Share Based Payment.” SFAS No. 123(R) is a revision of SFAS No. 123, “Accounting for Stock-Based Compensation” and supercedes Accounting Principles Board (“APB”) Opinion No. 25, “Accounting for Stock Issued to Employees,” and related interpretations. This statement establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods and services or incurs a liability in exchange for goods and services that are based on the fair value of the entity’s equity instruments or that may be settled by the issuance of those equity instruments. It requires an entity to measure the costs of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award and recognize that cost over the service period. This statement, according to SEC rule, as amended, is effective January 1, 2006. The Company is currently evaluating the methodology to be used in measuring the fair value of stock-based compensation awards, as well as the impact that adoption of this statement will have on its consolidated financial position and results of operations.

In May 2005, FASB issued SFAS No. 154, “Accounting Changes and Error Corrections.” SFAS No. 154 requires retrospective application to prior periods’ financial statements of changes in accounting principles. It also requires that the new accounting principle be applied to the balances of assets and liabilities as of the beginning of the earliest period for which retrospective application is practicable and that a corresponding adjustment be made to the opening balance of retained earnings for that period rather than being reported in an income statement. The statement will be effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. The Company does not expect the adoption of SFAS No. 154 to have a material effect on its consolidated financial position or results of operations.



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

**3. Employee Stock-Based Compensation**

As of September 30, 2005, the Company had a stock-based employee compensation plan to provide incentive compensation for directors, officers, key employees and consultants. As permitted by SFAS No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure, an amendment of SFAS No. 123," the Company continues to apply the provisions of APB Opinion No. 25 and related interpretations in accounting for its employee stock-based compensation. Accordingly, compensation expense is recognized only to the extent that the market value at the date of grant exceeds the exercise price. The following table illustrates the effect on the net loss if the Company had applied the fair value recognition provisions of SFAS No. 123 to stock-based employee compensation (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Net loss as reported	\$(14,190)	\$(22,706)	\$(86,979)	\$(77,872)
Less: total stock-based employee compensation determined under the fair-value based method for all awards	(2,683)	(434)	(6,681)	(2,690)
Proforma net loss	<u>\$(16,873)</u>	<u>\$(23,140)</u>	<u>\$(93,660)</u>	<u>\$(80,562)</u>
Basic and diluted loss per share:				
As reported	<u>\$ (0.14)</u>	<u>\$ (0.26)</u>	<u>\$ (0.89)</u>	<u>\$ (0.92)</u>
Proforma	<u>\$ (0.17)</u>	<u>\$ (0.26)</u>	<u>\$ (0.95)</u>	<u>\$ (0.95)</u>

**4. Earnings Per Share**

Earnings per share are calculated in accordance with SFAS No. 128, "Earnings Per Share," which provides for the reporting of "basic," or undiluted, earnings per share ("EPS"), and "diluted" EPS. Basic EPS is computed by dividing net income by the weighted average number of shares outstanding during the period. Diluted EPS reflects the addition of potentially dilutive securities. For all periods presented, the Company has recorded net losses. As a result, basic EPS is equal to diluted EPS for all periods presented. The calculation of diluted EPS at September 30, 2005 excludes the following anti-dilutive securities: 3,208,550 shares issuable upon exercise of stock options, 1,033,892 shares under restricted stock grants that had not yet vested and 10,869,550 shares issuable upon conversion of the 6% Convertible Subordinated Debentures due 2015 (the "Debentures"). The calculation of diluted EPS at September 30, 2004 excludes the following anti-dilutive securities: 2,140,750 shares issuable upon exercise of stock options, 1,328,061 shares under restricted stock grants that had not yet vested and 10,869,550 shares issuable upon conversion of the Debentures.

**5. Supplemental Disclosure of Cash Flow Information**

Interest paid for the nine months ended September 30, 2005 and 2004 totaled approximately \$81.1 million and \$75.1 million, respectively. Interest capitalized for the nine months ended September 30, 2005 and 2004 totaled approximately \$44.6 million and \$100.5 million, respectively.

Amortization of deferred compensation related to employees dedicated to the construction of Wynn Las Vegas and Wynn Macau that was capitalized into construction in progress for the nine months ended September 30, 2005 and 2004 totaled approximately \$1.6 million and \$1.6 million, respectively.

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

The increase in the fair value of interest rate swaps accounted for as cash flow hedges for the nine months ended September 30, 2005 totaled approximately \$8.0 million. The fair value decreased \$2.9 million during the nine months ended September 30, 2004.

Aircraft purchased and financed by debt during the nine months ended September 30, 2004 totaled \$21.7 million. No new aircraft have been purchased in 2005.

Common stock issued during the nine months ended September 30, 2004 for the acquisition of the minority interest preliminarily allocated to the value of the Macau gaming concession totaled \$51.4 million.

Acquisitions during the nine months ended September 30, 2004 financed with short and long-term liabilities, are approximately \$53.8 million relating to the leasehold interest in the land on which Wynn Macau is being constructed and approximately \$4.4 million relating to the purchase of certain entertainment production rights.

**6. 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 of the Company, including the personal use of corporate aircraft and household employees, construction work and other personal services. Mr. Wynn and other officers have deposits with the Company to prepay any such items, which are replenished on an ongoing basis as needed. At September 30, 2005 and December 31, 2004, the Company’s net liability to Mr. Wynn and other officers was approximately \$22,000 and \$71,000, respectively.

*The Wynn Collection*

During the period from January 1, 2004 through May 6, 2004, the Company operated an art gallery at the former Desert Inn displaying The Wynn Collection, a collection of fine art owned by Mr. Wynn and his wife, Elaine P. Wynn (“Mrs. Wynn”), who is also a director of Wynn Resorts. The art gallery in the Desert Inn was closed on May 6, 2004, and a new art gallery featuring The Wynn Collection opened in Wynn Las Vegas on April 28, 2005. During the three and nine month periods ended September 30, 2005 and 2004, Mr. and Mrs. Wynn leased The Wynn Collection to the Company for an annual fee of one dollar (\$1). The Company retained all revenues from the public display of The Wynn Collection and the related merchandising revenues, and was responsible for all the expenses incurred in exhibiting and safeguarding the collection. The current lease for The Wynn Collection extends through June 30, 2015. After specified notice periods, the Company or Mr. Wynn may terminate the lease. Subject to certain notice requirements, Mr. Wynn has the right to remove or replace any or all of the works of art displayed in the gallery.

*The “Wynn” Surname*

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,

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

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.

*Villa Suite Lease*

Effective July 1, 2005, Mr. and Mrs. Wynn lease from year to year a villa suite in the Wynn Las Vegas resort as their personal residence. Rent is determined each year by the Audit Committee of the Board of Directors (the "Audit Committee"), and is based on the fair market value of the use of the suite accommodations. Based on a third-party appraisal, the Audit Committee set the rental for the first lease year at \$580,000. All services for, and maintenance of, the suite are included in the rental, with certain exceptions.

**7. Property Charges and Other**

Property charges and other for the three and nine month periods ended September 30, 2005 and 2004, consist of the following (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
Temporary office abandonment charge	\$ 3,070	\$ —	\$ 3,070	\$ —
Impairment of assets to be disposed of	2,869	—	2,869	—
Loss on sale of assets	113	63	117	575
Loss from incidental operations	—	725	105	725
<b>Total property charges</b>	<b>\$ 6,052</b>	<b>\$ 788</b>	<b>\$ 6,161</b>	<b>\$ 1,300</b>

**8. Property and Equipment**

Property and equipment as of September 30, 2005 and December 31, 2004, consist of the following (amounts in thousands):

	September 30, 2005	December 31, 2004
Land and improvements	\$ 598,929	\$ 353,544
Buildings and improvements	1,159,170	1,041
Airplanes	57,405	57,336
Furniture, fixtures and equipment	586,124	14,830
Leasehold interest	67,118	67,616
Construction in progress	196,499	1,499,083
	2,665,245	1,993,450
Less: accumulated depreciation	(67,341)	(6,418)
	<b>\$ 2,597,904</b>	<b>\$ 1,987,032</b>

Construction in progress includes interest and other costs capitalized in conjunction with the Wynn Las Vegas, Encore and Wynn Macau projects. Capitalization of interest and other costs relating to Wynn Las Vegas ceased upon completion and opening of Wynn Las Vegas; however, costs, including interest, relating to the

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
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Encore and Wynn Macau projects will continue to be capitalized. In addition, costs related to periodic enhancements and refinements of Wynn Las Vegas, including interest, are recorded as construction in progress until the related work is completed and placed into use at the property.

**9. Long-Term Debt**

Long-term debt as of September 30, 2005 and December 31, 2004, consists of the following (amounts in thousands):

	September 30, 2005	December 31, 2004
6-5/8% First Mortgage Notes, due December 1, 2014	\$ 1,300,000	\$ 1,300,000
\$400.0 million Delay Draw Term Loan Facility due December 14, 2011; Interest at LIBOR plus 2.125% (approximately 5.985% and 4.575%, respectively)	400,000	26,564
6% Convertible Subordinated Debentures, due July 15, 2015	250,000	250,000
\$600.0 million Revolving Credit Facility due December 14, 2009; Interest at LIBOR plus 2.25% (approximately 6.11%)	80,000	—
Notes payable - Aircraft due May 24, 2010; interest at LIBOR plus 2.375% (approximately 5.865%)	44,750	—
Notes payable - Aircraft; interest at 5.67%	14,158	14,659
12% Second Mortgage Notes, net of original issue discount of approximately \$463,000 and \$531,000, respectively, due November 1, 2010; effective interest at approximately 12.9%	9,680	9,611
Other	178	212
	<u>2,098,766</u>	<u>1,601,046</u>
Current portion of long-term debt	(750)	(718)
	<u>\$ 2,098,016</u>	<u>\$ 1,600,328</u>

*Wynn Las Vegas Credit Facilities*

Wynn Las Vegas, LLC borrowed the remaining \$373.4 million available under its delay draw term loan facility during the first quarter of 2005, as required under the agreements governing its credit facilities. The total \$400 million of proceeds funded a portion of the total cost of the construction of Wynn Las Vegas.

As originally intended, on August 15, 2005, Wynn Las Vegas, LLC borrowed \$80.0 million of the \$600.0 million available under its revolving credit facility to provide a portion of the financing for Wynn Macau. Wynn Las Vegas, LLC also pays, quarterly in arrears, 0.75% per annum on unborrowed amounts available under the revolving credit facility.

As of September 30, 2005, the Company is in compliance with all of the covenants governing the Wynn Las Vegas credit facilities.

*Note Payable - Aircraft*

On May 24, 2005, World Travel, LLC, a subsidiary of Wynn Las Vegas, LLC, borrowed an aggregate amount of \$44.75 million under term loans which terminate and are payable in full on May 24, 2010. The term

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loans are guaranteed by Wynn Las Vegas, LLC and secured by a first priority security interest in World Travel, LLC's corporate aircraft. Principal and interest is payable quarterly, and interest is calculated at the London Interbank Offered Rate ("LIBOR") plus a margin of 2.375%. In addition to scheduled amortization payments, the Company is required to prepay the loans if certain events of loss with respect to the aircraft occur. Beginning on December 31, 2006, the Company may prepay all or any portion of the loans subject to a minimum prepayment of \$10.0 million.

*Wynn Las Vegas Interest Rate Swaps*

On December 14, 2004, Wynn Las Vegas, LLC terminated two interest rate swaps. As a result, Wynn Las Vegas, LLC received approximately \$9.6 million in settlement of the related assets, which is being amortized from accumulated other comprehensive income to reduce interest expense over the original contract life of the two interest rate swaps. Approximately \$1.2 million and \$3.6 million was amortized against interest expense during the three and nine months ended September 30, 2005.

Also on December 14, 2004, Wynn Las Vegas, LLC entered into two new interest rate swap arrangements to hedge the underlying interest rate risk on the \$400.0 million of term loan borrowings outstanding under the new credit facilities, which bear interest at LIBOR plus 2.125%. Under each of these two new interest rate swap arrangements, Wynn Las Vegas, LLC receives payments at a variable rate of LIBOR and pays a fixed rate of 3.793% on the \$200 million notional amount set forth in each of the swap instruments through December 2008. The interest rate swaps are expected to be effective as hedging instruments as long as sufficient term loan borrowings are outstanding, and effectively fix the interest rate on these borrowings at approximately 5.918%. Any ineffectiveness will increase the Company's recorded interest expense in the consolidated financial statements.

As of September 30, 2005, the Company recorded in other assets the fair value of the net effect of the two new interest rate swaps of approximately \$8.6 million, an increase of \$8.0 million compared to the value of \$583,000 at December 31, 2004. Because there has been no ineffectiveness in the hedging relationship, the corresponding change in fair value of equal amount is reported in other comprehensive income. 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. Therefore, the fair value is subject to significant estimation and a high degree of variability of fluctuation between periods.

**10. Stockholders' Equity**

On February 3, 2005, the Company granted an aggregate of 275,000 shares of restricted stock to two of its executive officers. These shares vest in five equal annual installments beginning on December 15, 2005. The market price of the Company's common stock on February 3, 2005 was \$67.40 per share. Consequently, the aggregate value of these grants at the grant date was approximately \$18.5 million. This amount will be amortized to compensation expense over the vesting period.

**11. Commitments and Contingencies**

*Wynn Las Vegas*

*Construction.* On April 28, 2005, Wynn Las Vegas opened to the public. The total project cost is expected to be in the range of \$2.72 to \$2.75 billion; however, consistent with large-scale construction projects,

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determination of the final Wynn Las Vegas project cost is subject to a complete accounting, which the Company expects to occur in the fourth quarter of 2005.

Through September 30, 2005, the Company had funded approximately \$2.7 billion of Wynn Las Vegas project costs. As of September 30, 2005, the Company had certain restricted cash balances for Wynn Las Vegas, including \$30.0 million of a completion guarantee account (which must be retained for Encore for a completion guarantee if the budget, plans and specifications for Encore are approved) and a \$30.0 million liquidity reserve, and availability under its credit facilities. Such balances and availability will be sufficient to pay the final project costs of Wynn Las Vegas.

*Encore Development.* Due to the strong demand for Wynn Las Vegas, the continued strength in the Las Vegas market, and the Company's desire to maximize the potential of its substantial real estate assets, the Company continues to evaluate Encore as part of its overall master plan. As a result, the Company has refined Encore to feature an approximately 2,000-room hotel tower fully integrated with Wynn Las Vegas, consisting of approximately 150 suites and approximately 1,850 guest rooms. Encore also is expected to include additional casino gaming and entertainment venues, restaurants, nightclubs, swimming pools, a spa and salon, convention and meeting space, and retail outlets. The Company expects Encore to open in the second half of 2008.

In June 2005, the Company received the necessary consents from the holders of its 6-5/8% First Mortgage Notes due 2014 ("First Mortgage Notes") and the Company's lenders to extend the deadline for approval of the budget, plans and specifications for Encore (the "Encore Budget, Plans and Specifications") from June 30, 2005 to December 31, 2005 (which may be further extended to March 31, 2006 upon receiving further approvals), and to extend the outside date for completion of Encore from March 31, 2008 to December 31, 2008.

Although the budget has not been finalized and must be approved by the Company's Board of Directors, the Company expects that the remaining proceeds from the First Mortgage Notes, together with availability under its existing credit facilities and cash flow from the operations of Wynn Las Vegas, will be sufficient to pay for expenditures of up to \$1.4 billion on the Encore project without incurring additional debt or receiving additional capital contributions. The availability of notes proceeds and funds under the credit agreement in excess of \$100.0 million is subject to approval of the Encore Budget, Plans and Specifications by a majority of arrangers or lenders. Once the Company has finalized the scope and plans for Encore, it will seek the necessary approvals from its lenders.

*Entertainment Productions.* The Company entered into long-term agreements for the licensing, creation, development and production of "Le Rêve, A Small Collection of Imperfect Dreams," the water-based production show, which opened concurrently with Wynn Las Vegas on April 28, 2005.

The Company also purchased the rights to stage "Avenue Q," the Tony Award-winning musical production and entered into a production services agreement for all production services related to the show. In August 2005, "Avenue Q" opened to the public in Wynn Las Vegas' second showroom, the Broadway Theater.

Under the agreements relating to "Le Rêve" and "Avenue Q," the Company is required to make payments to the creators and producers of each show based upon certain criteria including net ticket sales or profits.

On July 20, 2005, the Company also entered into an agreement with Spamalot, LLC to produce and present "Monty Python's Spamalot" in a new theater to be constructed at Wynn Las Vegas. The new theater is expected to be adjacent to the existing Wynn and Broadway theaters and will include a retail store, food and beverage

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facilities and a themed “Spamalot Environment.” Under the agreement, the Company is responsible for construction of the theater and related facilities, as well as advancing the initial production costs. The Company expects that these costs, together with certain rights fees, will exceed \$50 million. The construction cost and completion date for the theater, and the opening date for the production have not yet been determined.

*Wynn Macau*

Under its casino concession agreement with the government of Macau, Wynn Macau, S.A. is constructing and will own and operate Wynn Macau, a casino resort facility in Macau’s inner harbor area. Wynn Macau is being constructed, and will open, in two phases. The first phase of Wynn Macau is expected to open in the third quarter of 2006. The second phase is expected to open by the third quarter of 2007.

The first phase will utilize approximately 11 of 16 available acres and include 600 hotel rooms and suites, approximately 100,000 square feet of casino gaming space, seven restaurants, approximately 26,000 square feet of retail space, a spa, a salon, entertainment lounges and meeting facilities. In September 2005, Wynn Macau, S.A. completed the refinancing for the first phase of Wynn Macau and the financing for the second phase, which will include an additional 92,000 square feet of casino space, a restaurant, a theater, additional retail venues and a front feature attraction. The second phase will be built on the remaining five acres of the Wynn Macau site and will be fully integrated into the first phase of the resort. The total project budget for Wynn Macau, including the second phase, is approximately \$1.1 billion, including contingencies, but excluding up to \$12.5 million of post-opening land concession payments anticipated to be funded from operating cash flows.

Construction of Wynn Macau commenced in June 2004 under a guaranteed maximum price construction contract between Wynn Macau, S.A. and Leighton Contractors (Asia) Limited, China State Construction Engineering (Hong Kong) Limited and China Construction Engineering (Macau) Company Limited, acting together as general contractor. In September 2005, the construction contract was amended and restated to include the second phase of Wynn Macau. Under the amended and restated construction contract, the general contractor is responsible for both the construction and design of the project (other than certain limited portions to be designed by an affiliate of Wynn Macau, S.A.) based on an existing scope of work and design specifications provided by Wynn Macau, S.A., for a guaranteed maximum price of approximately \$457.2 million (including the contractors’ fee and contingency). The performance of the contractors is backed by a full completion guarantee given jointly and severally by Leighton Holdings Limited and China Overseas Holdings Limited, the parent companies of the contracting entities.

Wynn Macau, S.A. has entered into a land concession contract for the Wynn Macau project site. Under the land concession contract, Wynn Macau, S.A. leases a parcel of approximately 16 acres from the government for an initial term of 25 years, with a right to renew for additional periods. Wynn Macau, S.A. has made three payments to the Macau government under the land concession contract totaling approximately \$12.7 million and is required to make eight additional semi-annual payments (including interest) totaling approximately \$30.0 million for total payments of approximately \$42.7 million. Wynn Macau, S.A. also paid approximately \$17.9 million to an unrelated third party for its relinquishment of rights to a portion of the land. During the term of the land concession contract, Wynn Macau, S.A. is also required to make annual lease payments of up to \$400,000.

Financing for Wynn Macau’s design, development, construction and preopening expenses is being provided by a combination of cash on hand in the form of base equity loans from Wynn Resorts totaling \$230 million, subordinated loan financing provided from funds borrowed under Wynn Las Vegas, LLC’s revolving credit facility totaling \$80 million and a senior bank facility. In September 2005, to accommodate its second phase,

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Wynn Macau, S.A., amended its senior bank facility to expand availability under the facility from \$397 million to \$764 million, including \$729 million of senior term loan facilities, a HK\$117 million revolving credit facility (approximately US\$15 million), and an additional term loan facility of HK\$156 million (approximately US\$20 million). As of September 30, 2005, Wynn Macau, S.A. had not borrowed any funds under its senior bank facility. Wynn Macau, S.A. is permitted to borrow under the senior secured credit facilities after the base equity and subordinated funding described above has been expended on the project, and other conditions precedent customary to limited recourse project finance construction loans are satisfied.

The term loan facilities mature in September 2011, and the revolving credit facility matures in September 2007. The principal amount of the term loans is required to be repaid in quarterly installments, commencing on March 14, 2008. The term loans will bear interest at LIBOR or the Hong Kong Interbank Offer Rate (“HIBOR”) plus a margin of 3.0% until the opening of Wynn Macau (expected in the third quarter of 2006), at which time the interest rate will reduce to LIBOR or HIBOR plus a margin of 2.75%. The senior bank facility also provides for further reductions in the margin on the term loans if Wynn Macau, S.A. satisfies certain prescribed leverage ratio tests. Loans under the revolving credit facility will bear interest at HIBOR plus 2.5%.

Collateral for the senior bank facility consists of substantially all of the assets of Wynn Macau, S.A. Certain affiliates of the Company that own interests in Wynn Macau, S.A., either directly or indirectly through other subsidiaries, have executed guarantees of the loans and pledged their interests in Wynn Macau, S.A. as additional security for repayment of the loans.

In September 2004, in connection with the initial financing of the Wynn Macau project, Wynn Macau, S.A. entered into a Bank Guarantee Reimbursement Agreement with Banco Nacional Ultramarino (“BNU”) for a guarantee in the amount of 700.0 million patacas (approximately US\$87.0 million). This guarantee, which is for the benefit of the Macau government, assures Wynn Macau, S.A.’s performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform the concession agreement. To secure the guarantee, Wynn Macau, S.A. originally deposited \$50.0 million of the \$230.0 million base equity funding with BNU. As of September 30, 2005, however, Wynn Macau, S.A. had funded \$50.0 million of its project costs with these funds. 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 senior bank facilities, Wynn Macau, S.A. is obligated to promptly, upon demand by BNU, repay any claim made on the guarantee by the Macau government. BNU will be paid an annual fee for the guarantee not to exceed approximately 12.3 million Macau patacas (approximately US\$1.5 million).

Through September 30, 2005, Wynn Macau, S.A. had incurred approximately \$308.6 million of the total \$1.1 billion of budgeted project costs. As of September 30, 2005, project costs still to be incurred totaled approximately \$777.0 million. These costs have been and will be funded from the base equity loans and subordinated funding from Wynn Resorts and Wynn Las Vegas, LLC, as well as availability under the senior bank facility. In addition, the Company has \$30.0 million of long-term restricted cash reserved as contingent equity and a \$72.0 million contingent debt facility from Wynn Macau, S.A.’s lenders.

*Leases*

The Company is the lessor under five retail leases and has entered into license and distribution agreements for six additional retail outlets at Wynn Las Vegas. The Company also is a party to joint venture agreements for the operation of one other retail outlet and the Ferrari and Maserati automobile dealership at Wynn Las Vegas. Each of these retail outlets opened concurrently with the opening of Wynn Las Vegas. In connection with these



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arrangements, Wynn Las Vegas provided certain of the retail tenants an allowance for improvements. These improvement allowances were included in the budgeted costs to construct Wynn Las Vegas.

In addition to the above, the Company is the lessee under several leases for office space in Las Vegas, Macau and certain other locations, warehouse facilities, the land underlying the Company's aircraft hangar and certain office equipment. The Company also leases land from the government of Macau for the site of Wynn Macau.

*Self-insurance*

The Company's domestic subsidiaries are covered under a self-insured medical plan up to a maximum of \$200,000 per year for each insured person. Amounts in excess of these thresholds are covered by the Company's insurance programs, subject to customary policy limits. The Company's foreign subsidiaries are fully-insured.

*Employment Agreements*

The Company has entered into employment agreements with several executive officers, other members of management and certain key employees. These agreements generally have three- to five-year terms, indicate a base salary, and often contain provisions for guaranteed bonuses. Certain of the executives are also entitled to a separation payment if terminated without "cause" or upon voluntary termination of employment for "good reason" following a "change of control" (as these terms are defined in the employment contracts).

*Litigation*

The Company does not have any material litigation as of September 30, 2005.

**12. Segment Information**

The Company monitors its operations and evaluates earnings by reviewing the assets and operations of Wynn Las Vegas and Wynn Macau. Wynn Las Vegas opened on April 28, 2005. Wynn Macau is currently in the development and construction phase and is expected to open in the third quarter of 2006.

As of September 30, 2005 and December 31, 2004, the Company's total assets by segment are as follows (in thousands):

	<u>September 30, 2005</u>	<u>December 31, 2004</u>
<b>Total assets</b>		
Wynn Las Vegas (including Encore)	\$ 3,182,632	\$ 2,788,101
Wynn Macau	404,957	321,975
Corporate and other assets	355,175	354,136
<b>Total consolidated assets</b>	<u>\$ 3,942,764</u>	<u>\$ 3,464,212</u>

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The Company's segment information on its results of operations for the three and nine-month periods ended September 30, 2005 and 2004, is as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
<b>Revenues (1)</b>				
Casino	\$ 123,049	\$ —	\$ 221,764	\$ —
Rooms	61,393	—	106,026	—
Food and beverage	61,211	—	109,266	—
Entertainment, retail and other	42,057	1	76,716	195
	<u>287,710</u>	<u>1</u>	<u>513,772</u>	<u>195</u>
Gross revenues				
Less promotional allowances	(36,269)	—	(61,203)	—
	<u>251,441</u>	<u>\$ 1</u>	<u>\$ 452,569</u>	<u>\$ 195</u>
<b>Adjusted Property EBITDA (1, 2)</b>	\$ 73,205	\$ 3	\$ 131,940	\$ (170)
<b>Other operating costs and expenses</b>				
Preopening expenses:				
Wynn Las Vegas	(1,541)	(11,356)	(67,427)	(26,612)
Wynn Macau	(5,606)	(2,403)	(12,205)	(6,550)
Corporate and other	—	(7,766)	(8,984)	(19,381)
Depreciation and amortization:				
Wynn Las Vegas	(35,614)	(870)	(61,182)	(2,291)
Wynn Macau	(1,526)	(357)	(4,460)	(357)
Corporate and other	(746)	(677)	(1,863)	(1,079)
Property charges and other:				
Wynn Las Vegas	(5,939)	—	(5,939)	—
Wynn Macau	—	—	—	—
Corporate and other	(113)	(788)	(222)	(1,300)
Corporate expenses and other	(8,842)	—	(13,844)	—
	<u>(59,927)</u>	<u>(24,217)</u>	<u>(176,126)</u>	<u>(57,570)</u>
<b>Operating income (loss)</b>	13,278	(24,214)	(44,186)	(57,740)
<b>Other non-operating costs and expenses</b>				
Interest income	7,467	1,844	20,632	4,975
Interest expense, net	(34,935)	(336)	(63,425)	(533)
Loss on early extinguishment of debt	—	—	—	(25,628)
	<u>(27,468)</u>	<u>1,508</u>	<u>(42,793)</u>	<u>(21,186)</u>
<b>Minority interest</b>	—	—	—	1,054
<b>Net loss</b>	<u>\$ (14,190)</u>	<u>\$ (22,706)</u>	<u>\$ (86,979)</u>	<u>\$ (77,872)</u>

(1) Wynn Macau is currently in the development stage and therefore has no revenues or adjusted EBITDA.

(2) "Adjusted Property EBITDA" is earnings before interest, taxes, depreciation and amortization, preopening and corporate expenses, property charges and other, and other non operating income and expenses. Management uses Adjusted Property EBITDA as the primary measure of the operating performance of its segments - Wynn Las Vegas and Wynn Macau - and to compare the operating performance of its properties

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with those of its competitors. Adjusted Property EBITDA should not be construed as an alternative to operating income, as an indicator of the Company's performance, as an alternative to cash flows from operating activities, as a measure of liquidity, or as any other measure determined in accordance with generally accepted accounting principles in the United States. The Company has significant uses of cash flows, including capital expenditures, preopening costs, interest payments and debt principal repayments, which are not reflected in Adjusted Property EBITDA. Also, other companies may calculate Adjusted Property EBITDA in a different manner than the Company.

### **13. Subsequent Events**

#### *Wynn Macau Interest Rate Swaps*

On October 14, 2005, the Company entered into two interest rate swaps to hedge a portion of the underlying interest risk on future borrowings under Wynn Macau's existing \$729 million senior term loan facility. Under the first hedge agreement, the Company will pay a fixed interest rate of approximately 4.84% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately \$198.2 million, in exchange for receipts on the same amounts at a variable interest rate based on the applicable LIBOR at the time of payment. Under the second hedge agreement, the Company will pay a fixed interest rate of approximately 4.77% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately HK\$1.1 billion (approximately US\$140.3 million), in exchange for receipts on the same amounts at a variable interest rate based on the applicable HIBOR at the time of payment. The term of both hedge agreements is from November 28, 2005 through November 28, 2008.

The Wynn Macau interest rate swaps are expected to be effective as hedging instruments as long as sufficient borrowings are outstanding under the senior bank facility, and effectively fix the interest rate on 50% of the US dollar and 50% of the Hong Kong dollar borrowings under the senior bank facility at approximately 7.84% and 7.77%, respectively. Any ineffectiveness will increase the recorded interest expense in the consolidated financial statements.

#### *Wynn Las Vegas Revolver Repayment*

On October 24, 2005, the Company repaid the \$80.0 million principal balance outstanding under Wynn Las Vegas, LLC's revolving credit facility. The amount that was repaid may be reborrowed.

### **14. Consolidating Financial Information of Guarantors and Issuers**

The following consolidating financial statements present information related to Wynn Resorts (the "Parent"), which is the issuer of the Debentures, Wynn Resorts Funding, LLC (the "Convertible Debentures Guarantor") and non-guarantor subsidiaries as of September 30, 2005 and December 31, 2004 and for the three and nine months ended September 30, 2005 and 2004.

The following condensed consolidating financial statements are presented in the provided form because: (i) the Convertible Debentures Guarantor is a wholly owned subsidiary of the Parent; (ii) the guarantee is considered to be full and unconditional, that is, if the Parent fails to make a scheduled payment, the Convertible Debentures Guarantor is obligated to make the scheduled payment immediately and, if it does not, any holder of the Debentures may immediately bring suit directly against the Convertible Debentures Guarantor for payment of all amounts due and payable; and (iii) the guarantee is joint and several.

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**CONSOLIDATING BALANCE SHEET INFORMATION**  
**AS OF SEPTEMBER 30, 2005**  
(amounts in thousands)  
(unaudited)

	Parent	Convertible Debentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 309,282	\$ —	\$ 243,598	\$ —	\$ 552,880
Restricted cash and investments	—	—	97,709	—	97,709
Receivables, net	19	—	55,436	—	55,455
Inventories	—	—	33,355	—	33,355
Prepaid expenses	130	—	20,733	—	20,863
<b>Total current assets</b>	<b>309,431</b>	<b>—</b>	<b>450,831</b>	<b>—</b>	<b>760,262</b>
Restricted cash and investments	901	14,955	323,452	—	339,308
Property and equipment, net	550	—	2,597,354	—	2,597,904
Water rights	—	—	6,400	—	6,400
Trademark	—	—	1,000	—	1,000
Deferred financing costs	7,114	—	92,719	—	99,833
Macau gaming concession, net	—	—	39,913	—	39,913
Deposits and other assets	3,453	—	90,477	—	93,930
Investment in subsidiaries	1,306,952	—	—	(1,306,952)	—
Investment in unconsolidated affiliates	—	—	4,214	—	4,214
Intercompany balances	200,745	30,000	(230,745)	—	—
<b>Total assets</b>	<b>\$1,829,146</b>	<b>\$ 44,955</b>	<b>\$3,375,615</b>	<b>\$(1,306,952)</b>	<b>\$3,942,764</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Current portion of long-term debt	\$ —	\$ —	\$ 750	\$ —	\$ 750
Current portion of land concession obligation	—	—	8,984	—	8,984
Accounts and construction payable	88	—	66,889	—	66,977
Accrued interest	3,125	—	30,211	—	33,336
Accrued compensation and benefits	6,323	—	29,801	—	36,124
Other accrued expenses	823	—	40,418	—	41,241
Customer deposits and other related liabilities	—	—	34,744	—	34,744
Construction retention	—	—	25,890	—	25,890
<b>Total current liabilities</b>	<b>10,359</b>	<b>—</b>	<b>237,687</b>	<b>—</b>	<b>248,046</b>
Construction retention	—	—	8,633	—	8,633
Long-term debt	250,000	—	1,848,016	—	2,098,016
Long-term land concession obligation	—	—	19,218	—	19,218
Other long-term liabilities	—	—	64	—	64
<b>Total liabilities</b>	<b>260,359</b>	<b>—</b>	<b>2,113,618</b>	<b>—</b>	<b>2,373,977</b>
Commitments and contingencies					
Stockholders' equity:					
Common stock	993	—	—	—	993
Additional paid-in capital	1,972,209	44,028	1,622,709	(1,666,737)	1,972,209
Deferred compensation - restricted stock	(17,334)	—	(1,495)	1,495	(17,334)
Accumulated other comprehensive income	14,431	—	14,431	(14,431)	14,431
Accumulated deficit	(401,512)	927	(373,648)	372,721	(401,512)
<b>Total stockholders' equity</b>	<b>1,568,787</b>	<b>44,955</b>	<b>1,261,997</b>	<b>(1,306,952)</b>	<b>1,568,787</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$1,829,146</b>	<b>\$ 44,955</b>	<b>\$3,375,615</b>	<b>\$(1,306,952)</b>	<b>\$3,942,764</b>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING BALANCE SHEET INFORMATION**  
**AS OF DECEMBER 31, 2004**  
(amounts in thousands)  
(unaudited)

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 302,262	\$ —	\$ 27,999	\$ —	\$ 330,261
Restricted cash and investments	—	—	115,301	—	115,301
Receivables, net	19	—	208	—	227
Inventories	—	—	757	—	757
Prepaid expenses	290	—	4,393	—	4,683
<b>Total current assets</b>	<b>302,571</b>	<b>—</b>	<b>148,658</b>	<b>—</b>	<b>451,229</b>
Restricted cash and investments	769	29,691	796,606	—	827,066
Property and equipment, net	809	—	1,986,223	—	1,987,032
Water rights	—	—	6,400	—	6,400
Trademark	—	—	1,000	—	1,000
Deferred financing costs	7,652	—	80,913	—	88,565
Macau gaming concession, net	—	—	41,700	—	41,700
Deposits and other assets	5,674	—	55,546	—	61,220
Investment in subsidiaries	1,395,022	—	—	(1,395,022)	—
Intercompany balances	196,476	15,004	(211,480)	—	—
<b>Total assets</b>	<b>\$1,908,973</b>	<b>\$ 44,695</b>	<b>\$ 2,905,566</b>	<b>\$ (1,395,022)</b>	<b>\$ 3,464,212</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Current portion of long-term debt	\$ —	\$ —	\$ 718	\$ —	\$ 718
Current portion of land concession obligation	—	—	9,483	—	9,483
Accounts and construction payable	648	—	85,872	—	86,520
Accrued interest	6,875	—	5,206	—	12,081
Accrued compensation and benefits	6,464	—	4,646	—	11,110
Other accrued expenses	695	—	9,223	—	9,918
Customer deposits and other related liabilities	—	—	1,006	—	1,006
Construction retention	—	—	39,117	—	39,117
<b>Total current liabilities</b>	<b>14,682</b>	<b>—</b>	<b>155,271</b>	<b>—</b>	<b>169,953</b>
Construction retention	—	—	21,140	—	21,140
Long-term debt	250,000	—	1,350,328	—	1,600,328
Long-term land concession obligation	—	—	27,640	—	27,640
Other long-term liabilities	—	—	860	—	860
<b>Total liabilities</b>	<b>264,682</b>	<b>—</b>	<b>1,555,239</b>	<b>—</b>	<b>1,819,921</b>
Commitments and contingencies					
Stockholders' equity:					
Common stock	990	—	—	—	990
Additional paid-in capital	1,951,906	44,028	1,628,149	(1,672,177)	1,951,906
Deferred compensation - restricted stock	(4,079)	—	(3,111)	3,111	(4,079)
Accumulated other comprehensive income	10,007	—	10,007	(10,007)	10,007
Accumulated deficit	(314,533)	667	(284,718)	284,051	(314,533)
<b>Total stockholders' equity</b>	<b>1,644,291</b>	<b>44,695</b>	<b>1,350,327</b>	<b>(1,395,022)</b>	<b>1,644,291</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$1,908,973</b>	<b>\$ 44,695</b>	<b>\$ 2,905,566</b>	<b>\$ (1,395,022)</b>	<b>\$ 3,464,212</b>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**THREE MONTHS ENDED SEPTEMBER 30, 2005**  
(amounts in thousands)  
(unaudited)

	<u>Parent</u>	<u>Convertible Debentures Guarantor</u>	<u>Non- guarantor Subsidiaries</u>	<u>Eliminating Entries</u>	<u>Total</u>
<b>Operating revenues:</b>					
Casino	\$ —	\$ —	\$ 123,049	\$ —	\$123,049
Rooms	—	—	61,393	—	61,393
Food and beverage	—	—	61,211	—	61,211
Entertainment, retail and other	—	—	42,057	—	42,057
	<u>—</u>	<u>—</u>	<u>287,710</u>	<u>—</u>	<u>287,710</u>
Gross revenues	—	—	287,710	—	287,710
Less promotional allowances	—	—	(36,269)	—	(36,269)
	<u>—</u>	<u>—</u>	<u>251,441</u>	<u>—</u>	<u>251,441</u>
<b>Operating costs and expenses:</b>					
Casino	—	—	53,388	—	53,388
Rooms	—	—	16,120	—	16,120
Food and beverage	—	—	42,477	—	42,477
Entertainment, retail and other	—	—	28,699	—	28,699
General and administrative	5,389	—	39,425	—	44,814
Provision for doubtful accounts	(68)	—	2,111	—	2,043
Pre-opening costs	—	—	7,147	—	7,147
Depreciation and amortization	20	—	37,866	—	37,886
Property charges and other	115	—	5,937	—	6,052
	<u>5,456</u>	<u>—</u>	<u>233,170</u>	<u>—</u>	<u>238,626</u>
Equity in income/(loss) from unconsolidated affiliates	(15,830)	—	463	15,830	463
	<u>(21,286)</u>	<u>—</u>	<u>18,734</u>	<u>15,830</u>	<u>13,278</u>
<b>Other income/(expense):</b>					
Interest income	6,464	112	5,572	(4,681)	7,467
Interest expense, net	(4,651)	—	(34,965)	4,681	(34,935)
Management fees and royalties	5,283	—	(5,283)	—	—
	<u>7,096</u>	<u>112</u>	<u>(34,676)</u>	<u>—</u>	<u>(27,468)</u>
Net income/(loss)	<u>\$ (14,190)</u>	<u>\$ 112</u>	<u>\$ (15,942)</u>	<u>\$ 15,830</u>	<u>\$ (14,190)</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**THREE MONTHS ENDED SEPTEMBER 30, 2004**  
(amounts in thousands)  
(unaudited)

	<u>Parent</u>	<u>Convertible Debentures Guarantor</u>	<u>Non- guarantor Subsidiaries</u>	<u>Eliminating Entries</u>	<u>Total</u>
<b>Operating revenues:</b>					
Casino	\$ —	\$ —	\$ —	\$ —	\$ —
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	10	(9)	1
	<u>—</u>	<u>—</u>	<u>10</u>	<u>(9)</u>	<u>1</u>
Gross revenues	—	—	10	(9)	1
Less promotional allowances	—	—	—	—	—
	<u>—</u>	<u>—</u>	<u>10</u>	<u>(9)</u>	<u>1</u>
Net revenues	—	—	10	(9)	1
<b>Operating costs and expenses:</b>					
Casino	—	—	—	—	—
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	—	(7)	(7)
General and administrative	—	—	1,505	(1,500)	5
Provision for doubtful accounts	—	—	—	—	—
Pre-opening costs	6,958	—	14,569	(2)	21,525
Depreciation and amortization	20	—	1,884	—	1,904
Property charges and other	—	—	788	—	788
	<u>6,978</u>	<u>—</u>	<u>18,746</u>	<u>(1,509)</u>	<u>24,215</u>
Equity in income/(loss) from unconsolidated affiliates	(18,785)	—	3,995	14,790	—
	<u>(25,763)</u>	<u>—</u>	<u>(14,741)</u>	<u>16,290</u>	<u>(24,214)</u>
<b>Other income/(expense):</b>					
Interest income	1,557	103	686	(502)	1,844
Interest expense, net	—	—	(838)	502	(336)
Loss on early extinguishment of debt	—	—	—	—	—
Management fees and royalties	1,500	—	—	(1,500)	—
	<u>3,057</u>	<u>103</u>	<u>(152)</u>	<u>(1,500)</u>	<u>1,508</u>
Minority interest	—	—	1,054	(1,054)	—
	<u>—</u>	<u>—</u>	<u>1,054</u>	<u>(1,054)</u>	<u>—</u>
Net income/(loss)	<u>\$ (22,706)</u>	<u>\$ 103</u>	<u>\$ (13,839)</u>	<u>\$ 13,736</u>	<u>\$ (22,706)</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**NINE MONTHS ENDED SEPTEMBER 30, 2005**  
(amounts in thousands)  
(unaudited)

	Parent	Convertible Debentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
<b>Operating revenues:</b>					
Casino	\$ —	\$ —	\$ 221,764	\$ —	\$221,764
Rooms	—	—	106,026	—	106,026
Food and beverage	—	—	109,266	—	109,266
Entertainment, retail and other	—	—	76,716	—	76,716
<b>Gross revenues</b>	<b>—</b>	<b>—</b>	<b>513,772</b>	<b>—</b>	<b>513,772</b>
Less promotional allowances	—	—	(61,203)	—	(61,203)
<b>Net revenues</b>	<b>—</b>	<b>—</b>	<b>452,569</b>	<b>—</b>	<b>452,569</b>
<b>Operating costs and expenses:</b>					
Casino	—	—	95,668	—	95,668
Rooms	—	—	27,900	—	27,900
Food and beverage	—	—	76,184	—	76,184
Entertainment, retail and other	—	—	48,966	—	48,966
General and administrative	8,465	4	67,358	—	75,827
Provision for doubtful accounts	(80)	—	10,722	—	10,642
Pre-opening costs	9,387	—	79,229	—	88,616
Depreciation and amortization	59	—	67,446	—	67,505
Property charges and other	114	—	6,047	—	6,161
<b>Total operating costs and expenses</b>	<b>17,945</b>	<b>4</b>	<b>479,520</b>	<b>—</b>	<b>497,469</b>
Equity in income/(loss) from unconsolidated affiliates	(88,670)	—	714	88,670	714
<b>Operating income/(loss)</b>	<b>(106,615)</b>	<b>(4)</b>	<b>(26,237)</b>	<b>88,670</b>	<b>(44,186)</b>
<b>Other income/(expense):</b>					
Interest income	15,722	264	14,692	(10,046)	20,632
Interest expense, net	(7,371)	—	(66,100)	10,046	(63,425)
Management fees/Royalties	11,285	—	(11,285)	—	—
<b>Other income (expense), net</b>	<b>19,636</b>	<b>264</b>	<b>(62,693)</b>	<b>—</b>	<b>(42,793)</b>
<b>Net income/(loss)</b>	<b>\$ (86,979)</b>	<b>\$ 260</b>	<b>\$ (88,930)</b>	<b>\$ 88,670</b>	<b>\$ (86,979)</b>



**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION**  
**NINE MONTHS ENDED SEPTEMBER 30, 2004**  
(amounts in thousands)  
(unaudited)

	<u>Parent</u>	<u>Convertible Debentures Guarantor</u>	<u>Non- guarantor Subsidiaries</u>	<u>Eliminating Entries</u>	<u>Total</u>
<b>Operating revenues:</b>					
Casino	\$ —	\$ —	\$ —	\$ —	\$ —
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	218	(23)	195
	<u>—</u>	<u>—</u>	<u>218</u>	<u>(23)</u>	<u>195</u>
Gross revenues	—	—	218	(23)	195
Less promotional allowances	—	—	—	—	—
	<u>—</u>	<u>—</u>	<u>218</u>	<u>(23)</u>	<u>195</u>
Net revenues	—	—	218	(23)	195
<b>Operating costs and expenses:</b>					
Casino	—	—	—	—	—
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	84	(16)	68
General and administrative	3	—	4,836	(4,542)	297
Provision for doubtful accounts	—	—	—	—	—
Pre-opening costs	16,515	4	35,989	35	52,543
Depreciation and amortization	58	—	3,669	—	3,727
Property charges and other	—	—	1,300	—	1,300
	<u>16,576</u>	<u>4</u>	<u>45,878</u>	<u>(4,523)</u>	<u>57,935</u>
Equity in income/(loss) from unconsolidated affiliates	(69,138)	—	3,995	65,143	—
	<u>(85,714)</u>	<u>(4)</u>	<u>(41,665)</u>	<u>69,643</u>	<u>(57,740)</u>
<b>Other income/(expense):</b>					
Interest income	3,342	335	1,984	(686)	4,975
Interest expense, net	—	—	(1,219)	686	(533)
Loss on early extinguishment of debt	—	—	(25,628)	—	(25,628)
Management fees and royalties	4,500	—	—	(4,500)	—
	<u>7,842</u>	<u>335</u>	<u>(24,863)</u>	<u>(4,500)</u>	<u>(21,186)</u>
Minority interest	—	—	1,054	—	1,054
	<u>—</u>	<u>—</u>	<u>1,054</u>	<u>—</u>	<u>1,054</u>
Net income/(loss)	<u>\$ (77,872)</u>	<u>\$ 331</u>	<u>\$ (65,474)</u>	<u>\$ 65,143</u>	<u>\$ (77,872)</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION**  
**NINE MONTHS ENDED SEPTEMBER 30, 2005**  
(amounts in thousands)  
(unaudited)

	<u>Parent</u>	<u>Convertible Debentures Guarantor</u>	<u>Non- guarantor Subsidiaries</u>	<u>Eliminating Entries</u>	<u>Total</u>
<b>Cash flows from operating activities:</b>					
Net loss accumulated during					
Net income/(loss)	\$ (86,979)	\$ 260	\$ (88,930)	\$ 88,670	\$ (86,979)
Adjustments to reconcile net income/(loss) to net cash provided (used in) operating activities:					
Depreciation and amortization	59	—	67,446	—	67,505
Amortization of deferred compensation	3,665	—	—	—	3,665
Amortization of deferred financing costs	538	—	5,799	—	6,337
Provision for doubtful accounts	—	—	10,642	—	10,642
Property charges and other	114	—	6,047	—	6,161
Equity in unconsolidated affiliates	88,670	—	(714)	(88,670)	(714)
Increase (decrease) in cash from changes in:					
Receivables, net	—	—	(65,870)	—	(65,870)
Inventories and prepaid expenses	160	—	(49,734)	—	(49,574)
Accounts payable and accrued expenses	(4,323)	—	127,836	—	123,513
Net cash provided by (used in) operating activities	<u>1,904</u>	<u>260</u>	<u>12,522</u>	<u>—</u>	<u>14,686</u>
<b>Cash flows from investing activities:</b>					
Capital expenditures, net of construction payables	—	—	(739,850)	—	(739,850)
Restricted cash and investments	(132)	14,736	490,746	—	505,350
Investment in unconsolidated affiliates	—	—	(3,500)	—	(3,500)
Other assets	(2,529)	—	(21,004)	—	(23,533)
Intercompany balances	5,919	(14,996)	9,077	—	—
Proceeds from sale of equipment	86	—	23	—	109
Net cash provided by (used in) investing activities	<u>3,344</u>	<u>(260)</u>	<u>(264,508)</u>	<u>—</u>	<u>(261,424)</u>
<b>Cash flows from financing activities:</b>					
Exercise of stock options	1,772	—	—	—	1,772
Proceeds from issuance of long-term debt	—	—	517,186	—	517,186
Principal payments of long-term debt	—	—	(19,534)	—	(19,534)
Payments on long-term land concession obligation	—	—	(8,921)	—	(8,921)
Deferred financing costs	—	—	(21,146)	—	(21,146)
Net cash provided by (used in) financing activities	<u>1,772</u>	<u>—</u>	<u>467,585</u>	<u>—</u>	<u>469,357</u>
<b>Cash and cash equivalents:</b>					
Increase in cash and cash equivalents	7,020	—	215,599	—	222,619
Balance, beginning of period	302,262	—	27,999	—	330,261
Balance, end of period	<u>\$ 309,282</u>	<u>\$ —</u>	<u>\$ 243,598</u>	<u>\$ —</u>	<u>\$ 552,880</u>

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION**  
**NINE MONTHS ENDED SEPTEMBER 30, 2004**  
(amounts in thousands)  
(unaudited)

	<u>Parent</u>	<u>Convertible Debentures Guarantor</u>	<u>Non- guarantor Subsidiaries</u>	<u>Eliminating Entries</u>	<u>Total</u>
<b>Cash flows from operating activities:</b>					
Net income/(loss)	\$ (77,872)	\$ 331	\$ (65,474)	\$ 65,143	\$ (77,872)
Adjustments to reconcile net income/(loss) to net cash provided (used in) operating activities:					
Depreciation and amortization	58	—	3,669	—	3,727
Minority interest	—	—	(1,054)	—	(1,054)
Amortization and write-off of deferred compensation	2,738	—	—	—	2,738
Amortization of deferred financing costs	542	—	19,533	—	20,075
Property charges and other	—	—	1,300	—	1,300
Equity in unconsolidated affiliates	69,138	—	(3,995)	(65,143)	—
Incidental operations	—	—	3,438	—	3,438
Increase (decrease) in cash from changes in:					
Receivables, net	36	—	(103)	—	(67)
Inventories and prepaid expenses	50	—	(1,454)	—	(1,404)
Accounts payable and accrued expenses	(1,991)	—	16,194	—	14,203
<b>Net cash provided by (used in) operating activities</b>	<b>(7,301)</b>	<b>331</b>	<b>(27,946)</b>	<b>—</b>	<b>(34,916)</b>
<b>Cash flows from investing activities:</b>					
Capital expenditures, net of construction payables	(17)	—	(731,719)	—	(731,736)
Restricted cash and investments	—	14,669	(8,404)	—	6,265
Other assets	(200)	—	(21,978)	—	(22,178)
Intercompany balances	(413,290)	(15,000)	428,290	—	—
Proceeds from sale of equipment	—	—	33,868	—	33,868
<b>Net cash used in investing activities</b>	<b>(413,507)</b>	<b>(331)</b>	<b>(299,943)</b>	<b>—</b>	<b>(713,781)</b>
<b>Cash flows from financing activities:</b>					
Proceeds from issuance of common stock	271,250	—	—	—	271,250
Third party fees	(3,283)	—	—	—	(3,283)
Deferred financing costs	(105)	—	(10,023)	—	(10,128)
Exercise of stock options	213	—	—	—	213
Proceeds from issuance of long-term debt	—	—	480,955	—	480,955
Principal payments of long-term debt	—	—	(122,616)	—	(122,616)
<b>Net cash provided by financing activities</b>	<b>268,075</b>	<b>—</b>	<b>348,316</b>	<b>—</b>	<b>616,391</b>
<b>Cash and cash equivalents:</b>					
Increase (decrease) in cash and cash equivalents	(152,733)	—	20,427	—	(132,306)
Balance, beginning of period	328,745	—	12,807	—	341,552
<b>Balance, end of period</b>	<b>\$ 176,012</b>	<b>\$ —</b>	<b>\$ 33,234</b>	<b>\$ —</b>	<b>\$ 209,246</b>

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

The following discussion should be read in conjunction with, and is qualified in its entirety by, the consolidated financial statements and the condensed notes thereto included elsewhere in this Quarterly Report on Form 10-Q.

### Forward-Looking Statements

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements. Certain information included in this Quarterly Report on Form 10-Q contains statements that are forward-looking, including, but not limited to, statements relating to our business strategy and development activities as well as other capital spending, financing sources, the effects of regulation (including gaming and tax regulations), expectations concerning future operations, margins, profitability and competition. Any statements contained in this report that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the generality of the foregoing, in some cases you can identify forward-looking statements by terminology such as "may," "will," "should," "would," "could," "believe," "expect," "anticipate," "estimate," "intend," "plan," "continue" or the negative of these terms or other comparable terminology. Such forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by us. These risks and uncertainties include, but are not limited to, conditions precedent to funding under the agreement governing the disbursement of the proceeds of certain of our debt and equity offerings and borrowings under our credit facilities, competition in the casino/hotel and resort industries, completion of our Wynn Macau casino resort on time and within budget, our intention to fund a substantial portion of the development and construction costs of Encore at Wynn Las Vegas with anticipated cash flows generated at our Wynn Las Vegas casino resort, doing business in foreign locations such as Macau (including the risks associated with Macau's developing gaming regulatory framework), new development and construction activities of competitors, our lack of operating history, our dependence on Stephen A. Wynn and existing management, our dependence on a limited number of properties for all of our cash flow, leverage and debt service (including sensitivity to fluctuations in interest rates), levels of travel, leisure and casino spending, general domestic or international economic conditions, pending or future legal proceedings, changes in federal or state tax laws or the administration of such laws, changes in gaming laws or regulations (including the legalization of gaming in certain jurisdictions), applications for licenses and approvals under applicable jurisdictional laws and regulations (including gaming laws and regulations), the impact that an outbreak of an infectious disease, such as avian flu, or the impact of a natural disaster, such as the tsunami which struck southeast Asia in December 2004, may have on the travel and leisure industry, and the consequences of the war in Iraq and other military conflicts in the Middle East and any future security alerts and/or terrorist attacks. Further information on potential factors that could affect our financial condition, results of operations and business are included in our filings with the Securities and Exchange Commission ("SEC"). You should not place undue reliance on any forward-looking statements, which are based only on information currently available to us. We undertake no obligation to publicly release any revisions to such forward-looking statements to reflect events or circumstances after the date of this report.

### Overview

We are a developer, owner and operator of casino resorts. Wynn Las Vegas, our first casino resort in Las Vegas, Nevada, opened on April 28, 2005. Until the opening of Wynn Las Vegas, we were solely a development stage company.

Wynn Las Vegas occupies approximately 217 acres of land fronting the Las Vegas Strip and utilizes approximately 18 additional acres across Sands Avenue for employee parking. The resort offers 2,716 rooms and suites, an approximately 111,000 square foot casino, 22 food and beverage outlets, an 18-hole golf course, approximately 223,000 square feet of meeting space, a Ferrari and Maserati automobile dealership and approximately 76,000 square feet of retail space. Efforts to further enhance and refine Wynn Las Vegas in response to market demands and customer preferences are ongoing.

We are developing and constructing Wynn Macau, a destination casino resort in the Macau Special Administrative Region of the Peoples' Republic of China ("Macau"). Wynn Macau will open in two phases. The first phase will utilize approximately 11 of 16 available acres and includes 600 hotel rooms and suites, approximately 100,000 square feet of casino gaming space, seven restaurants, approximately 26,000 square feet of retail space, a spa, a salon, entertainment lounges and meeting facilities. The second phase, which is being built on the remaining five acres, will be fully integrated into the first phase of the resort and include an additional 92,000 square feet of casino space, a restaurant, a theater, additional retail venues and a front feature attraction. Design and construction is progressing on schedule and within budget. We expect to open the first phase of Wynn Macau in the third quarter of 2006, and the expansion by the third quarter of 2007. We recently completed a refinancing that will enable us to complete both phases of this project. Because Wynn Macau utilizes all of our currently available land, we are actively seeking additional land in Macau for future development, including land in the area commonly known as the Cotai Strip.

As part of our overall master plan, we continue to evaluate the previously announced expansion of Wynn Las Vegas, known as "Encore at Wynn Las Vegas" or "Encore." As a result, we have refined Encore to currently feature an approximately 2,000-room hotel tower fully integrated with Wynn Las Vegas, consisting of approximately 150 suites and approximately 1,850 guest rooms as well as additional casino gaming and entertainment venues, restaurants, nightclubs, swimming pools, a spa and salon, convention and meeting space, and retail outlets. We expect Encore to open in the second half of 2008. As part of Encore, we are developing an additional theater to be called "The Grail Theater" and to be constructed adjacent to our existing Wynn and Broadway theaters at Wynn Las Vegas for the Tony Award winning musical, "Monty Python's Spamalot." The Grail Theater will include a retail store, food and beverage facilities and a themed "Spamalot Environment." The construction cost and completion date for the theater, and the opening date for the production, have not yet been determined.

In February 2005, we submitted a design concept to the government of Singapore for the development of an integrated resort, including a casino, in Singapore and have been notified by the Singapore Tourism Board that we are qualified to participate in the Request for Proposal for the integrated resort that is expected to be issued by the Singapore Government in November 2005.

### **Results of Operations**

We offer gaming, hotel accommodations, dining, entertainment, retail shopping, convention services and other amenities at Wynn Las Vegas. The quality of the non-gaming amenities combined with our goal of providing an unparalleled total resort experience to our guests is expected to drive a premium in our non-gaming revenues. Consequently, we believe that revenues from our gaming activities will comprise a lower percentage of our total revenues than for many of our competitors.

We are currently reliant solely upon the operations of Wynn Las Vegas for our operating cash flow. Concentration of our cash flow in one property exposes us to certain risks that competitors, whose operations are more diversified, may be better able to control. In addition to the concentration of operations in a single property, many of our customers are high-end gaming customers who wager on credit, thus exposing us to increased credit risk. High-end gaming also increases the potential for variability in our results.

We opened Wynn Las Vegas on April 28, 2005 and operated the casino resort for 156 days during the nine-month period ended September 30, 2005. Prior to opening Wynn Las Vegas, we had not commenced operations, nor generated any significant revenues. Because the quarter ended September 30, 2005 is our first full quarter of operations (except for the *Avenue Q* show in our Broadway Theater, which opened in late August 2005), we believe that our results of operations for the nine month periods ended September 30, 2005 and 2004 are not indicative of future results.

Our net loss for the three months ended September 30, 2005 was \$14.2 million, which represents a \$8.5 million or 38% decrease from the net loss of \$22.7 million for the quarter ended September 30, 2004. Our net

loss for the nine months ended September 30, 2005 was \$87.0 million, which represents a \$9.1 million or 12% increase from the net loss of \$77.9 million for the nine months ended September 30, 2004.

We expect that our preopening expenses, which were a significant contributor to the net losses incurred for the nine months ended September 30, 2005 and 2004, will decrease in the near term. We will no longer incur preopening expenses associated with Wynn Las Vegas (excluding Encore). However, preopening expenses relating to Encore will increase as the scope and plans for Encore are completed. In addition, preopening expenses associated with Wynn Macau will increase as the construction of Wynn Macau progresses and as staffing increases prior to opening.

*Financial results for the three and nine months ended September 30, 2005 compared to the three and nine months ended September 30, 2004.*

The following table sets forth our financial results for the periods indicated by segment:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2005	2004	2005	2004
<b>Revenues (1)</b>				
Casino	\$ 123,049	\$ —	\$ 221,764	\$ —
Rooms	61,393	—	106,026	—
Food and beverage	61,211	—	109,266	—
Entertainment, retail and other	42,057	1	76,716	195
	<u>287,710</u>	<u>1</u>	<u>513,772</u>	<u>195</u>
Gross revenues	287,710	1	513,772	195
Less promotional allowances	(36,269)	—	(61,203)	—
	<u>251,441</u>	<u>\$ 1</u>	<u>\$ 452,569</u>	<u>\$ 195</u>
<b>Adjusted Property EBITDA (1, 2)</b>	\$ 73,205	\$ 3	\$ 131,940	\$ (170)
<b>Other operating costs and expenses</b>				
Preopening expenses:				
Wynn Las Vegas	(1,541)	(11,356)	(67,427)	(26,612)
Wynn Macau	(5,606)	(2,403)	(12,205)	(6,550)
Corporate and other	—	(7,766)	(8,984)	(19,381)
Depreciation and amortization:				
Wynn Las Vegas	(35,614)	(870)	(61,182)	(2,291)
Wynn Macau	(1,526)	(357)	(4,460)	(357)
Corporate and other	(746)	(677)	(1,863)	(1,079)
Property charges and other:				
Wynn Las Vegas	(5,939)	—	(5,939)	—
Wynn Macau	—	—	—	—
Corporate and other	(113)	(788)	(222)	(1,300)
Corporate expenses and other	(8,842)	—	(13,844)	—
	<u>(59,927)</u>	<u>(24,217)</u>	<u>(176,126)</u>	<u>(57,570)</u>
<b>Operating income (loss)</b>	13,278	(24,214)	(44,186)	(57,740)
<b>Other non-operating costs and expenses</b>				
Interest income	7,467	1,844	20,632	4,975
Interest expense, net	(34,935)	(336)	(63,425)	(533)
Loss on early extinguishment of debt	—	—	—	(25,628)
	<u>(27,468)</u>	<u>1,508</u>	<u>(42,793)</u>	<u>(21,186)</u>
<b>Minority interest</b>	—	—	—	1,054
<b>Net loss</b>	<u>\$ (14,190)</u>	<u>\$ (22,706)</u>	<u>\$ (86,979)</u>	<u>\$ (77,872)</u>

(1) Wynn Macau is currently in the development stage and therefore has no revenues or adjusted EBITDA.

(2) “Adjusted Property EBITDA” is earnings before interest, taxes, depreciation and amortization, pre-opening and corporate expenses, property charges and other, and other non operating income and expenses. Management uses Adjusted Property EBITDA as the primary measure of the operating performance of its segments - Wynn Las Vegas and Wynn Macau - and to compare the operating performance of its properties with those of its competitors. Adjusted Property EBITDA should not be construed as an alternative to operating income, as an indicator of the Company’s performance, as an alternative to cash flows from operating activities, as a measure of liquidity, or as any other measure determined in accordance with generally accepted accounting principles in the United States. The Company has significant uses of cash flows, including capital expenditures, propening costs interest payments and debt principal repayments, which are not reflected in Adjusted Property EBITDA. Also, other companies may calculate Adjusted Property EBITDA in a different manner than the Company.

The three months ended September 30, 2005 and the 156 days of operations during the nine months ended September 30, 2005 have no comparisons to prior periods as we were solely a development stage company prior to the opening of Wynn Las Vegas on April 28, 2005.

#### *Revenues*

Wynn Las Vegas’ net gaming revenues were \$123.0 million for the three months ended September 30, 2005, and \$221.8 million for the 156 days of operations during the nine months ended September 30, 2005.

During both the three and the nine month periods ended September 30, 2005, the average table games win percentage (before discounts) was within the expected range of 18% to 22%, and the slot win percentage was within the expected range of between 5% to 6% of handle.

For the three months ended September 30, 2005, Wynn Las Vegas room revenues were approximately \$61.4 million. Average daily rate (“ADR”) and occupancy for that period were \$264 and 93.0%, respectively, generating revenues per available room (“REVPAR”) of \$246. Other non-gaming revenues included food and beverage revenues of approximately \$61.2 million, retail revenues of approximately \$16.9 million, entertainment revenues of approximately \$14.0 million, and other revenues including from the spa and salon, of approximately \$11.2 million.

For the 156 days of operations during the nine months ended September 30, 2005, Wynn Las Vegas room revenues were approximately \$106.0 million. ADR and occupancy for that period were \$272 and 91.8%, respectively, generating REVPAR of \$250. Other non-gaming revenues included food and beverage revenues of approximately \$109.3 million, retail revenues of approximately \$33.8 million, entertainment revenues of approximately \$23.6 million, and other revenues including from the spa and salon, of approximately \$19.3 million.

#### *Adjusted Property EBITDA*

Wynn Las Vegas’ adjusted EBITDA was approximately \$73.2 million for the three months ended September 30, 2005 and was approximately \$131.9 million for the 156 days of operations during the nine months ended September 30, 2005. Included in adjusted EBITDA are direct departmental expenses not present in the corresponding 2004 periods. During the three months ended September 30, 2005, these departmental expenses include casino expenses of \$53.4 million, rooms expenses of \$16.1 million, food and beverage expenses of \$42.5 million, and entertainment, retail and other expenses of \$28.7 million. During the 156 days of operations during the nine months ended September 30, 2005, these departmental expenses include casino expenses of \$95.7 million, rooms expenses of \$27.9 million, food and beverage expenses of \$76.2 million, and entertainment, retail and other expenses of \$49.0 million. Operating efficiencies continue to improve, as the number of full-time equivalent employees has decreased from an average of 9,600 in the quarter ending June 30, 2005, to an average of 8,200 in the quarter ending September 30, 2005.

### *Preopening expenses*

Wynn Las Vegas' preopening expenses decreased by \$9.8 million or 86% for the three months ended September 30, 2005 compared to the three months ended September 2004, as a result of Wynn Las Vegas opening in the second quarter of 2005. Preopening expenses for Wynn Las Vegas ceased upon opening the hotel; however, preopening expenses relating to Encore are included in the Wynn Las Vegas segment. During the nine months ended September 30, 2005 compared to September 30, 2004, however, preopening expenses increased by \$40.8 million or 153% due primarily to a substantial increase in staffing required in the period immediately before the opening of Wynn Las Vegas.

Wynn Macau's preopening expenses increased by \$3.2 million and \$5.7 million, or 133% and 86%, respectively, for the three and nine month periods in 2005 compared to 2004, due primarily to the increased preopening activity commensurate with the progress of the Wynn Macau construction project. We expect that Wynn Macau's preopening expenses will continue to increase in future periods as Wynn Macau's construction and development continues, similar to the trend experienced with Wynn Las Vegas.

Corporate and other preopening expenses were zero and \$9.0 million for the three and nine month periods ended September 30, 2005, respectively. After Wynn Las Vegas opened on April 28, 2005, corporate expenses were charged to general and administrative expense instead of preopening expenses. Consequently, during the nine-month period ended September 30, 2005, preopening expenses decreased by \$10.4 million or 54% compared to the same period in 2004. Corporate staffing did not increase significantly immediately prior to and after opening Wynn Las Vegas; therefore the decrease represents the difference in having a 117-day preopening period in 2005 compared to a 274-day preopening period in 2004.

### *Depreciation and amortization*

Wynn Las Vegas' depreciation and amortization increased by \$34.7 million and \$58.9 million for the three and nine-month periods ended September 30, 2005, compared to the same periods in 2004, as a result of the opening of Wynn Las Vegas. During construction of Wynn Las Vegas, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations were capitalized. Once Wynn Las Vegas opened and these assets were placed into service, we began recognizing the associated depreciation expenses. The depreciation expenses will continue throughout the estimated useful lives of these assets.

Wynn Macau's depreciation and amortization expenses also increased by \$1.2 million and \$4.1 million, respectively for the three and nine month periods in 2005, compared to 2004, due primarily to the amortization of the capitalized intangible assets associated with the Macau casino and land lease concessions. In September 2004, we purchased the 17.5% minority interest in Wynn Macau for 1,333,333 shares of Wynn Resorts, Limited ("Wynn Resorts") common stock. We allocated \$42.3 million of the value of the shares to the casino concession, which is charged to amortization expense over the concession's term through June 2022. We also obtained a land lease concession during 2004, which we charge to depreciation and amortization over the 25-year lease term. Other than these charges to depreciation and amortization, Wynn Macau's depreciation expenses will remain relatively insignificant until the resort opens and its assets are placed into service. See "Critical Accounting Policies and Estimates," below.

### *Property charges and other*

We continually evaluate market demand and customer preferences for our amenities and service offerings. Accordingly, we began to make enhancements and refinements to Wynn Las Vegas in the third quarter of 2005. Included in Wynn Las Vegas' property charges and other for the three and nine months ended September 30, 2005 is approximately \$2.9 million of costs relating to assets replaced or refurbished to enhance Wynn Las Vegas. Also included in Wynn Las Vegas property charges for the three and nine months ended September 30, 2005 is approximately \$3.0 million of expense relating to the abandonment of improvements made to the



temporary offices utilized during part of the construction and opening Wynn Las Vegas. There were no comparable Wynn Las Vegas property charges incurred during 2004.

#### *Corporate expenses and other*

Corporate expenses reflect costs such as salaries and other general and administrative expenses that are not allocated to our Wynn Las Vegas or Wynn Macau segments. Prior to opening Wynn Las Vegas, corporate expenses were reported as preopening expenses. Consequently the corporate expenses of approximately \$8.5 million and \$13.5 million, respectively, represent those unallocated expenses incurred during the three months and the 156 days of operations during the nine months ending September 30, 2005.

#### *Other non-operating costs and expenses*

Interest income increased by \$5.6 million and \$15.7 million, respectively, for the three and nine months ended September 30, 2005, compared to 2004, due primarily to the significant increase in the amount of average cash balances available and invested from the remaining proceeds of our 6-5/8% First Mortgage Notes due 2014 (the "First Mortgage Notes") and borrowings under the Wynn Las Vegas, LLC credit facilities that were invested during the three and nine months ended September 30, 2005, compared to the same periods in 2004.

Interest expense, net, increased by \$34.6 million and \$62.9 million for the three and nine months ended September 30, 2005, compared to 2004, due to the significant decrease in the amount of interest capitalized. During the construction of Wynn Las Vegas, a significant portion of the interest costs were capitalized. Upon opening Wynn Las Vegas, a substantial portion of our assets previously under construction were placed into service, and the majority of our interest cost was thereafter expensed.

Also, during 2004, we recorded a \$25.6 million loss on the early retirement of \$122.4 million of the original \$370.0 million of 12% Second Mortgage Notes due 2010 (the "Second Mortgage Notes"). This loss resulted from the write-off of associated deferred financing costs and original issue discount, as well as a 12% redemption premium, on the Second Mortgage Notes. Most of the remaining principal amount of the Second Mortgage Notes have since been repurchased.

#### *Comprehensive Income*

Comprehensive income of approximately \$6.1 million and \$8.0 million, respectively for the three and nine month periods ended September 30, 2005 increased from the comprehensive losses of \$8.9 million and \$2.9 million, respectively, for the three and nine months ended September 30, 2004, due to the changes in the fair value of our interest rate swaps outstanding during each of those periods. We seek to manage the interest rate risk associated with our variable rate borrowings, through balancing fixed-rate and variable-rate borrowings and the use of derivative financial instruments. Our interest rate swaps have been designated by us as cash flow hedges in accordance with prevailing accounting regulations. As of September 30, 2005 and December 31, 2004, we recorded approximately \$8.6 million and \$583,000 in other assets, respectively, to reflect their fair value. These fair value amounts approximate the amount we would pay or receive if these contracts were settled at these 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. Therefore, the fair value is subject to significant estimation and a high degree of variability of fluctuation between periods.

### **Liquidity and Capital Resources**

#### *Cash flows from operations*

Our operating cash flows are primarily affected by our operating income, interest paid and non-cash charges included in operating income. We believe that cash flows from operations for the nine months ended

September 30, 2005, are not indicative of future results, primarily because of the preopening expenses that were incurred in connection with the opening of Wynn Las Vegas and included in the nine months ended September 30, 2005 and 2004. Cash provided by operations for the three and nine months ended September 30, 2005 was approximately \$32.2 million and \$14.7 million, respectively, and cash used in operations for the three and nine months ended September 30, 2004 was approximately \$10.2 million and \$34.9 million, respectively.

#### *Capital Resources*

We have financed each of our casino resort projects separately at the subsidiaries that own and operate, or will own and operate, them. Although Wynn Las Vegas opened on April 28, 2005, consistent with large-scale construction projects, final accounting for and payment of the total project costs have not yet been completed. Determination of the final project cost is subject to a complete accounting, which is expected to occur in the fourth quarter of 2005. We also are constructing Wynn Macau and continue to develop plans for Encore.

At September 30, 2005, we also had approximately \$989.9 million of cash and cash equivalents. Although Wynn Resorts is not a guarantor of Wynn Las Vegas, LLC's or Wynn Macau, S.A.'s debt and is not obligated to apply any of its funds to either Wynn Las Vegas or Wynn Macau, it has approximately \$309.3 million in cash that can be made available for those projects or used for general corporate purposes. In addition, Wynn Las Vegas has \$206.6 million in cash available for its unrestricted use, and Wynn Macau has approximately \$37.0 million in cash available for its unrestricted use.

At September 30, 2005, we had approximately \$437.0 million in restricted cash and investments from the proceeds of our debt and equity financings. The substantial majority of this amount is restricted for the final project costs of Wynn Las Vegas, the development and construction of Encore, the ongoing construction of Wynn Macau, and certain other specific costs in accordance with agreements governing our debt facilities. Approximately \$372.1 million, including \$80.0 million restricted for a Wynn Las Vegas liquidity reserve and completion guarantee (\$30.0 million of which must be retained for Encore for a completion guarantee if the budget, plans and specifications for Encore (the "Encore Budget, Plans and Specifications") are approved), is restricted for the remaining costs of Wynn Las Vegas and the construction, development and preopening expenses of Encore. Approximately \$49.0 million is restricted for the ongoing development, construction and preopening expenses of Wynn Macau. Approximately \$15.0 million is restricted for the two semi-annual interest payments, due on January 15, 2006 and July 15, 2006, on our 6% Convertible Subordinated Debentures due 2015. In addition there is approximately \$900,000 restricted for certain sales tax and other payments. Cash equivalents are comprised of investments in overnight money market funds. Restricted investments are kept in money market funds or relatively short-term, government-backed, marketable debt securities as required by agreements governing the Company's debt facilities.

#### *Construction and Development*

##### *Wynn Las Vegas*

Construction of Wynn Las Vegas was virtually complete by the opening on April 28, 2005. Certain minor construction, consisting primarily of punchlist items and the Broadway Theater, continued subsequent to opening. As of September 30, 2005, the Broadway Theater was complete and the punchlist had been virtually completed. However, a final accounting has not yet been made. Based on information available to us at September 30, 2005, the total cost of Wynn Las Vegas is expected to be in the range of \$2.72 to \$2.75 billion. This includes the cost of acquiring approximately 235 acres of land, costs of design and construction, capitalized interest, pre-opening expenses, financing fees and construction contingencies, but excluding the incremental cost for Encore (other than the land for Encore). Through September 30, 2005, we had funded approximately \$2.7 billion of Wynn Las Vegas project costs primarily from a combination of contributed capital, proceeds from sales of our common stock, proceeds from the issuance of the Second Mortgage Notes which were discharged in December 2004, proceeds from the issuance of First Mortgage Notes, and a portion of the borrowings under our credit facilities.

We have sufficient cash balances, including our completion guarantee and liquidity reserve, as well as availability under our credit facilities, to pay for all of the costs of the Wynn Las Vegas project.

Since opening Wynn Las Vegas, we have been evaluating customer reception to the property and our service offerings and in response have commenced certain enhancements and refinements to Wynn Las Vegas. As a result, we have begun to incur capital expenditures relating to these enhancements and refinements. Under our credit facilities, Wynn Las Vegas, LLC is permitted to make a maximum of \$40.0 million of capital expenditures in 2005, and up to \$80.0 million of capital expenditures in 2006; provided that such limitations shall be increased by the amount of any capital contributions made by Wynn Resorts, Limited and applied to such capital expenditures.

#### *Encore at Wynn Las Vegas*

Due to the strong demand for Wynn Las Vegas, the continued strength in the Las Vegas market, and our desire to maximize the potential of our substantial real estate assets, we continue to evaluate Encore as part of our overall master plan. As a result, we have refined Encore to currently feature an approximately 2,000-room hotel tower fully integrated with Wynn Las Vegas, consisting of approximately 150 suites and approximately 1,850 guest rooms, as well as additional entertainment venues, restaurants, nightclubs, swimming pools, casino gaming, a spa and salon, convention and meeting space, and retail outlets. We expect Encore to open in the second half of 2008.

In June 2005, we received the necessary consents from the holders of our First Mortgage Notes and our lenders to extend the deadline for approval of the Encore Budget, Plans and Specifications from June 30, 2005 to December 31, 2005 (which may be further extended to March 31, 2006 upon receiving further approvals), and to extend the outside date for completion of Encore from March 31, 2008 to December 31, 2008.

Although the budget has not been finalized and must be approved by our Board of Directors, we expect that the remaining proceeds from the First Mortgage Notes, together with availability under our existing credit facilities and cash flow from the operations of Wynn Las Vegas, will be sufficient to pay for expenditures of up to \$1.4 billion on the Encore project without incurring additional debt or receiving additional capital contributions from Wynn Resorts. The availability of notes proceeds and funds under the credit agreement in excess of \$100.0 million is subject to approval of the Encore Budget, Plans and Specifications by a majority of arrangers or lenders. Once the Company has finalized the scope and plans for Encore, it will seek the necessary approvals from its lenders.

#### *Wynn Macau*

Wynn Macau is under construction and will open in two phases. The first phase will utilize approximately 11 of the 16 available acres and includes 600 hotel rooms and suites, approximately 100,000 square feet of casino gaming space, seven restaurants, approximately 26,000 square feet of retail space, a spa, a salon, and entertainment lounges and meeting facilities. In September 2005, Wynn Macau, S.A. completed a refinancing of the first phase of the resort, as well as a financing for the second phase, which will include an additional 92,000 square feet of casino space, a restaurant, a theater, additional retail venues and a front feature attraction. The second phase will be built on the remaining five acres of the Wynn Macau site and will be fully integrated into the first phase of the resort. The total project budget for Wynn Macau is approximately \$1.1 billion, including contingencies, but excluding up to \$20.5 million of post-opening land concession payments anticipated to be funded from operating cash flows. Wynn Macau is expected to open in the third quarter of 2006, with the second phase expected to open by the third quarter of 2007.

We commenced construction of Wynn Macau in June 2004 and amended the construction contract to include the second phase in September 2005. Under the amended and restated construction contract, the general contractor is responsible for both the construction and design of the project (other than certain limited portions to

be designed by one of our subsidiaries) based on an existing scope of work and design specifications for both the first phase and the expansion as provided by us, for a guaranteed maximum price of approximately \$457.2 million (including the contractors' fee and contingency).

Design and construction is progressing on schedule and within budget. Construction milestones in the various project sections since groundbreaking include the following:

Phase I

*Highrise Tower:*

- The building superstructure is complete;
- The placement of roof steel is nearly complete;
- The curtain wall is nearly complete; and
- Electrical and mechanical services, sub-framing and other activities are in progress.

*Lowrise Podium:*

- Pile caps and the water feature ground floor slab are nearly complete, as is the swimming pool base slab; and
- The superstructure is progressing, with many areas over 80% complete.

Phase II

- Work relating to excavation and footings has begun and is progressing.

Through September 30, 2005, Wynn Macau, S.A. had incurred approximately \$308.6 million of the total \$1.1 billion of budgeted project costs. Total budgeted project costs include construction and design costs (including construction contingencies) of approximately \$685.0 million, land acquisition costs of approximately \$49.0 million, and capitalized interest, preopening expenses, financing fees and other costs totaling in the aggregate approximately \$351.6 million. These costs have been, and will continue to be, funded from the previously funded \$230.0 million base equity loans from Wynn Resorts and \$80.0 million borrowed under Wynn Las Vegas, LLC's revolving credit agreement and loaned as subordinated debt, as well as Wynn Macau, S.A.'s senior secured credit facility. As of September 30, 2005, project costs still to be incurred totaled approximately \$777.0 million.

*Financing Activity*

*Wynn Las Vegas and Encore*

On December 14, 2004, we completed a series of transactions that refinanced Wynn Las Vegas, LLC's debt structure and raised additional funds we anticipate will be needed to develop Encore. The closing of the refinancing was the culmination of a series of transactions designed to facilitate the development of Encore, lower our overall cost of borrowing, and achieve an enhanced degree of financial maturity. In addition, it provided us with the financial flexibility to continue to develop our real estate assets.

We borrowed the remaining \$373.4 million available under the delay draw term loan facility during the first quarter of 2005, as was required under the agreements governing the credit facilities. The total \$400 million of proceeds of the delay draw term loan facility are being used as a portion of the total financing of Wynn Las Vegas.

As originally intended, on August 15, 2005, we borrowed \$80.0 million of the \$600.0 million available under the Wynn Las Vegas, LLC revolving credit facility to provide a portion of the financing for Wynn Macau. We repaid this borrowing on October 25, 2005. The amount that was repaid may be reborrowed.

The costs of Wynn Las Vegas are paid for with funds from the following sources and in the following order of priority:

- First by using any proceeds from the First Mortgage Notes, and the proceeds of borrowings under the credit facilities, until exhaustion of the First Mortgage Notes proceeds, with amounts funded 66.67% from notes proceeds and 33.33% from the new credit facilities;
- Second, by using proceeds of additional borrowings under our credit facilities; and
- Third, by using the funds made available to us on a gradual basis from the \$30 million available of the \$50 million completion guarantee deposit account and the \$30 million liquidity reserve account.

Through September 30, 2005, we had funded approximately \$60.7 million of costs associated with the design and predevelopment of Encore (including \$35.1 million since December 14, 2004). Until such time as the Encore Budget, Plans and Specifications have been submitted by us and approved by a majority of the arrangers or a majority of the lenders under the agreement governing the disbursement of funds for Wynn Las Vegas and Encore, we may make additional disbursements of up to \$64.9 million to pay for development costs for Encore. If the Encore Budget, Plans and Specifications are approved by December 31, 2005 (which may be further extended to March 31, 2006 upon receiving certain approvals), then we expect to fund construction of Encore with remaining proceeds of the First Mortgage Notes, borrowings under the Wynn Las Vegas, LLC credit facilities and future cash flows from the operations of Wynn Las Vegas. We will fund the costs of development and construction of Encore pursuant to the disbursement agreement, with funds utilized in the same order of priority as indicated above for Wynn Las Vegas. If the Encore Budget, Plans and Specifications are not approved by December 31, 2005 (or March 31, 2006, if further extended), then the amount available under the new credit facilities, and the amount of indebtedness that the indenture for the First Mortgage Notes will permit us to incur for this purpose, will be reduced by \$550.0 million.

We also entered into two interest rate swaps in December 2004 to hedge a portion of the underlying interest rate risk on future borrowings under the Wynn Las Vegas credit facilities. See Item 3. "Quantitative and Qualitative Disclosures About Market Risk," below.

#### *Wynn Macau*

Financing for Wynn Macau's design, development, construction and preopening expenses is provided by a combination of cash on hand in the form of base equity loans totaling \$230 million, subordinated loan financing provided from funds borrowed under the Wynn Las Vegas, LLC revolving credit facility totaling \$80 million, and a senior bank facility. On September 14, 2005, we amended the Wynn Macau, S.A. senior bank facility to expand its availability from \$397 million to \$764 million, including \$729 million of senior term loan facilities, a HK\$117 million revolving credit facility (approximately US\$15 million), and an additional term loan facility of HK\$156 million (approximately US\$20 million). As of September 30, 2005, we have not borrowed any funds under the Wynn Macau, S.A. senior bank facility.

The term loan facilities mature in September 2011, and the revolving credit facility matures in September 2007. The principal amount of the term loans is required to be repaid in quarterly installments, commencing on March 14, 2008. The term loans will bear interest at the London Interbank Offered Rate ("LIBOR") or the Hong Kong Interbank Offered Rate ("HIBOR") plus a margin of 3.0% until the opening of Wynn Macau (expected in the third quarter of 2006), at which time the interest rate will reduce to LIBOR or HIBOR plus a margin of 2.75%. The senior bank facility also provides for further reductions in the margin on the term loans if Wynn Macau, S.A. satisfies certain prescribed leverage ratio tests. Loans under the revolving credit facility will bear interest at HIBOR plus 2.5%.

Collateral for the senior bank facility consists of substantially all of the assets of Wynn Macau, S.A. Certain affiliates that own interests in Wynn Macau, S.A. either directly or indirectly through other subsidiaries, have

executed guarantees of the loans and pledged their interests in Wynn Macau, S.A. as additional security for repayment of the loans.

Wynn Macau, S.A. is permitted to borrow under the senior secured credit facilities after the base equity and subordinated funding described above has been expended by Wynn Macau, S.A. on Wynn Macau, and other conditions precedent customary for limited recourse project finance construction loans are satisfied.

In addition to the above financing sources, we have \$30.0 million of long-term restricted cash reserved as contingent equity and a \$72.0 million contingent debt facility from our lenders. We also entered into two interest rate swaps in October 2005 to hedge a portion of the underlying interest rate risk on future borrowings under the Wynn Macau, S.A. credit facilities. See Item 3. "Quantitative and Qualitative Disclosures About Market Risk," below.

#### *Other*

On May 24, 2005, we borrowed an aggregate amount of \$44.75 million under two term loans secured by a corporate aircraft. The loans mature on May 24, 2010. Principal and interest is payable quarterly, and interest is calculated at LIBOR plus a margin of 2.375%. In addition to scheduled amortization payments, we are required to prepay the loans if certain events of loss with respect to the aircraft occur. Beginning December 31, 2006, we may prepay all or any portion of the loans, subject to a minimum prepayment of \$10.0 million.

#### *Other Liquidity Matters*

Wynn Resorts is a holding company and, as a result, its ability to pay dividends is dependent on its subsidiaries' ability to provide funds to it. Restrictions imposed by Wynn Resorts subsidiaries' debt instruments significantly restrict certain key subsidiaries holding a majority of our assets, including Wynn Las Vegas, LLC and Wynn Macau, S.A., from making dividends or distributions to Wynn Resorts. Specifically, Wynn Las Vegas, LLC and certain of its subsidiaries are restricted under the indenture governing the First Mortgage Notes from making certain "restricted payments" as defined in the Indenture. These restricted payments include the payment of dividends or distributions to any direct or indirect holders of equity interests of Wynn Las Vegas, LLC. These restricted payments may not be made until Wynn Las Vegas has been completed and certain other financial and non-financial criteria have been satisfied. In addition, the other credit facilities of Wynn Las Vegas, LLC and Wynn Macau, S.A. contain similar restrictions.

If completion of the Encore or the Wynn Macau projects is delayed, then our debt service obligations accruing prior to the actual opening of those respective resorts will increase correspondingly. Wynn Las Vegas will fund its operations and capital requirements from operating cash flows and remaining availability under Wynn Las Vegas, LLC's credit facilities. We cannot assure you, however, that Wynn Las Vegas will generate sufficient cash flow from operations or that future borrowings available to us under the Wynn Las Vegas credit facilities 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 Wynn Macau, upon opening, will fund Wynn Macau, S.A.'s debt service obligations with operating cash flows and remaining availability under its senior secured bank facility. However, we cannot assure you that operating cash flows and available borrowings 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.

Furthermore, 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 Las Vegas, as well as other domestic or international markets, including Singapore. There can be no assurances regarding the business prospects with respect to Singapore or any other opportunity. This or any other

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.

Wynn Resorts' articles of incorporation provide that Wynn Resorts may redeem shares of its capital stock, including its common stock, that are owned or controlled by an unsuitable person or its affiliates to the extent a gaming authority makes a determination of unsuitability and orders the redemption, or to the extent deemed necessary or advisable by our Board of Directors. The redemption price may be paid in cash, by promissory note or both, as required by the applicable gaming authority and, if not, as we elect. Any promissory note that we issue to an unsuitable person or its affiliate in exchange for its shares could increase our debt to equity ratio and will increase our leverage ratio.

### Critical Accounting Policies and Estimates

Our consolidated financial statements were prepared in conformity with accounting principles generally accepted in the United States of America. Certain of our accounting policies require that management apply significant judgment in defining the appropriate assumptions integral to financial estimates. On an ongoing basis, management evaluates those estimates, including those relating to the estimated lives of depreciable assets, asset impairment, allowances for doubtful accounts, accruals for customer loyalty rewards, self insurance, contingencies, litigation and other items. Judgments are based on historical experience, terms of existing contracts, industry trends and information available from outside sources, as appropriate. However, by their nature, judgments are subject to an inherent degree of uncertainty, and therefore actual results could differ from our estimates.

#### *Construction and Development Estimates*

During construction, direct costs such as those incurred for the design and construction of the Wynn Las Vegas and Wynn Macau casino resorts, including applicable portions of interest, are capitalized. Accordingly, the recorded amounts of property and equipment increase significantly during the construction periods. Depreciation expense related to capitalized construction costs is recognized when the related assets are put in service. Accordingly, upon opening, we began recognizing depreciation on the fixed assets of Wynn Las Vegas. Depreciation expense is recognized in our financial statements based on the straight-line method over the estimated useful lives of the corresponding assets as follows:

Buildings and improvements	40 years
Parking garage	15 years
Airplanes	7 to 20 years
Furniture, fixtures, equipment and land improvements	3 To 20 years

The remaining estimated useful lives of assets are periodically reviewed. A charge resulting from a change in the estimated period of benefit is accounted for in the period of change as a change in accounting estimate under Accounting Principles Board ("APB") No. 20, "Accounting Changes".

Depreciation on the majority of the assets comprising Wynn Macau will commence in the third quarter of 2006 when Wynn Macau opens. However, the maximum useful life of assets at Wynn Macau will be the remaining life of the gaming concession, which expires in June 2022. Consequently, depreciation related to Wynn Macau will generally be charged on an accelerated basis when compared to Wynn Las Vegas.

Costs of building repairs and maintenance are charged to expense when incurred. The cost and accumulated depreciation of property and equipment retired or otherwise disposed of are eliminated from the respective accounts and any resulting gain or loss is included in operating income or loss.

In addition, during construction and development, preopening or start-up costs are expensed when incurred. Significant costs were incurred and charged to preopening expenses through the second quarter of 2005, as anticipated. Although Wynn Las Vegas opened on April 28, 2005, start-up costs relating to Encore and Wynn Macau will continue to be charged to preopening expenses.

#### *Allowance for Estimated Doubtful Accounts Receivable*

We maintain a reserve for bad debts. The provision for doubtful accounts, an operating expense, increases the reserve for bad debts. Write-offs decrease the reserve. We evaluate the reserve for bad debts based on a specific review of customer accounts as well as management's prior experience with collection trends in the casino industry and current economic and business conditions.

A substantial portion of our outstanding receivables relates to casino credit play. Credit play represents a significant portion of the table games volume at Wynn Las Vegas. We maintain strict controls over the issuance of markers and aggressively pursue collection from those customers who fail to pay their marker balances timely. These collection efforts may include the mailing of statements and delinquency notices, personal contacts, the use of outside collection agencies, and civil litigation and criminal proceedings. Markers are generally legally enforceable instruments in the United States. Markers are not legally enforceable instruments in some foreign countries, but the United States assets of foreign customers may be used to satisfy judgments entered in the United States. At September 30, 2005, approximately 57% of our casino accounts receivable were owed by customers from foreign countries. The collectibility of markers given by foreign customers is affected by a number of factors including changes in currency exchange rates and economic conditions in the customers' home countries.

As our customer payment experience evolves, we will continue to refine our estimated reserve for bad debts. Accordingly, the associated provision for doubtful accounts charge may fluctuate as shown by the relative amounts charged for the three and nine months ended September 30, 2005 of \$2.0 million and \$10.6 million, respectively. Because individual customer account balances can be significant, the reserve and the provision can change significantly between periods, as information about a certain customer becomes known or as changes in a region's economy or legal system occur.

#### *Accruals*

We estimate liabilities for certain self-insurance, customer loyalty program reward redemptions, contingencies, claims and litigation and other items, as appropriate. Management determines the adequacy of these estimates by reviewing the expected trends and from industry experience and adjusts the assumptions utilized as necessary.

#### **Recently Issued Accounting Standards**

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123(R), "Share Based Payment." This statement is a revision of SFAS No. 123, "Accounting for Stock-Based Compensation" and supercedes APB Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations. SFAS No. 123 establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods and services or incurs a liability in exchange for goods and services that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of those equity instruments. It requires an entity to measure the costs of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award and recognize that cost over the service period. This statement, according to SEC rule, as amended, is effective January 1, 2006. We are currently evaluating the methodology to be used in measuring the fair value of stock-based compensation awards, as well as the impact that adoption of this statement will have on our consolidated financial position and results of operations.



In May 2005, FASB issued SFAS No. 154, "Accounting Changes and Error Corrections". SFAS No. 154 requires retrospective application to prior periods' financial statements of changes in accounting principle. It also requires that the new accounting principle be applied to the balances of assets and liabilities as of the beginning of the earliest period for which retrospective application is practicable and that a corresponding adjustment be made to the opening balance of retained earnings for that period rather than being reported in an income statement. The statement will be effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. We do not expect the adoption of SFAS No. 154 to have a material effect on our consolidated financial position or results of operations.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

#### *Interest Rate Risks*

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. Our primary exposure 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 supplemented by hedging activities as considered necessary. 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.

#### *Wynn Las Vegas*

On December 14, 2004, concurrent with refinancing Wynn Las Vegas, LLC's indebtedness, we terminated the two interest rate swaps we had previously entered into as required under the terms of our original financing documents. As a result of the termination, we received approximately \$9.6 million in settlement of the related assets, which is being amortized from accumulated other comprehensive income to reduce interest expense over the original contract life of the two interest rate swaps. Approximately \$1.2 million and \$3.6 million was amortized against interest expense during the three and nine months ended September 30, 2005, respectively.

In connection with the refinancing, we entered into two new interest rate swap arrangements to hedge the underlying interest rate risk on the \$400.0 million of term loan borrowings outstanding under the current Wynn Las Vegas, LLC credit facilities, which bear interest at LIBOR plus 2.125%. Under each of these two interest rate swap arrangements, we receive payments at a variable rate of LIBOR and pay a fixed rate of 3.793% on \$200 million notional amount set forth in each of the swap instruments through December 2008. The interest rate swaps are expected to be effective as hedging instruments as long as sufficient term loan borrowings are outstanding, and effectively fix the interest rate on these borrowings at approximately 5.918%. Any ineffectiveness will increase our recorded interest expense in the consolidated financial statements.

As of September 30, 2005, we recorded in other assets the fair value of the net effect of the two new interest rate swaps of approximately \$8.6 million, an increase of \$8.0 million compared to the value of \$583,000 at December 31, 2004. Because there has been no ineffectiveness in the hedging relationship, the corresponding change in fair value of equal amount is reported in other comprehensive income for the year ended December 31, 2004. The fair value approximates the amount we 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. Therefore, the fair value is subject to significant estimation and a high degree of variability of fluctuation between periods.

#### *Wynn Macau*

On October 14, 2005, we entered into two interest rate swaps to hedge a portion of the underlying interest rate risk on future borrowings under Wynn Macau S.A.'s \$729 million senior term loan facility. Under the first

hedge agreement, we will pay a fixed interest rate of approximately 4.84% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately \$198.2 million, in exchange for receipts on the same amounts at a variable interest rate based on the applicable LIBOR at the time of payment. Under the second hedge agreement, we will pay a fixed interest rate of approximately 4.77% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately HK\$1.1 billion (approximately US\$140.3 million), in exchange for receipts on the same amounts at a variable interest rate based on the applicable HIBOR at the time of payment. The term of both hedge agreements is from November 28, 2005 through November 28, 2008.

These interest rate swaps are expected to be effective as hedging instruments as long as sufficient borrowings are outstanding under the senior bank facility, and effectively fix the interest rate on 50% of the US dollar and 50% of the Hong Kong dollar borrowings under the senior bank facility at approximately 7.84% and 7.77%, respectively. Any ineffectiveness will increase our recorded interest expense in the consolidated financial statements.

#### *Interest Rate Sensitivity*

Although we hedge a significant portion of our floating-rate debt, a 1% increase in the LIBOR would have increased our interest cost by approximately \$217,000 and \$280,000 for the three and nine months ended September 30, 2005, based upon the average amounts outstanding during those periods.

#### *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.

In July 2005, officials from the People's Bank of China announced the adoption of a new foreign exchange policy that will move away from a U.S. dollar peg of 8.28 Chinese renminbi to one U.S. dollar. The renminbi will instead trade based on a basket of currencies. The currency components of the basket have not been announced. The exchange rate at September 30, 2005, was 8.11 Chinese renminbi to one U.S. dollar. Management believes that the current revaluation of the renminbi will not have a material effect on our financial position or results of operations.

Certain Asian countries have publicly asserted their desire to eliminate the linkage of the Hong Kong dollar to the U.S. dollar. As a result, we cannot assure you that the Hong Kong dollar, and the Macau pataca will continue to be linked to the U.S. dollar, which may result in severe fluctuations in the exchange rate for these currencies. 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 ability to service its debt, its

results of operations and its financial condition. We have not yet determined whether we will engage in hedging activities to protect against foreign currency risk.

#### **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. 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 are effective 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 are 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 have not been any changes in the Company's 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 fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

**Part II—OTHER INFORMATION**

**Item 1. Legal Proceedings**

The Company does not have any material litigation as of September 30, 2005.

**Item 6. Exhibits**

(a) Exhibits

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amended and Restated Articles of Incorporation of the Registrant. (1)
3.2	Third Amended and Restated Bylaws of the Registrant, as amended. (2)
10.1	Employment Agreement, dated as of August 31, 2005, between Wynn Resorts, Limited and John Strzemp. (3)
10.2	Employment Agreement, dated as of August 31, 2005, between Worldwide Wynn, LLC and Linda Chen. (3)
10.3	Employment Agreement, dated as of August 31, 2005, between Wynn Las Vegas, LLC and Andrew Pascal. (3)
10.4	Second Amendment to Credit Agreement, dated as of June 29, 2005, among Wynn Las Vegas, LLC, the Wynn Amendment Parties (as defined therein) and Deutsche Bank Trust Company Americas, as administrative agent on behalf of the Lenders (as defined therein). (4)
*10.5	Amended and Restated Design-Build Agreement for Guaranteed Maximum Price Architectural, Engineering and Construction Services, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Owner and Leighton Contractors (Asia) - Limited, China State Construction Engineering (Hong Kong) Limited, and China Construction Engineering (Macau) Company Limited, jointly and severally, the Contractor.
*10.6	Amended and Restated Note Purchase Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. and Wynn Group Asia, Inc.
*10.7	Hotel Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Societe Generale Asia Limited, as Hotel Facility Agent and Certain Financial Institutions as Hotel Facility Lenders.
*10.8	Project Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Societe Generale Asia Limited, as Project Facility Agent and Certain Financial Institutions as Project Facility Lenders.
*10.9	Revolving Credit Facility Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company and Certain Financial Institutions as Revolving Credit Facility Lenders.
*10.10	Common Terms Agreement Amendment Agreement, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as the Company, Certain Financial Institutions as Hotel Facility Lenders, Project Facility Lenders, Revolving Credit Facility Lenders and Hedging Counterparties, Bank of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Societe Generale Asia Limited as Global Coordinating Lead Arrangers, Societe Generale Asia Limited as Hotel Facility Agent and Project Facility Agent, Societe Generale Asia Limited as Intercreditor Agent, and Societe Generale, Hong Kong Branch as Security Agent.

<u>Exhibit No.</u>	<u>Description</u>
*10.11	Wynn Resorts Support Agreement Deed of Amendment, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as Security Agent.
*10.12	Deed of Appointment and Priority Deed of Amendment, dated as of September 14, 2005, between Wynn Resorts (Macau), S.A. as Company, Certain Financial Institutions as Original First Ranking Lenders, Certain Financial Institutions as Original Hedging Counterparties, Banco Nacional Ultramarino, S.A. as Second Ranking Finance Party, Wynn Group Asia, Inc. as Third Ranking Finance Party, Societe Generale Asia Limited as Security Agent, Societe Generale Asia Limited as Intercreditor Agent, Societe Generale Asia Limited as Hotel Facility Agent and Project Facility Agent, and Others.
*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).
*32.1	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350.

\* Filed herewith.

- (1) Previously filed with Amendment No. 4 to the Form S-1 filed by the Registrant on October 7, 2002 (File No. 333-90600) and incorporated herein by reference.
- (2) Previously filed with the Quarterly Report on Form 10-Q filed by the Registrant on December 9, 2002 and incorporated herein by reference.
- (3) Previously filed with the Current Report on Form 8-K filed by the Registrant on September 1, 2005 and incorporated herein by reference.
- (4) Previously filed with the Current Report on Form 8-K/A filed by the Registrant on September 29, 2005 and incorporated herein by reference.



**AMENDED AND RESTATED DESIGN-BUILD AGREEMENT**

**FOR**

**GUARANTEED MAXIMUM PRICE  
ARCHITECTURAL, ENGINEERING AND  
CONSTRUCTION SERVICES**

**BETWEEN**

**WYNN RESORTS (MACAU) S.A.  
("Owner")**

**AND**

**LEIGHTON CONTRACTORS (ASIA) LIMITED,  
CHINA STATE CONSTRUCTION ENGINEERING  
(HONG KONG) LIMITED,**

**AND**

**CHINA CONSTRUCTION ENGINEERING  
(MACAU) COMPANY LIMITED**

**(jointly and severally, "Contractor")**

**FOR**

**LUXURY RESORT CASINO COMPLEX IN MACAU**

**As of September 14, 2005**

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**AMENDED AND RESTATED DESIGN-BUILD AGREEMENT  
FOR  
GUARANTEED MAXIMUM PRICE  
ARCHITECTURAL, ENGINEERING AND  
CONSTRUCTION SERVICES**

**LUXURY RESORT CASINO COMPLEX IN MACAU**

This Amended and Restated Design-Build Agreement for Guaranteed Maximum Price Architectural, Engineering and Construction Services (this "Agreement"), which amends and restates the Original Agreement (defined below), made as a Deed effective as of September 14, 2005 (the "Effective Date"), is entered into between WYNN RESORTS (MACAU) S.A., a company incorporated in the Macau Special Administrative Region having its registered office at 335-341, Alameda Dr. Carlos d' Assumpção, 9<sup>th</sup> Floor, Hotline Center, Macau ("Owner"), and LEIGHTON CONTRACTORS (ASIA) LIMITED, a private limited company incorporated in the Hong Kong Special Administrative Region, having its registered office at 39<sup>th</sup> Floor, Sun Hung Kai Centre, 30 Harbour Road, North Wanchai, Hong Kong ("Leighton"), CHINA STATE CONSTRUCTION ENGINEERING (HONG KONG) LIMITED, a private limited company incorporated in the Hong Kong Special Administrative Region, having a registered office at 29<sup>th</sup> Floor, China Overseas Building, 139 Hennessy Road, Hong Kong ("China/HK"), and CHINA CONSTRUCTION ENGINEERING (MACAU) COMPANY LIMITED, a private limited company incorporated in the Macau Special Administrative Region, having a registered office at Rua do Campo, No 78, Edificio Commercial Zhang Kian, 18 andar, Macau ("China/Macau"); Leighton, China/HK, and China/Macau being jointly and severally referred to as the "Contractor".

**RECITALS**

A. Owner has been granted a concession to operate a casino and resort complex in Macau pursuant to a certain Concession Contract for the Operation of Games of Chance or Other Games in Casinos in the Macau Special Administrative Region dated June 24, 2002, between the Macau Special Administrative Region (the "Macau SAR") and Owner (the "Gaming Concession Agreement").

B. Owner has been granted a leasehold interest in the real property described in Exhibit A hereto (the "Site") pursuant to a certain Land Concession Contract dated June 4, 2004, between the Macau SAR and Owner (the "Land Concession Agreement").

C. Owner desires to construct on the Site a "five-star", first-class, Las Vegas-style luxury resort and casino, including high-rise hotel space and low rise space comprised of casino and gaming areas, restaurants, retail, spa, convention and meeting areas, together

with all exterior features, and all on-Site and off-Site improvements and infrastructure related thereto, all in accordance with the Contract Documents (as defined below).

D. The Contractor has commenced the design and construction of a high-rise hotel and low rise space comprised of casino and gaming areas and restaurants, retail, spa, convention and meeting areas, (as more fully described in this Agreement, the "Original Project") in accordance with the Original Agreement (as defined below). Owner desires to engage Contractor to design and construct a new front feature, a theatre, additional casino and gaming areas and additional retail and restaurant areas (as more fully described in this Agreement, the "Expansion Project"; the Original Project and Expansion Project, together, the "Project").

E. Owner and Contractor entered into that certain Design-Build Agreement for Guaranteed Maximum Price Architectural, Engineering and Construction Services (the "Original Agreement"), made as a Deed effective as of May 10, 2004, pursuant to which the Contractor commenced construction of the Original Project on or about June 28, 2004.

F. In order to document the Expansion Project, Owner and Contractor desire to amend and restate the Original Agreement to set forth the terms and conditions governing both the Original Project and the Expansion Contract.

G. Owner desires (i) to engage Contractor to design and construct the Expansion Project and (ii) for Contractor to continue its design and construction of the Original Project, as more fully described in this Agreement, and Contractor desires to accept such engagement with respect to the Expansion Project and continue its engagement and construction with respect to the Original Project, upon the terms and conditions contained in this Agreement.

## **AGREEMENT**

In consideration of the mutual covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Owner hereby adopt and incorporate the foregoing Recitals and agree as follows:

### **ARTICLE I. CERTAIN DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings respectively set forth in this Article 1:

**"Actions"** has the meaning given to it in Section 14.1.

**"Agreement"** has the meaning given to it in the introductory paragraph.

**“Anticipated Cost Report”** has the meaning given to it in [Section 7.5.4](#).

**“Applications For Final Payment”** has the meaning given to it in [Section 5.8](#).

**“Architect/Engineer”** for the Project means Wong & Ouyang (HK) Limited pursuant to the Architect/Engineer Agreement.

**“Architect/Engineer Agreement”** means that certain Designer Professional Services Agreement among Wynn Design and Development, LLC and Wong & Ouyang (HK) Limited, dated as of February 28, 2003, which agreement was transferred to the Contractor pursuant to that certain Novation Agreement, dated June 3, 2005, among Wynn Design and Development, LLC, Wong & Ouyang (HK) Limited and Contractor.

**“As Built”** has the meaning given to it in [Section 12.2.1.7](#).

**“Auditable Subcontractors”** has the meaning given to it in [Section 19.1](#).

**“Bases for Withholding”** has the meaning given to it in [Section 5.4](#).

**“Casino Area 4”** means that portion of the Expansion Project Casino depicted on [Attachment 4](#) of [Exhibit B](#) as “Area 4” on the ground floor, including all associated support and external features.

**“Casino Area 5”** means that portion of the Expansion Project Casino depicted on [Attachment 4](#) of [Exhibit B](#) as “Area 5” on the ground floor, including all associated support and external features.

**“Change”** has the meaning given to it in [Section 18.1](#).

**“Change Order”** has the meaning given to it in [Section 18.2](#).

**“Change Proposal”** has the meaning given to it in [Section 18.3.1](#).

**“Change Proposal Request”** has the meaning given to it in [Section 18.3](#).

**“Claim”** has the meaning given to it in [Section 20.1](#).

**“Consequential Damages”** has the meaning given to it in [Section 14.7](#).

**“Construction Change Directive”** has the meaning given to it in [Section 18.4.1](#).

**“Contract”** means the Contract Documents, collectively.



**“Contract Documents”** means, collectively, the following documents which are hereby incorporated herein by this reference:

- a) this Agreement;
- b) the description of the Site attached hereto as Exhibit A;
- c) Drawings;
- d) Specifications;
- e) the Original Project Schedule attached hereto as Exhibit B-1;
- f) the Expansion Project Schedule attached hereto as Exhibit B-4;
- g) the preliminary list of construction machinery and equipment to be rented or purchased by Contractor for use in the Work pursuant to Section 3.2.6 of this Agreement, attached hereto as Exhibit D;
- h) the Original Project Schedule of Approved Values;
- i) Expansion Project Schedule of Values;
- j) the Original Project Guaranteed Maximum Price Premises and Assumptions attached hereto as Exhibit G;
- k) the Expansion Project Guaranteed Maximum Price Premises and Assumptions attached hereto as Exhibit G;
- l) all other exhibits to this Agreement, as set forth on the list of exhibits appearing at the end of this Agreement; and
- m) all supplements, addenda, modifications and amendments to any of the foregoing documents described in (a) through and including (i), from time to time approved by Owner (and Contractor, to the extent required by the terms of this Agreement) in writing, including, but not limited to, any Change Orders and Construction Change Directives, and such other documents expressly referred to in the foregoing documents as being a part of the Contract Documents. The Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, instructions to bidders, sample forms, and Contractor’s bid or portion of addenda relating to bidding requirements).

**“Contract Time”** has the meaning given to it in Section 4.1.5.

**“Contractor”** has the meaning given to it in the introductory paragraph.

**“Contractor’s Certificate”** has the meaning given to it in Section 5.2.5.

**“Cost of the Work”** has the meaning given to it in Section 3.2.

**“day”** has the meaning given to it in Section 4.1.1.

**“Defects Liability Retainage”** has the meaning given to it in Section 5.6.2.

**“Design Documents”** has the meaning given to it in Section 8.2.8.

**“Design Information”** has the meaning given to it in Section 8.2.1.

**“Dispute”** has the meaning given to it in Section 22.1.

**“Dispute Date”** has the meaning given to it in Section 22.1.

**“Drawings”** means the graphic and pictorial portions of the Contract Documents, in both digital and paper form, wherever located and whenever issued, which are approved for use during construction and show the design, location and dimensions of the Work and Project including plans, elevations, sections, diagrams and other details. Owner and Contractor acknowledge that as of the Effective Date the Drawings with respect to the Expansion Project are not complete. The Drawings include, but are not limited to, those listed on Exhibit E attached hereto and incorporated herein by this reference.

**“Effective Date”** has the meaning given to it in the preamble.

**“Excepted Risks”** has the meaning given to it in Section 5.10.

**“Entry Feature”** means the collective components of the Feature as depicted on Attachment 3 of Exhibit E (including the dome, tree, lifts and other features described therein), and associated support and external features.

**“Expansion Project”** has the meaning given to it in preamble.

**“Expansion Project Casino”** means, collectively, those portions of the Expansion Project comprising the casino and support facilities located in the lowrise podium, and associated support and external features. The footprint of the Expansion Project Casino on the Site is generally depicted on Attachment 4 of Exhibit B.

**“Expansion Project Certificate of Final Completion”** has the meaning given to it in Section 12.2.2.4.

**“Expansion Project Certificate of Substantial Completion”** has the meaning given to it in Section 12.1.2.7.

**“Expansion Project Construction Contingency”** has the meaning given to it in [Section 3.1.8.2](#).

**“Expansion Project Contractor’s Fee”** has the meaning given to it in [Section 3.1.3.2](#).

**“Expansion Project Cost Control Incentive”** has the meaning given to it in [Section 3.2](#).

**“Expansion Project Date of Commencement”** means the “Expansion Project Date of Commencement” specified in Section 4.1.3 with respect to the Expansion Project Work.

**“Expansion Project Defects Liability Period”** has the meaning given to it in [Section 10.2](#).

**“Expansion Project Final Completion”** has the meaning given to it in [Section 12.2.1](#).

**“Expansion Project Final Payment”** has the meaning given to it in [Section 5.8.2](#).

**“Expansion Project Guaranteed Maximum Price”** has the meaning given to it in [Section 3.1](#).

**“Expansion Project Guaranteed Maximum Price Premises and Assumptions”** means the contents of [Exhibit G](#) attached hereto, which describe Owner’s requirements for the Expansion Project.

**“Expansion Project Interim Milestone Dates”** has the meaning given to it in [Section 4.1.4](#).

**“Expansion Project Interim Milestones”** has the meaning given to it in [Section 4.1.4](#).

**“Expansion Project Liquidated Damages”** has the meaning given to it in [Section 4.4.1](#).

**“Expansion Project Owner Contingency”** has the meaning given to it in [Section 3.1.7.2](#).

**“Expansion Project Punch List Items”** has the meaning given to it in [Section 12.1.2.5](#).

**“Expansion Project Schedule”** has the meaning given to it in Section 4.1.4.

**“Expansion Project Schedule of Values”** has the meaning given to it in Section 5.1.1.

**“Expansion Project Substantial Completion”** has the meaning given to it in Section 12.1.1.

**“Expansion Project Work”** means those portions of the Work to be executed by Contractor with respect to the Expansion Project.

**“FCPA”** has the meaning given to it in Section 27.1.1.

**“Fill Materials”** has the meaning given to it in Section 7.1.11.1.

**“Force Majeure”** has the meaning given to it in Section 11.4.

**“Force Majeure Delay”** has the meaning given to it in Section 11.4.

**“Gaming Concession Agreement”** has the meaning given to it in the preamble.

**“Guarantee”** means the Amended and Restated Parent Completion Guarantee in the form of Exhibit K attached hereto, whereby the Guarantors absolutely and unconditionally guarantee to Owner each and all of Contractor’s obligations and liabilities under this Agreement.

**“Guaranteed Date of Expansion Project Final Completion”** has the meaning given to it in Section 4.1.8.

**“Guaranteed Date of Expansion Project Substantial Completion”** has the meaning given to it in Section 4.1.9.

**“Guaranteed Date of Original Project Final Completion”** has the meaning given to it in Section 4.1.6.

**“Guaranteed Date of Original Project Substantial Completion”** has the meaning given to it in Section 4.1.7.

**“Guaranteed Maximum Price”** means, collectively, the Expansion Project Guaranteed Maximum Price and the Original Project Guaranteed Maximum Price.

**“Guarantor”** and “Guarantors” have the meaning given to them in Section 4.6.1.

**“Hotel”** means collectively those portions of the Project comprising the hotel guestrooms and suites as well as the sky casino, and ancillary facilities. The footprint of the Hotel on the Site is generally depicted on Attachment 2 of Exhibit B.

**“ICC”** has the meaning given to it in Section 22.1.

**“ICC Rules”** has the meaning given to it in Section 22.1.

**“Independent Expert”** has the meaning given to it in Section 7.18.1.2.

**“Land Concession Agreement”** has the meaning given to it in the preamble.

**“Laws”** has the meaning given to it in Section 7.2.

**“Lender Liens”** has the meaning given to it in Section 24.2.

**“Lender’s Notification”** has the meaning given to it in Section 21.2.

**“Liquidated Damages”** has the meaning given to it in Section 4.4.1.

**“Minor Changes”** has the meaning given to it in Section 18.9.

**“Modification”** means any of the following:

- (a) a written amendment to the Contract identified as such and signed by both parties;
- (b) a Change Order;
- (c) a Construction Change Directive; or
- (d) a Minor Change.

**“Non-Allowable Cost of the Work”** has the meaning given to it in Section 3.3.

**“Notice to Proceed”** has the meaning given to it in Section 4.1.2.

**“Notices”** has the meaning given to it in Section 25.1.

**“Official”** has the meaning given to it in Section 27.1.3.

**“On-Site Property”** has the meaning given to it in Section 7.8.

**“Original Agreement”** has the meaning given to it in the preamble.

**“Original Agreement Guaranteed Maximum Price”** means Two Hundred Fifty-Five Million Five Hundred Thousand United States Dollars (US\$255,500,000).

**“Original Project”** has the meaning given to it in the preamble.

**“Original Project Casino”** means, collectively, those portions of the Original Project comprising the casino and support facilities located in the lowrise podium, and associated support and external features. The footprint of the Casino on the Site is generally depicted on Attachment 2 of Exhibit B.

**“Original Project Certificate of Final Completion”** has the meaning given to it in Section 12.2.2.4.

**“Original Project Certificate of Substantial Completion”** has the meaning given to it in Section 12.1.2.7.

**“Original Project Construction Contingency”** has the meaning given to it in Section 3.1.8.1.

**“Original Project Contractor’s Fee”** has the meaning given to it in Section 3.1.2.2.

**“Original Project Cost Control Incentive”** has the meaning given to it in Section 3.2.

**“Original Project Date of Commencement”** means June 28, 2004.

**“Original Project Defects Liability Period”** has the meaning given to it in Section 10.2.

**“Original Project Early Completion Component”** has the meaning given to it in Section 3.2.

**“Original Project Final Completion”** has the meaning given to it in Section 12.2.1.

**“Original Project Final Payment”** has the meaning given to it in Section 5.8.1.

**“Original Project Guaranteed Maximum Price”** has the meaning given to it in Section 3.1.

**“Original Project Guaranteed Maximum Price Premises and Assumptions”** means the contents of Exhibit G attached hereto, which describe Owner’s requirements for the Original Project.

**“Original Project Interim Milestone Dates”** has the meaning given to it in Section 4.1.4.

**“Original Project Interim Milestones”** has the meaning given to it in Section 4.1.4.

**“Original Project Liquidated Damages”** has the meaning given to it in Section 4.4.1.

**“Original Project Owner Contingency”** has the meaning given to it in [Section 3.1.7.1](#).

**“Original Project Punch List Items”** has the meaning given to it in [Section 12.1.2.5](#).

**“Original Project Schedule”** has the meaning given to it in [Section 4.1.4](#).

**“Original Project Approved Schedule of Values”** means the Schedule of Values delivered by Contractor to Owner on July 27, 2004.

**“Original Project Substantial Completion”** has the meaning given to it in [Section 12.1.1](#).

**“Original Project Work”** means those portions of the Work to be executed by Contractor with respect to the Original Project.

**“Owner Delay”** has the meaning given to it in [Section 11.5](#).

**“Owner Indemnitees”** has the meaning given to it in [Section 14.1](#).

**“Owner Recovery Plan”** has the meaning given to it in [Section 11.8.6](#).

**“Owner’s Consultants”** means the Principal Interior Designer together with the additional interior design and other consultants retained by Owner to perform the Owner’s Design and other services as set out in the Guaranteed Maximum Price Premises and Assumptions.

**“Owner’s Contractors”** means the contractors, vendors and suppliers (other than Owner’s Consultants) retained by Owner in connection with the Project. The Contractor shall be responsible for managing and coordinating the activities of the Owner’s Consultants and Owner’s Contractors with the Work.

**“Owner’s Design”** means those design services related to the Project prepared by Owner or the Owner’s Consultants, which shall, as may be required, be included in Contractor’s Work.

**“Owner’s Lenders”** has the meaning given to it in [Section 21.1](#).

**“Owner’s Pre-Opening Work”** has the meaning given to it in [Section 11.8.6](#).

**“Owner’s Representative”** has the meaning given to it in [Section 6.3](#).

**“Permissible Delay”** means any Owner Delay, Force Majeure Delay, any other delay for circumstances specified in this Agreement as providing for an extension of the

Contract Time and/or an increase in the Guaranteed Maximum Price, and any other delay for causes which Owner and Contractor agree may justify delay.

“**Personnel**” has the meaning given to it in [Section 3.2.1](#).

“**Plant**” has the meaning given to it in [Section 7.27.1](#).

“**pre-existing hazardous materials**” has the meaning given to it in [Section 7.26.1](#).

“**Principal Interior Designer**” means Wynn Design and Development, LLC, which in turn shall be retaining additional interior design consultants for the Project.

“**Product Data**” has the meaning given to it in [Section 7.13.2](#).

“**Project**” has the meaning given to it in the preamble.

“**Recovery Plan**” has the meaning given to it in [Section 11.8](#).

“**Recovery Plan Liabilities**” has the meaning given to it in [Section 4.2](#).

“**Reimbursable Taxes**” means all those Taxes described on [Exhibit N](#) attached hereto as being reimbursable to Contractor as a Cost of the Work.

“**Related Entities**” has the meaning given to it in [Section 27.1.1](#).

“**Request**” has the meaning given to it in [Section 22.1](#).

“**Retention**” has the meaning given to it in [Section 5.6.1](#).

“**RFI**” has the meaning given to it in [Section 7.3.3](#).

“**Right to Audit**” has the meaning given to it in [Section 19.5](#).

“**Samples**” has the meaning given to it in [Section 7.13.3](#).

“**Schedule Update**” has the meaning given to it in [Section 11.3](#).

“**Schedule Update No. 1**” has the meaning given to it in [Section 11.3](#).

“**Shop Drawings**” has the meaning given to it in [Section 7.13.1](#).

“**Site**” has the meaning given to it in the preamble.

“**Specifications**” means that portion of the Contract Documents, in both digital and paper form, wherever located and whenever issued, which are approved by Owner for use during construction and set forth the written requirements for materials, equipment,



construction systems, standards and workmanship for the Work. Owner and Contractor acknowledge that as of the Effective Date the Specifications are not complete. The Specifications include, without limitation, those listed on Attachment 2 to Exhibit E attached hereto and incorporated herein by this reference.

**“Subcontractor”** means any person or entity (including employees, agents and representatives thereof) who has a contract with or is engaged by Contractor, or with any other Subcontractor, at any tier to construct or perform a portion of the Work and/or provide construction related services for the Work at the Site, and includes any party any of them are responsible or liable for at law or under the Contract Documents.

**“Substitution”** means the substitution of any materials or equipment specified in the Contract Documents, or any design change, initiated by the Contractor and approved by Owner in advance and in writing pursuant to Section 7.10 of this Agreement after the Effective Date.

**“Tax”** or **“Taxes”** mean all taxes, charges, fees, duties, levies, penalties or other assessments imposed by any governmental authority, including income, gross receipts, excise, property, sales, gain, use, license, custom duty, unemployment, capital stock, transfer, franchise, payroll, withholding, social security, minimum estimated, profit, gift, severance, value added, disability, premium, recapture, credit, occupation, service, leasing, employment, stamp and other taxes.

**“TCO”** has the meaning given to it in Section 12.1.2.2.

**“Theatre”** means collectively those portions of the Project comprising the theatre and its ancillary facilities. The footprint of the theatre on the Site is generally depicted on Attachment 4 of Exhibit B.

**“TPL”** has the meaning given to it in Section 15.1.6.

**“Vendor”** means any person or entity (including employees, agents and representatives thereof) which has a purchase order or other agreement to provide materials, supplies, equipment and/or related services for the Work and/or provide installation services at the Site for the Work, through a contract, purchase order or other arrangement with Contractor or any Subcontractor at any tier, and includes any party any of them are responsible or liable for at law or under the Contract Documents.

**“Work”** means the totality of the obligations imposed upon Contractor by the Contract Documents with respect to each of the Original Project and the Expansion Project, including, but not limited to, (a) the design, supply and performance by Contractor, directly and through Architect/Engineer, Subcontractors and Vendors, of all things (labor, services, materials, equipment, tools, machinery, fabrication, etc.) necessary and/or reasonably inferable from the Contract Documents (including those prepared by Owner) as being required or necessary to fully complete the tasks and improvements described as

Contractor's Work with respect to each of the Original Project and the Expansion Project in the Contract Documents (b) the management of Owner's Consultants and the coordination of the Owner's Design with the Architect/Engineer as may be required, and (c) the management of Owner's Contractors, all in accordance with the requirements of the Original Project Guaranteed Maximum Price Premises and Assumptions, the Expansion Project Guaranteed Maximum Price Premises and Assumptions and the other Contract Documents. The term "Work" includes the Original Project Work and the Expansion Project Work. The term "Work" does not include the exclusions or Owner's separate work as identified in Attachment 1 to Exhibit G.

**ARTICLE II.  
INTENT, INTERPRETATION AND CORRELATION**

**2.1 Intent of the Contract Documents.** The intent of the Contract Documents is for the Contractor to perform, supply and complete, and Owner hereby engages Contractor to and Contractor hereby agrees to perform, supply and complete, the Work. Contractor's obligation to perform, supply, complete and commission the Work shall include, without limitation, providing all necessary architectural design (except for the Owner's Design); engineering; scheduling, procurement, supervision, construction, and construction management services; the management and coordination of Owner's Consultants and Owner's Contractors and Owner's Vendors with the Work; and the supplying of all necessary labor, materials, equipment and related work and services, including all things reasonably inferable from the Contract Documents as being necessary to fully complete the Work and obtain the intended results described in the Original Project Guaranteed Maximum Price Premises and Assumptions, and the Expansion Project Guaranteed Maximum Price Premises and Assumptions, all in accordance with the requirements of the Contract Documents (including, but not limited to, the requirements of the Original Project Schedule, the Expansion Project Schedule, the Original Project Guaranteed Maximum Price requirements set forth in Article 3 below and Expansion Project Guaranteed Maximum Price requirements set forth in Article 3 below). Contractor shall be solely responsible for the preparation of the Drawings and Specifications (other than those to be prepared by Owner's Consultants with respect to Owner's Design); for the means, methods, techniques and sequences of construction; and for the finished construction fully complying with the Project requirements established pursuant to the Contract Documents and with applicable Laws. Contractor recognizes that Owner is not retaining its own architect or engineer on the Project and Contractor acknowledges that it is solely responsible for Project Site analysis and for the design (except for the Owner's Design) and construction of the Work, including coordinating the Owner's Design with the Architect/Engineer's design, and that Owner is relying upon Contractor for such services. Contractor accepts the relationship of trust and confidence thus imposed and shall efficiently design, administer, construct and supervise the Work in a professional manner, timely delivering the completed Original Project and completed Expansion Project to Owner with all applicable mechanical, electrical, plumbing, fire safety and other building systems fully operational. The enumeration of particular items in the Specifications and/or Drawings and/or other Contract Documents shall not be

construed to exclude other items reasonably inferable from the Contract Documents or being necessary to fully complete the Work. The Contract Documents are complementary, and what is required by or reasonably inferable from any one of the Contract Documents (including either a Drawing or Specification) as being necessary to produce the intended results shall be binding and required as a part of the Work as if required by all Contract Documents. Notwithstanding that Exhibit F attached hereto sets forth Contractor's estimated breakdown of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price into line items and categories and that Contractor's acceptance of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price may have been based on such estimates, Contractor agrees that the scope of the Work to be performed by Contractor shall be determined by the Original Project Guaranteed Maximum Price Premises and Assumptions, the Expansion Project Guaranteed Maximum Price Premises and Assumptions and the other Contract Documents. Contractor further agrees that in the event of any discrepancy between (a) the Original Project Guaranteed Maximum Price Premises and Assumptions, the Expansion Project Guaranteed Maximum Price Premises and Assumptions and the other Contract Documents (other than Exhibit F) and (b) Exhibit F, the Original Project Guaranteed Maximum Price Premises and Assumptions, the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable) and the other Contract Documents (other than Exhibit F) shall control, and no adjustment to the Original Project Guaranteed Maximum Price, the Expansion Project Guaranteed Maximum Price or the Contract Time shall be made as a result thereof.

**2.2 Order of Precedence.** Subject to the provisions of Section 2.3 and the last two sentences of Section 2.1 hereof, in the event of any conflicts or inconsistencies which cannot be resolved by reading the Contract Documents as a whole, the provisions of the Contract Documents shall be controlling in accordance with the following order of precedence:

2.2.1 this Agreement;

2.2.2 the Original Project Guaranteed Maximum Price Premises and Assumptions and the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable);

2.2.3 the Drawings;

2.2.4 Specifications; and

2.2.5 the other Contract Documents.

**2.3 Contractor's Compliance with Contract Documents.** Contractor hereby agrees and accepts that Contractor has a duty to refer all questions with respect to any doubts or concerns over the intent or appropriate interpretation of the Contract Documents to Owner for Owner's decision. Contractor agrees, accepts and assumes that Owner's decision will require implementation of the most stringent requirements among any conflicting

provisions of the Contract Documents as being part of the Work. Contractor agrees to be bound by all decisions by Owner to implement the most stringent of any conflicting requirements within the Contract Documents. Any failure by Contractor to seek such clarifications shall in no way limit Owner's ability to require such implementation, including replacement by Contractor of installed Work at a later date (as a Cost of the Work, subject to the provisions of Section 3.3, and without increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable)), to achieve compliance with the standard required pursuant to this Section 2.3.

**2.3.1** The failure of Owner to insist in any one or more instances upon a strict compliance with any provision of this Contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of Owner's right thereafter to require compliance with such provision of this Contract, or as being a waiver of Owner's right thereafter to exercise such option, and such provision or option will remain in full force and effect.

**2.3.2** If there is any inconsistency in the Drawings or any conflict between the Drawings and Specifications, Contractor shall provide the better quality or greater quantity of Work or materials, as applicable, unless Owner directs otherwise in writing.

**2.3.3** Contractor shall be responsible for dividing the Work among the appropriate qualified Subcontractors and Vendors. No claim will be entertained by Owner based upon the organization or arrangement of the Specifications and/or the Drawings into areas, sections, subsections or trade disciplines.

**2.3.4** Detail drawings shall take precedence over scale drawings, and figured dimensions on the Drawings shall govern the setting out of the Work.

**2.3.5** Unless the Specifications expressly state otherwise, references to documents and standards of professional organizations shall mean the latest editions published prior to the Effective Date.

**2.3.6** Technical words, abbreviations and acronyms in the Contract Documents not defined therein shall be used and interpreted in accordance with customary usage in the construction industry.

**2.3.7** Whenever consent, permission or approval is required from any party pursuant to the provisions of the Contract Documents, such consent, permission or approval shall, unless expressly provided otherwise in this Agreement, be given or obtained, as applicable, in writing and shall not be unreasonably withheld or delayed.

**2.4 Joint and Several Liability.** Leighton, China/HK and China/Macau shall be jointly and severally liable to Owner for the fulfillment by Contractor of the terms of this Agreement. All references to Contractor in the Contract Documents shall be deemed to include references to Leighton, China/HK and China/Macau jointly and severally. Each of

Leighton, China/HK and China/Macau shall be fully responsible for the proper performance of the obligations of Contractor under the Contract Documents. Leighton, China/HK and China/Macau shall be liable to Owner and the Owner Indemnities on a joint and several basis for any and all acts or omissions of Contractor, whether under this Agreement or pursuant to the Contract Documents. The composition of the joint venture formed by Leighton, China/HK and China/Macau, as well as the terms and conditions of the written joint venture agreement among such parties, shall be subject to Owner's prior written consent and shall not be materially altered without Owner's prior written consent, which consent shall not be unreasonably withheld or delayed; and any direct or indirect transfers of interests in the joint venture by or among any of such parties shall be subject to Owner's prior written consent. Contractor's Representative shall have the authority to bind the joint venture constituting Contractor and each of its members. The Contractor's Representative is authorized to act on behalf of Contractor with regard to the Work and the Contract Documents and his decisions will be binding upon Contractor. Owner may rely on, and Contractor shall be bound by, any notice or correspondence delivered by Contractor's Representative in connection with the Contract Documents.

**ARTICLE III.  
GUARANTEED MAXIMUM PRICE**

**3.1 Guaranteed Maximum Price.** Subject to additions and deductions which may be made only in accordance with the Contract Documents, Contractor represents, warrants and guarantees to Owner that the total maximum cost to be paid by Owner for Contractor's complete performance under the Contract Documents, including, but not limited to, Original Project Final Completion and Expansion Project Final Completion (as applicable) of all Work, all services of Contractor under the Contract, and all fees, compensation and reimbursements to Contractor, shall not exceed the total amount of:

(a) with respect to the Original Project, Three Hundred Million Four Hundred Sixty-Four Thousand Six Hundred Fifty-Eight United States Dollars (US\$300,464,658) ("Original Project Guaranteed Maximum Price"); and

(b) with respect to the Expansion Project, One Hundred Fifty-Six Million Seven Hundred Fifty-Nine Thousand Three Hundred Twenty-Six United States Dollars (US\$156,759,326) ("Expansion Project Guaranteed Maximum Price").

Costs which would cause either the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as each may be adjusted pursuant to the Contract Documents) to be exceeded shall be paid by the Contractor without reimbursement by Owner. Contractor acknowledges that each of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price is stated and is payable in United States dollars, and that no adjustment will be made thereto on account of change in any exchange rate relevant to the performance of the Work, including, but not

limited to, any changes in exchange rates of the United States dollar, Hong Kong dollar, Macau pataca and People's Republic of China renminbi. Each of the Original Project Guaranteed Maximum Price and Expansion Project Guaranteed Maximum Price is inclusive of all Taxes assessed in any jurisdiction for the performance by Contractor (including Subcontractors and Vendors at any tier) of its obligations under the Contract Documents. Further, Contractor shall be deemed to have satisfied itself before entering into this Agreement as to (a) all of the conditions and circumstances which may affect each of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price, including the nature and character of the Work to be executed, the prevailing geotechnical, environmental and ambient conditions, local uses, the existing installations (if any), the general circumstances at the Site, the general labor position at the Site and in the region generally and the coordination and interrelation of the execution of the Original Project Work and the Expansion Project Work; and (b) the correctness and sufficiency of the each of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price to cover all of its obligations under the Contract Documents. Contractor shall be responsible for obtaining all information necessary for the Work and shall be deemed to have included and accounted for in each of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price all risks, contingencies, Taxes, local and national conditions, laws, customs, policies and practices and other conditions affecting the Work, the Project or the performance thereof, in each case whether known or unknown, or foreseeable or unforeseeable (subject to the provisions of this Agreement relating to Permissible Delay and Excepted Risks). Contractor shall be responsible for all errors made and for any misunderstanding or incorrect information provided by any person or entity or relied upon by Contractor, except to the extent otherwise provided for in the Contract Documents. Notwithstanding the preceding sentence, Contractor shall not be responsible for errors made or for any incorrect information provided by any of Owner's Consultants or Owner's Contractors, except to the extent that Contractor has failed in its duty of coordination, supervision and management with respect to Owner's Consultants and Owner's Contractors, as set forth in this Agreement.

**3.1.2 Original Project Guaranteed Maximum Price Components.** The Original Project Guaranteed Maximum Price is comprised of the maximum amount payable by Owner for:

**3.1.2.1** the Cost of the Work listed in Section 3.2 hereof for full and complete performance of the Work in strict accordance with Contract Documents, and

**3.1.2.2** a fixed fee to Contractor in the amount of Twenty Million Five Hundred Forty-One Thousand Nine-Hundred Sixty-Seven United States Dollars (US\$20,541,967) ("Original Project Contractor's Fee").

The Original Project Contractor's Fee shall be the Contractor's sole and exclusive compensation for all costs described as Non-Allowable Costs of the Work in Section 3.3

hereof and is inclusive of all overhead and profit arising out of or relating to the Contractor's Work. The Original Project Guaranteed Maximum Price is further broken down into line items and categories on Exhibit F attached hereto.

**3.1.3 Expansion Project Guaranteed Maximum Price Components.** The Expansion Project Guaranteed Maximum Price is comprised of the maximum amount payable by Owner for:

**3.1.3.1** the Cost of the Work listed in Section 3.2 hereof for full and complete performance of the Work in strict accordance with Contract Documents, and

**3.1.3.2** a fixed fee to Contractor in the amount of Eleven Million Five Hundred Eighteen Thousand Three Hundred Fifty-Eight United States Dollars (US\$11,518,358) ("Expansion Project Contractor's Fee").

The Expansion Project Contractor's Fee shall be the Contractor's sole and exclusive compensation for all costs described as Non-Allowable Costs of the Work in Section 3.3 hereof and is inclusive of all overhead and profit arising out of or relating to the Contractor's Work. The Expansion Project Guaranteed Maximum Price is further broken down into line items and categories on Exhibit F attached hereto.

**3.1.4 Cost Overruns.** Subject to any adjustment to each of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price (as applicable) which may be made in accordance with the Contract Documents, Contractor shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price (as applicable) for and/or relating to the Original Project Work and Expansion Project Work (as applicable), without entitlement to reimbursement from Owner.

**3.1.5 Proof of Funds.** The Contractor shall, within five (5) days of receipt of any request by Owner or Owner's Lenders therefor, provide Owner and Owner's Lenders with evidence satisfactory to Owner's Lenders that (i) based on the progress of the Work and Cost of the Work already incurred, the remaining Work can be completed for the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price, or (ii) sufficient funds are available to Contractor (directly, or through any of the Guarantors) to pay any anticipated overage.

**3.1.6 Inferable Work.** Contractor agrees that the scope of each of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price includes Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Contract Documents, or consistent therewith, and such Work shall be performed by Contractor without any increase in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable). The intent of the Contract Documents is described in Section 2.1 and shall

include all additional items reasonably inferable from the Contract Documents as being necessary to conform with this Contract and applicable Laws. Contractor acknowledges that it bears responsibility for consequences resulting from its design and construction processes and acknowledges its responsibility to manage and coordinate all of the design and construction processes for the Project so that the requirements of the Contract are achieved.

**3.1.7 Owner Contingency.**

**3.1.7.1** The Original Project Guaranteed Maximum Price includes an Owner contingency in the amount of Three Million Twelve Thousand Eight Hundred Twenty-One United States Dollars (US\$3,012,821) ("Original Project Owner Contingency").

**3.1.7.2** The Expansion Project Guaranteed Maximum Price includes an Owner contingency in the amount of Two Million Five Hundred Thousand United States Dollars (US\$2,500,000) ("Expansion Project Owner Contingency").

To allocate a portion of the Original Project Owner Contingency or the Expansion Project Owner Contingency (as applicable) to a portion of the Original Project Work or Expansion Project Work, respectively, for any purpose, Owner shall submit a Construction Change Directive to Contractor with respect to such allocation. Contractor and Owner will then follow the procedure described in Article 18 of this Agreement. Each allocation of either the Original Project Owner Contingency or the Expansion Project Owner Contingency shall be reflected on the respective Application for Progress Payment for the period during which Owner makes such approved allocation. Any portion of either of the Original Project Owner Contingency or the Expansion Project Owner Contingency remaining unallocated at Original Project Final Completion and Expansion Project Final Completion, respectively, shall revert to the Owner as provided for in Section 3.2. Contractor shall have the right to propose to Owner at any time an allocation of either of the Original Project Owner Contingency or the Expansion Project Owner Contingency (as applicable), setting forth in reasonable detail why Contractor considers such an allocation to be appropriate, but Owner may in its sole discretion agree or disagree to such use or allocation of the Original Project Owner Contingency or the Expansion Project Owner Contingency (as applicable).

**3.1.8 Construction Contingency.**

**3.1.8.1** The Original Project Guaranteed Maximum Price includes a construction contingency in the amount of Thirteen Million Three Hundred Fifty-Two Thousand Eight Hundred Twenty-Two United States Dollars (US\$13,352,822) ("Original Project Construction Contingency").

**3.1.8.2** The Expansion Project Guaranteed Maximum Price includes a construction contingency in the amount of Twelve Million Seven Hundred Forty-Five Thousand Five Hundred Forty-Six United States Dollars (US\$12,745,546) ("Expansion Project Construction Contingency").



Subject to the terms of the Contract Documents, Contractor shall be entitled to allocate from and apply against the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable) Costs of the Work for the following, and no other, purposes relating to the Original Project Work or Expansion Project Work (as applicable): (a) implementation of any Recovery Plan, (b) cost overruns, (c) Minor Changes in the Original Work or Expansion Project Work (as applicable), (d) warranty costs prior to Original Project Final Completion and Expansion Project Final Completion (as applicable), (e) those circumstances where the actual cost of an item exceeds the amount allocated to such item in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) (pursuant to Section 3.1.9.2 or 3.1.9.3 of this Agreement), (f) the costs described in Sections 3.2.13.7, 3.2.13.10, 3.3.6, 3.3.9, 3.3.13, 3.3.15, 3.3.17 or 7.17, (g) any other purpose expressly authorized in this Agreement, and (h) concealed conditions; provided, however, that Contractor may not apply, use or allocate from the Original Project Construction Contingency or the Expansion Project Construction Contingency any amounts for any of the foregoing purposes that are the result of, relate to or arise from any gross negligence, willful misconduct, fraud, material breach or material failure to perform by, Contractor, any Subcontractor or Vendor (except as necessary to replace any Subcontractor or Vendor because of the bankruptcy or failure to perform of such Subcontractor or Vendor), or any party for which any of them are liable or responsible at law or under the Contract Documents, or for any Non-Allowable Costs of the Work except as provided above. Each use of the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable) by Contractor shall be reflected (with a narrative explanation) on the respective Application for Progress Payment for the period during which Contractor makes such use and application. Any portion of the Original Project Construction Contingency or the Expansion Project Construction Contingency remaining unused at Original Project Final Completion and Expansion Project Final Completion, respectively, shall be allocated as provided in Section 3.2.

**3.1.9 Subcontractor Bids.** As Drawings and Specifications are deemed sufficient to call for tenders for a particular portion of the Work, Contractor shall propose and obtain bona fide bids from a minimum of three Subcontractors and/or Vendors for such portion of the Work and, in accordance with Section 9.2 hereof, make a recommendation to Owner in writing as to which bid Owner should select.

**3.1.9.1** If the amount of the bid selected by Owner exceeds the amount budgeted in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) for that item or portion of the Work and the increase in cost is due to the failure of the Drawings and Specifications to substantially conform to the Original Project Guaranteed Maximum Price Premises and Assumptions or the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable), then to the extent that the applicable Drawings and Specifications were not prepared by any of Owner's Consultants, there shall be no adjustment to the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) and, at Owner's option, (a) Contractor shall cause Architect/Engineer to rework

the Drawings and Specifications to cause the Work depicted therein to conform to the Original Project Guaranteed Maximum Price Premises and Assumptions or the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable); or (b) Contractor shall allocate a portion of the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable) to such increased cost pursuant to Section 3.1.8; or (c) Owner may require Contractor to cause some revisions to be made to such Drawings and Specifications to bring down the cost while allocating a portion of the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable) to any remaining increased cost.

**3.1.9.2** If the amount of the bid selected by Owner exceeds the amount budgeted in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) for that item or portion of the Work and the increase in cost is due to the failure of the Drawings and Specifications to substantially conform to the Original Project Guaranteed Maximum Price Premises and Assumptions or the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable), then to the extent any of the applicable Drawings and Specifications were prepared by any of Owner's Consultants, Owner shall, at its option, (a) increase the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) by the amount of such increase in cost; or (b) cause such Owner's Consultant(s) to rework such Drawings and Specifications to cause the Work depicted therein to conform to the Original Project Guaranteed Maximum Price Premises and Assumptions or the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable); or (c) allocate a portion of the Original Project Owner Contingency or the Expansion Owner Contingency (as applicable) to such increased cost pursuant to Section 3.1.7; or (d) do any combination of the foregoing as necessary to cover such increase in cost.

**3.1.9.3** If the amount of the bid recommended by Contractor and accepted by Owner exceeds the amount allocated or budgeted in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) for that item or portion of the Work, and the Drawings and Specifications substantially conform to the Original Project Guaranteed Maximum Price Premises and Assumptions or the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable), then Contractor shall perform such Work and such increase in costs shall be solely Contractor's responsibility, except that Contractor shall be entitled to use a portion of the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable) to cover such cost increase to the extent permitted under Section 3.1.8 hereof (provided, however, if no funds remain in the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable), Contractor shall still be responsible for the increased cost of the Work), and Contractor shall not be entitled to, and will not seek, any increase in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) with regard thereto.

**3.1.9.4** Notwithstanding the provisions of Sections 3.1.9.1 through 3.1.9.3 above, if Contractor failed to comply with its obligations under Section 7.3 of this Agreement and, as a result, the amount of the bid selected by Owner exceeds the amount allocated or budgeted in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) for that item or portion of the Work, Contractor shall perform such Work and such increase in costs shall be solely Contractor's responsibility, except that Contractor may use a portion of the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable) to cover such increased costs to the extent permitted under Section 3.1.8 hereof (provided, however, if no funds remain in the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable), Contractor shall still be responsible for the increased costs of such Work), and Contractor shall not be entitled to, and will not seek, any increase in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) with regard thereto.

**3.1.9.5** If the amount of the bid selected by Owner plus the additional and customary cost to complete the bid Work (if such additional and customary amount is so required as mutually determined between Owner and Contractor) is less than the amount budgeted in the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) for that item or portion of the Work, then the savings shall remain within the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) and be made available to pay for the Cost of the Work, but shall not be allocated to the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable) until Original Project Substantial Completion or the Expansion Project Substantial Completion (as applicable) of the applicable portion of the Work.

**3.1.9.6** Notwithstanding the foregoing provisions of this Section 3.1.9, if Owner elects in accordance with the terms of this Agreement to have a party other than the Contractor perform a portion of the Work, or otherwise eliminates or reduces the scope of a portion of the Work to be performed by the Contractor, the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) shall be reduced in accordance with Article 18.

**3.2 Cost of the Work.** "Cost of the Work" means those elements of costs described in this Section 3.2 up to the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) (subject to change only as provided in this Agreement) which are chargeable to Owner and payable to Contractor when reasonably, actually and necessarily incurred by the Contractor during or in connection with performance of the Work, without mark-up or add on of any kind by or at the request of Contractor. Such costs shall be actual costs paid or to be paid by Contractor during the applicable billing period and agreed upon by Owner, less all discounts, rebates and salvages taken by Contractor. All amounts paid or payable as Costs of the Work shall be subject to verification by audit pursuant to Article 19 of this Agreement. Contractor covenants and

agrees to use reasonable efforts to achieve the lowest price or cost available and consistent with the Contract Documents, for all Cost of the Work items. Upon Original Project Substantial Completion or the Expansion Project Substantial Completion (as applicable) of the Original Project Work and the Expansion Project Work (as applicable), all savings on any and all components of the Cost of the Work, including, but not limited to, all savings on labor costs and other general conditions costs, as well as any savings resulting from early delivery of the completed Project, shall be allocated to and included within the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable). Upon Original Project Final Payment, any unused amounts in the Original Project Owner's Contingency and sixty percent (60%) of any unused amounts in the Original Project Construction Contingency shall revert to the Owner, and forty percent (40%) of any unused amounts in the Original Project Construction Contingency shall be paid to Contractor as a "Original Project Cost Control Incentive" at the time of payment by the Owner of the Original Project Final Payment; provided, however, that if (a) Original Project Substantial Completion is achieved at least fifteen (15) calendar days prior to the Guaranteed Date of Original Project Substantial Completion, and (b) Contractor provides Owner with a written notice accurately confirming to Owner the date of Original Project Substantial Completion of the Original Project Work not less than one hundred fifty-two (152) calendar days prior to such date, then upon Original Project Final Payment a portion of the One Million Two Hundred Eighty-Two Thousand Fifty-One United States Dollars (US\$1,282,051) component of the Original Project Construction Contingency representing the cost of anticipated project preliminaries associated with the twenty-sixth month of the Work (such US\$1,282,051 component, the "Original Project Early Completion Component") shall be paid to Contractor as part of the "Original Project Cost Control Incentive", which portion shall be calculated as follows: (i) if Original Project Substantial Completion of the entire Original Project Work is achieved between fifteen (15) and thirty (30) calendar days prior to the Guaranteed Date of Original Project Substantial Completion, then a percentage of the Original Project Early Completion Component shall be so paid to Contractor equal to (A) the number of calendar days by which Original Project Substantial Completion of the entire Original Project Work is achieved prior to the Guaranteed Date of Original Project Substantial Completion, divided by (B) thirty (30) for example, if Original Project Substantial Completion of the entire Original Project Work is achieved twenty-four (24) calendar days prior to the Guaranteed Date of Original Project Substantial Completion, then Contractor would be paid eighty percent (80%) ( $24 / 30 = 80\%$ ) of the Original Project Early Completion Component; and (ii) if Original Project Substantial Completion of the entire Work is achieved more than thirty (30) calendar days prior to the Guaranteed Date of Original Project Substantial Completion, then one hundred percent (100%) of the Original Project Early Completion Component shall be so paid to Contractor. In no event shall the total payment to Contractor of any unused amounts in the Original Project Construction Contingency, excluding any payment to Contractor of any portion of the Original Project Early Completion Component, exceed the sum of Four Million United States Dollars (US\$4,000,000). Upon Expansion Project Final Payment, any unused amounts in the Expansion Project Owner's Contingency and sixty percent (60%) of any unused amounts in the Expansion Project Construction Contingency shall revert to the Owner, and forty percent

(40%) of any unused amounts in the Expansion Project Construction Contingency shall be paid to Contractor as an “Expansion Project Cost Control Incentive” at the time of payment by the Owner of the Expansion Project Final Payment. In no event shall the total payment to Contractor of any unused amounts in the Expansion Project Construction Contingency exceed the sum of Two Million Two Hundred Fifty Thousand United States Dollars (US\$2,250,000). Costs of the Work shall be strictly limited to and include only the following items, unless otherwise agreed by the Owner in writing:

**3.2.1 Contractor’s Salaried Employees.** Direct cost of amounts actually paid by Contractor for the salaries paid to Contractor’s employees (excluding craft labor) while and only to the extent they are performing Work at the Site, except to the extent approved otherwise by Owner, and except for those off-Site personnel listed in Exhibit C attached hereto (all such on-Site and off-Site personnel collectively being “Personnel”). Such direct costs include Contractor’s actual costs of statutory payroll taxes and payroll burden and customary employee benefits (including vacation) to the extent stated in this Section 3.2.1, pro-rated for the time they are performing Work. Such employee benefits shall include the Chinese New Year bonus, if applicable, and any reasonable and customary costs considered a normal part of the employee’s salary and not a bonus (other than the Chinese New Year bonus). Contractor shall submit to Owner all documentation necessary to support the referenced rate and benefits. Costs for Contractor’s staff shall exclude any elements of overhead or profit. Any changes to the Personnel listed in Exhibit C during the course of the Work must be approved in advance and in writing by Owner, which approval shall not be unreasonably withheld or delayed. The Contractor shall submit a rate schedule for each of its Personnel for Owner’s audit and approval, including any increases other than increases solely for annual standard cost of living adjustments and merit raises in Contractor’s normal and customary practice, but not to exceed three percent (3%) of an employee’s direct annual salary (excluding benefits) per year, unless approved otherwise by Owner. Costs included in such proposed rates shall, however, be strictly limited to actual payroll costs including actual labor burden, and excluding any element for overhead or profit. Items covered by or included within the labor burden shall not be separately or otherwise included in Costs of the Work or billed to Owner.

**3.2.2 Contractor’s Site Craft Labor.** Direct cost of amounts actually paid for Contractor’s craft labor, including actual labor burden and any Chinese New Year bonus paid to such workers. Contractor shall submit daily rates for regular time and hourly rates for premium time hours for Owner’s review and approval, which approval shall not be unreasonably withheld or delayed. In no event shall such rates exceed the lesser of (a) those daily or hourly rates, as applicable, specified in collective bargaining agreements applicable to such labor, including stated increases, or (b) the amount actually paid by Contractor for such craft labor, unless approved in writing in advance by Owner.

**3.2.3 Subcontractor and Vendor Costs.** Direct cost of amounts actually paid or payable during the applicable billing period by Contractor to its Subcontractors and Vendors for Work performed pursuant to subcontracts and purchase orders (including any

change orders or other modifications thereto) which have been reviewed and approved in advance and in writing by Owner (except to the extent Owner's prior written consent is not required pursuant to Section 9.3 of this Agreement).

**3.2.4 Materials and Equipment Incorporated in the Work.** Direct cost of amounts actually paid or to be paid during the applicable billing period by Contractor and approved by Owner for all materials and equipment incorporated or to be incorporated into the Work by Contractor, including the actual direct costs of transportation, insurance and temporary storage (including any materials stored off-Site so long as the requirements of Section 5.13 of this Agreement are fulfilled to Owner's satisfaction). Contractor shall promptly disclose to Owner all relevant details regarding any such materials, equipment and other items if any of the foregoing is being provided for purchase by Contractor or any company which is a subsidiary or otherwise affiliated with Contractor or its parent company. Said costs shall be invoiced at actual prices, net of any available trade and quantity discounts. Contractor shall use reasonable efforts to achieve the lowest cost or price available and consistent with the Contract Documents. Any salvage value received by Contractor for any excess items, materials or equipment paid for by Owner, to be determined prior to the Original Project Final Payment or the Expansion Project Final Payment (as applicable) upon Original Project Final Completion or Expansion Project Final Completion (as applicable), shall reduce the Cost of the Work and be a credit to Owner.

**3.2.5 Materials and Equipment Consumed at the Site.** Direct cost of amounts actually paid or to be paid during the applicable billing period by Contractor for all materials, equipment, supplies and small tools which are provided by Contractor, its Subcontractors or Vendors at the Site and fully consumed at the Site during performance of the Work, including, but not limited to, the actual direct costs of transportation and related insurance costs and temporary storage on-Site or pursuant to Section 5.13 hereof. Contractor shall promptly disclose to Owner all relevant details regarding any such materials, equipment and other items if any of the foregoing is being provided for purchase by Contractor or any company which is a subsidiary or otherwise affiliated with Contractor or its parent company. Said costs shall be at lowest rates reasonably available and consistent with the Contract Documents and shall be invoiced at actual prices, net of any available trade and quantity discounts. Contractor shall use reasonable efforts to achieve the lowest cost or price available and consistent with the Contract Documents. Any salvage value received by the Contractor for any excess items paid for by Owner, to be determined prior to the Original Project Final Payment or the Expansion Project Final Payment (as applicable) upon Original Project Final Completion or Expansion Project Final Completion (as applicable), shall reduce the Cost of the Work and be a credit to Owner.

**3.2.6 Rental Equipment.** Direct cost of amounts actually paid or to be paid during the applicable billing period by Contractor for rental charges for all necessary construction machinery and equipment utilized at the Site (exclusive of small tools), including, but not limited to, the direct costs of transportation, delivery, installation, dismantling, removal, maintenance, and insurance. Contractor shall use reasonable efforts

to achieve the lowest cost or price available and which is consistent with the Contract Documents. Contractor shall promptly disclose to Owner all relevant details regarding any such construction machinery or equipment that is being provided, either for purchase or rental, by Contractor or any company which is a subsidiary or otherwise affiliated with Contractor or its parent company. The rental rates for any machinery and equipment owned by Contractor or an affiliated entity shall be agreed upon by Owner and Contractor in advance; provided that the aggregate amount of rental costs charged for any individual piece of Contractor or affiliate-owned machinery or equipment shall not exceed 75% of its actual acquisition cost. The preliminary list of machinery and equipment to be rented or purchased by the Contractor for use in the Work is set out on Exhibit D attached hereto.

**3.2.7 Site Office Costs.** Direct cost of amounts actually paid or to be paid during the applicable billing period by Contractor for Site office facilities and Site office general expenses, telephone services, long distance telephone calls, photocopying, postage, reasonable and customary petty cash expenses not to exceed US\$250 monthly, facsimile transmissions, office supplies, standard printing required by the Contract Documents, express and air courier mail delivery services, Site office equipment such as computers, telephones, copiers, facsimile machines, typewriters and similar items used in connection with the Work. Contractor shall use reasonable efforts to achieve the lowest cost or price available and consistent with the Contract Documents, provided, however, such costs shall be expressly limited to such of the foregoing items as are not otherwise made available or provided by Owner to Contractor at the Site to the Contractor's reasonable satisfaction. Contractor shall promptly advise Owner of any such Site office equipment which is charged to the Work and provide Owner with all purchase and rental agreements pertaining thereto for Owner's approval. Contractor shall promptly disclose to Owner all relevant details if any such Site office equipment is being provided, either for purchase or rental, by Contractor or any company which is a subsidiary or otherwise affiliated with the Contractor or its parent company. Any salvage value received by Contractor for any excess items paid for by Owner, to be determined prior to the Original Project Final Payment or the Expansion Project Final Payment (as applicable) upon Original Project Final Completion or Expansion Project Final Completion (as applicable), shall reduce the Cost of the Work and be a credit to Owner.

**3.2.8 Reimbursable Taxes.** Direct cost of amounts properly and actually paid by Contractor for Reimbursable Taxes arising from or payable in connection with the execution of the Work.

**3.2.9 Bond Premiums.** Direct cost of amounts actually paid or to be paid during the applicable billing period by Contractor for premiums solely attributable to the Work for Contractor's On-Demand Bonds to the extent required by Owner, and direct cost of amounts paid or to be paid during the applicable billing period for Subcontractor bond premiums.

**3.2.10 Course of Constructions Repairs.** Actual and reasonable costs incurred and paid by Contractor in repairing minor damage to trade Work caused as a normal by-product during the course of construction and not otherwise a Non-Allowable Cost of the Work.

**3.2.11 Royalties.** Royalties and license fees necessarily and reasonably paid or to be paid during the applicable billing period by Contractor for an express design, process or product required by the Contract Documents in accordance with Section 7.20 hereof.

**3.2.12 Cost of Hedging Exchange Rate.** Reasonable costs incurred and paid by Contractor in connection with hedging the exchange rate risk under this Contract, provided that such costs shall not exceed, in the aggregate, Fifty Thousand United States Dollars (US\$50,000).

**3.2.13 Miscellaneous Costs.** Miscellaneous costs are chargeable as a Cost of the Work only as follows:

**3.2.13.1** Direct costs actually incurred or paid by Contractor for clean-up and removal of debris;

**3.2.13.2** Direct costs actually incurred or paid to respond to an emergency affecting the safety of persons and property, and not otherwise a Non-Allowable Cost of the Work;

**3.2.13.3** Direct costs actually incurred or paid by Contractor and approved by Owner for Site security services for protection of the Work;

**3.2.13.4** Direct costs actually incurred or paid by Contractor for blueprinting of Drawings as required by the Contract Documents and required postage, express mail and long distance costs in the performance of the Work;

**3.2.13.5** Direct costs actually incurred or paid for building permit fees, including plan check fees, licenses and other authorizations which are required by governmental authorities to be taken out in Owner's or Contractor's name for construction and completion of the Work, including, but not limited to, temporary and final certificates of occupancy, and licenses (such as the kitchen license) required by governmental authorities strictly for the operation of the completed Project;

**3.2.13.6** Direct costs actually and reasonably incurred and paid or to be paid during the applicable billing period by Contractor's Personnel and required for travel or while traveling in the performance of the Work, all in accordance with travel policies agreed upon in advance by Owner and Contractor;



**3.2.13.7** Losses and expenses from property damage not compensated by insurance and incurred by Contractor directly relating to the performance of the Work and not relating to or arising from the failure of Contractor to comply with the Contract Documents or otherwise a Non-Allowable Cost of the Work;

**3.2.13.8** The costs of insurance required to be carried by Contractor and Subcontractors relating to the Work pursuant to Section 15.1.1 hereof;

**3.2.13.9** Direct costs actually incurred or paid by the Contractor for the purpose of correcting minor defects in the Work, subject to the provisions of Section 3.3.6, prior to or during the Original Project Defects Liability Period or the Expansion Project Defects Liability Period (as applicable) and not otherwise a Non-Allowable Cost of the Work and provided that any such costs shall only be payable to Contractor from amounts available in the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable), if any;

**3.2.13.10** The cost of an insurance policy obtained by Contractor in its name (but naming Owner as an additional insured) relating to the Project and providing coverage for the difference between Contractor's normal and customary insurance coverage and the insurance required to be maintained by Owner pursuant to Section 15.1 of this Agreement; provided, however, that any portion of the cost of such policy in excess of Two Hundred Thousand United States Dollars (US\$200,000) shall only be payable to Contractor from amounts available in the Original Project Construction Contingency or the Expansion Project Construction Contingency (as applicable), if any;

**3.2.13.11** Other actual direct costs specifically stated in this Agreement as being payable to Contractor as a Cost of the Work; and

**3.2.13.12** Other actual direct costs incurred in the performance of the Work, but limited solely to those costs which are approved in writing by Owner in advance.

**3.3 Non-Allowable Cost of the Work.** "Non-Allowable Cost of the Work" means the direct and/or indirect costs described in this Section 3.3 and all similar costs and all other costs not included within the Cost of the Work, which are paid or incurred by Contractor during or in connection with the performance of the Work. All such Non-Allowable Costs of the Work are included in the Original Project Contractor's Fee and the Expansion Project Contractor's Fee set forth in Sections 3.1.2 and 3.1.3 above, regardless of whether they exceed the amount of the Original Project Contractor's Fee or the Expansion Project Contractor's Fee (as applicable). Notwithstanding any provision of this Contract to the contrary, (a) an item of cost which would otherwise be included in the Cost of the Work shall be deemed a Non-Allowable Cost of the Work if any of the provisions of Sections 3.3.1 through 3.3.26 below shall apply to such item of cost, and (b) Contractor shall not be entitled to receive any additional reimbursement for Non-Allowable Costs of the Work, including, but not limited to, any of the types of cost items described as follows:

**3.3.1** The cost of any item not specifically and expressly included as a Cost of the Work in Section 3.2 above;

**3.3.2** Costs in excess of the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable);

**3.3.3** Salaries and all other compensation of the Contractor's personnel and representatives performing any function at any location other than at the Site, except for those Personnel individually named as approved in Exhibit C attached hereto, and to the extent described therein;

**3.3.4** All direct and indirect operating, maintenance and overhead costs of any nature whatsoever arising out of or in any way relating to any of the Contractor's principal or branch offices, including, but not limited to: office space; furniture and equipment which is dedicated to or reserved for use for the Work; leasing and rental costs; maintenance; local telephone; utilities; depreciation; security; office supplies; property taxes; the development of engineering and construction manuals, standards or computer programs; personnel training of any kind; and janitorial services; excepting only those actual and direct costs incurred and permitted to the extent described in Sections 3.2.7 and 3.2.13 above;

**3.3.5** Any expenses relating to Contractor's operating capital, including interest on the Contractor's capital employed in support of the Work (provided, however, as to interest, only so long as Owner timely pays amounts properly due and owing to Contractor in accordance with and subject to the Contract Documents);

**3.3.6** All direct and indirect costs arising out of the fault or negligence of, or failure to comply with the terms of the Contract Documents or any subcontracts by, the Contractor, any Subcontractor or Vendor, Architect/Engineer, or anyone directly or indirectly employed by any of them, or for whose acts or omissions any of them are responsible or liable at law or under the Contract Documents;

**3.3.7** Except to the extent provided in Section 7.2, all direct and indirect costs arising out of the failure of any portion of the Work to comply with applicable Laws; all direct and indirect costs of any nature relating to work arising during the Original Project Defects Liability Period or the Expansion Project Defects Liability Period defined in Section 10.2 of this Agreement, for correction, removal, replacement or disposal of any non-conforming Work, materials or equipment to the extent defined in Article 10 of this Agreement

**3.3.8** All costs incurred by Contractor for bonuses (other than the Chinese New Year bonus, as applicable), stock options, profits sharing arrangements and similar incentive programs;

**3.3.9** All direct and indirect costs of any nature resulting from or attributable to either delays, disruptions or interferences, excepting only for those costs which are expressly identified and permitted in accordance with Article 11 of this Agreement;

**3.3.10** All direct and indirect costs of any nature resulting from or attributable to terminations, cancellations for convenience or suspensions, excepting only for those costs which are expressly identified and permitted in accordance with Article 17 of this Agreement;

**3.3.11** Rental costs of Contractor or affiliate owned machinery and equipment, except as specifically provided in Section 3.2.6 of this Agreement;

**3.3.12** All costs and fees relating to business and/or operating permits, licenses and taxes, required by any governmental authorities (except as provided in Sections 3.2.8 and 3.2.13.5, and other than work visas and/or work permits, which shall be included in the Cost of the Work) or by labor agreements to enable the Contractor, its Subcontractors or Vendors of any tier to be qualified to do business and/or perform trade activities and/or any Work pursuant to the Contract Documents;

**3.3.13** Costs incurred by Contractor in satisfying its indemnification obligations pursuant to Article 14 of this Agreement or any other Contractor indemnification provision of the Contract Documents;

**3.3.14** Payments on account of materials, supplies, and equipment until delivered and suitably stored at the Site for subsequent incorporation or consumption in the Work, except as specifically provided in Sections 3.2.4, 5.11 and 5.13 of this Agreement or as otherwise approved by Owner on a case-by-case basis (if, however, in Owner's reasonable opinion, such warehousing and storage costs are due to Contractor caused delays and/or poor sequencing of the Work by Contractor, these costs shall not be considered a Cost of the Work and will be at Contractor's sole cost and expense);

**3.3.15** Payments made to Subcontractors or Vendors in violation of the provisions of this Agreement;

**3.3.16** Legal costs incurred by Contractor relating to the preparation, response to or defense of any Claim, or of any claims by third parties for copyright or patent infringement, for which Contractor or any Subcontractor or Vendor are liable or responsible at law or under the Contract Documents;

**3.3.17** Any cost incurred by Contractor relating to a Change in the Work without a Change Order or Construction Change Directive (other than a Minor Change or unless approved otherwise in writing by Owner and Owner's Lenders);

**3.3.18** Costs reimbursed by insurance to Contractor or any Subcontractor or Vendor;

**3.3.19** The costs of any insurance premiums for insurance coverage, and the amounts of any insurance deductibles, beyond that required or permitted, respectively, by Section 15.1 hereof, except to the extent provided in Section 3.2.13.10 hereof or as otherwise provided for in this Agreement;

**3.3.20** Costs that Owner has already paid;

**3.3.21** All direct and indirect costs of any nature relating to work arising during the Original Project Defects Liability Period or the Expansion Project Defects Liability Period defined in Section 10.2 of this Agreement, for correction, removal, replacement or disposal of any non-conforming Work, materials or equipment, except to the extent provided in Section 3.2.13.9 hereof;

**3.3.22** Costs incurred for the purpose of correcting any defects in the Work after the Original Project Defects Liability Period and the Expansion Project Defects Liability Period;

**3.3.23** Costs of repairing defective or non-conforming Work or Work damaged by Contractor, any Subcontractor or Vendor, anyone directly or indirectly employed by any of them, or for those acts or omissions any of them are responsible or liable at law or under the Contract Documents, except to the extent provided in Section 3.2.10 hereof;

**3.3.24** Costs that are incurred or are submitted to Owner for payment after Original Project Final Payment or Expansion Project Final Payment (as applicable) has been made, except for the specific dollar amounts of any unresolved claims specifically identified in its Application for Original Project Final Payment or Expansion Project Final Payment (as applicable);

**3.3.25** Any cost specifically stated in this Agreement as not reimbursable to the Contractor or not includable in the Cost of the Work; and

**3.3.26** All other direct, indirect and/or overhead costs of any nature whatsoever, except as otherwise expressly provided to the contrary in the Contract Documents.

**3.4 Contractor's Responsibility For Taxes.** Other than as provided in Section 3.2.8, Exhibit N or elsewhere in this Agreement, it is expressly understood that no Taxes of any nature whatsoever are considered a Cost of the Work and that Contractor will not be separately reimbursed for any Taxes. Contractor shall be responsible for and shall timely pay, all Taxes relating to or arising out of the performance of the Work or Contractor's obligations under the Contract.

**3.5 Discounts, Rebates and Refunds.** All cash discounts (so long as Owner has made payment to Contractor to the extent advance or timely payment is necessary to obtain such cash discount), trade discounts, rebates and refunds obtained by Contractor during the course of the Work shall be credited to the Original Project Construction Contingency or the Expansion Project Construction Contingency based on whether such trade discount, rebate or refund arises out of the Original Project Work or the Expansion Project Work, and allocated in accordance with Section 3.2. Contractor shall take all necessary steps to obtain, secure and pass on such credits to Owner and all such discounts, rebates and refunds shall be fully reflected in Contractor's monthly Applications for Progress Payment submitted pursuant to Article 5 of this Agreement. Title to all materials, tools, and equipment paid for by Owner shall be vested in Owner. At the completion of the Work and when no longer required, such tools, equipment and materials as remain and have been or shall be paid for by the Owner shall belong to Owner and be, as Owner may direct (a) sold at the direction of Owner and all sums and allowances realized and received by Contractor shall be credited against the Cost of the Work for all purposes under this Agreement or (b) delivered to Owner, all as Owner shall direct.

**3.6 No Duplication.** Notwithstanding the breakdown or categorization of any costs in this Article 3 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

#### **ARTICLE IV. CONTRACT TIME AND INTERIM MILESTONE DATES**

##### **4.1 Definitions.**

**4.1.1** The term "day" means any calendar day including public holidays.

**4.1.2** The term "Notice to Proceed" means the written notice from Owner to Contractor providing Contractor with a "Date of Commencement" for the Work, which Date of Commencement shall not be earlier than thirty (30) days after the date on which the Notice to Proceed is delivered to Contractor. At Owner's option, the Notice to Proceed may specify a Date of Commencement with respect to only a specific portion or aspect of the Work or may specify varying Dates of Commencement for different portions or aspects of the Work. Contractor will not commence or perform any Work or portion thereof, or enter upon the Site except with the prior written consent of Owner, prior to the Date of Commencement for such Work in Owner's Notice to Proceed.

**4.1.3** The Contractor and the Owner hereby agree (i) that the Notice to Proceed given by the Owner to the Contractor with respect to the Original Project Work was properly provided in accordance with the terms and conditions of this Agreement on June 11, 2004 and (ii) with respect to the Expansion Project, July 15, 2005 shall be the Expansion

Project Date of Commencement, and no Notice to Proceed with respect to the Expansion Project Work is required.

**4.1.4** The term "Original Project Interim Milestone Dates" means either the fixed dates, or the fixed number of calendar days, available to Contractor to achieve the key schedule "Original Project Interim Milestones" identified in Attachment 2 to Exhibit B (as it may be updated or revised from time to time in accordance with Section 11.2, the "Original Project Schedule"). The term "Expansion Project Interim Milestone Dates" means either the fixed dates, or the fixed number of calendar days, available to Contractor to achieve the key schedule "Expansion Project Interim Milestones" identified in Attachment 5 to Exhibit B (as it may be updated or revised from time to time in accordance with Section 11.2, the "Expansion Project Schedule").

**4.1.5** The term "Contract Time" means (a) with respect to Original Project Substantial Completion, the period of time between the Original Project Date of Commencement and Guaranteed Date of Original Project Substantial Completion, (b) with respect to Original Project Final Completion, the period of time between the Guaranteed Date of Original Project Substantial Completion and the Guaranteed Date of Original Project Final Completion, (c) with respect to Expansion Project Substantial Completion, the period of time between the Expansion Project Date of Commencement and Guaranteed Date of Expansion Project Substantial Completion and (d) with respect to Expansion Project Final Completion, the period of time between the Guaranteed Date of Expansion Project Substantial Completion and the Guaranteed Date of Expansion Project Final Completion.

**4.1.6** The term "Guaranteed Date of Original Project Final Completion" means the date which is sixty (60) calendar days after the date of Original Project Substantial Completion or such longer period as is permitted pursuant to Section 12.2.

**4.1.7** The term "Guaranteed Date of Original Project Substantial Completion" means the date which is seven hundred ninety-one (791) calendar days from and after the Original Project Date of Commencement.

**4.1.8** The term "Guaranteed Date of Expansion Project Final Completion" means the date which is sixty (60) calendar days after the date of Expansion Project Substantial Completion or such longer period as is permitted pursuant to Section 12.2.

**4.1.9** The term "Guaranteed Date of Expansion Project Substantial Completion" means the date which is seven hundred twenty-six (726) calendar days from and after the Expansion Project Date of Commencement.

**4.2 Time of the Essence.** Contractor hereby accepts and confirms that, subject to the terms of this Agreement, the Contract Time is reasonable for completing the Work and hereby agrees to dedicate such personnel and other resources as are necessary to assure that the Work is continuously managed and performed in a diligent, skilled and workmanlike manner to achieve the Original Project Interim Milestone Dates, the Expansion Project

Interim Milestone Dates, the Guaranteed Date of Original Project Substantial Completion and the Guaranteed Date of Expansion Project Substantial Completion. Contractor and Owner acknowledge that TIME IS OF THE ESSENCE with respect to their respective obligations under the Contract Documents, and that Owner's business interests will suffer substantial losses in the event that any Original Project Interim Milestone or Expansion Project Interim Milestone is not achieved by the applicable Original Project Interim Milestone Date or Expansion Project Interim Milestone Date and/or Original Project Substantial Completion or Expansion Project Substantial Completion is not achieved by the Guaranteed Date of Original Project Substantial Completion or Guaranteed Date of Expansion Project Substantial Completion (as applicable) in accordance with and subject to the terms of this Agreement. Notwithstanding the foregoing, the liability of Contractor due solely to the failure to achieve one or more of the Original Project Interim Milestones or the Expansion Project Interim Milestones by the applicable Original Project Interim Milestone Date or Expansion Project Interim Milestone Date shall be limited to (a) the cost of preparing and implementing an acceptable Recovery Plan with respect to the applicable milestone(s) in accordance with Section 11.8 to address such failure, (b) all costs and expenses incurred by Owner in preparing and implementing an Owner Recovery Plan to address such failure as described in and subject to any limitation set forth in Section 11.8.6 (any such amounts described under clauses (a) and (b), collectively, "**Recovery Plan Liabilities**"), and (c) the Original Project Liquidated Damages or the Expansion Project Liquidated Damages (as applicable) provided for under Section 4.4.1.1 with respect to each such milestone. Contractor's liability with respect to the failure to achieve Original Project Substantial Completion by the Guaranteed Date of Original Project Substantial Completion is covered under Section 4.4. Contractor's liability with respect to the failure to achieve Expansion Project Substantial Completion by the Guaranteed Date of Expansion Project Substantial Completion is covered under Section 4.4. Notwithstanding anything to the contrary contained herein, the aggregate liability of Contractor with respect to Original Project Work for (i) Recovery Plan Liabilities, as provided in this Section 4.2, and (ii) Original Project Liquidated Damages, as provided in Section 4.4.1, shall not exceed the sum of Twenty Million United States Dollars (US\$20,000,000) and the aggregate liability of Contractor with respect to Expansion Project Work for (i) Recovery Plan Liabilities, as provided in this Section 4.2, and (ii) Expansion Project Liquidated Damages, as provided in Section 4.4.1, shall not exceed the sum of Ten Million United States Dollars (US\$10,000,000).

**4.3 Completion Guarantees.** Contractor and Owner agree that the Original Project Work commenced on the Original Project Date of Commencement. Subject to changes in the Contract Time which are mutually agreed to in accordance with the Contract Documents, Contractor hereby guarantees to cause the Expansion Project Work to be commenced on the Expansion Project Date of Commencement as provided in Section 4.1.2 hereof, and (a) to timely achieve each of the Original Project Interim Milestones and the Expansion Project Interim Milestones on or before the applicable Original Project Interim Milestone Date or Expansion Project Interim Milestone Date, and (b) to timely achieve Original Project Substantial Completion and Expansion Project Substantial Completion in

accordance with the requirements of Section 12.1 of this Agreement on or before the Guaranteed Date of Original Project Substantial Completion and the Guaranteed Date of Expansion Project Substantial Completion (as applicable). Contractor shall and hereby agrees to indemnify Owner from and against any and all costs, damages, expenses, losses, liabilities and obligations relating to and/or arising out of Contractor's failure to achieve either of Original Project Substantial Completion or Expansion Project Substantial Completion by the Guaranteed Date of Original Project Substantial Completion or the Guaranteed Date of Expansion Project Substantial Completion (as applicable), except pursuant to schedule extensions which are set forth in Change Orders in accordance with the Contract Documents.

#### **4.4 Liquidated Damages With Respect to Delays.**

**4.4.1** If any Original Project Interim Milestone or Expansion Project Interim Milestone is not achieved by the applicable Original Project Interim Milestone Date or Expansion Project Interim Milestone Date and/or Original Project Substantial Completion or Expansion Project Substantial Completion is not achieved by the Guaranteed Date of Original Project Substantial Completion or the Guaranteed Date of Expansion Project Substantial Completion (as applicable), as such time periods may be adjusted pursuant to the Contract Documents, Contractor acknowledges and agrees that Owner will suffer significant damages. Accordingly, if any Original Project Interim Milestone or Expansion Project Interim Milestone is not achieved by the applicable Original Project Interim Milestone Date or Expansion Project Interim Milestone Date and/or Original Project Substantial Completion or Expansion Project Substantial Completion is not achieved by the Guaranteed Date of Original Project Substantial Completion or the Guaranteed Date of Expansion Project Substantial Completion (as applicable), Contractor shall pay to Owner on demand (or, at Owner's option Owner may deduct, withhold and/or set off the whole or any portion of the following liquidated damages amounts from or against any amounts then or thereafter payable or due to Contractor from Owner), as liquidated damages for such delay and not as a penalty, the following amounts:

**4.4.1.1** If any Original Project Interim Milestone is not achieved by the applicable Original Project Interim Milestone Date, the amount identified in Attachment 2 to Exhibit B with respect to such Original Project Interim Milestone per day for each day of delay from and after such Original Project Interim Milestone Date until such Original Project Interim Milestone is achieved;

**4.4.1.2** If Original Project Substantial Completion is not achieved by the Guaranteed Date of Original Project Substantial Completion, Three Hundred Thousand United States Dollars (US\$300,000) per day for each day of delay from and after the Guaranteed Date of Original Project Substantial Completion until Original Project Substantial Completion is achieved;



**4.4.1.3** If any Expansion Project Interim Milestone is not achieved by the applicable Expansion Project Interim Milestone Date, the amount identified in Attachment 5 to Exhibit B with respect to such Expansion Project Interim Milestone per day for each day of delay from and after such Expansion Project Interim Milestone Date until such Expansion Project Interim Milestone is achieved; and

**4.4.1.4** If Expansion Project Substantial Completion is not achieved by the Guaranteed Date of Expansion Project Substantial Completion, One Hundred Fifty Thousand United States Dollars (US\$150,000) per day for each day of delay from and after the Guaranteed Date of Expansion Project Substantial Completion until Expansion Project Substantial Completion is achieved;

The liquidated damages payable by Contractor pursuant to this Section 4.4.1 are referred to herein as “**Liquidated Damages**”. The Liquidated Damages payable by Contractor with respect to Original Project Work are referred to herein as “Original Project Liquidated Damages”. The Liquidated Damages payable by Contractor with respect to Expansion Project Work are referred to herein as “Expansion Project Liquidated Damages”. Notwithstanding anything to the contrary contained herein, the aggregate liability of Contractor with respect to Original Project Work for (i) Recovery Plan Liabilities, as provided in Section 4.2, and (ii) Original Project Liquidated Damages, as provided in this Section 4.4.1, shall not exceed the sum of Twenty Million United States Dollars (US\$20,000,000) and the aggregate liability of Contractor with respect to Expansion Project Work for (i) Recovery Plan Liabilities, as provided in Section 4.2, and (ii) Expansion Project Liquidated Damages, as provided in this Section 4.4.1, shall not exceed the sum of Ten Million United States Dollars (US\$10,000,000).

**4.4.2** Owner and Contractor hereby agree that it would be impractical or impossible to ascertain at the outset of the Project the exact amount of damages in the case of Contractor’s failure to cause any Original Project Interim Milestone or Expansion Project Interim Milestone to be achieved by the applicable Original Project Interim Milestone Date or Expansion Project Interim Milestone Date or Original Project Substantial Completion or Expansion Project Substantial Completion to be achieved by the Guaranteed Date of Original Project Substantial Completion or Guaranteed Date of Expansion Project Substantial Completion (as applicable) and agree to stipulate that Owner’s loss in the case of any such failure will be deemed equal to the amounts set forth herein as liquidated damages for the specific periods set forth in Section 4.4.1 above, which amounts both parties agree represent the parties’ best efforts at the outset in making a genuine pre-estimate of Owner’s actual damages in such event, and which amount shall be the only monies due from the Contractor for such failure and which the parties agree shall be the Owner’s sole remedy for delay in the execution of the Work, except as set forth in Section 4.2. Other than with respect to Owner’s right to claim damages for delay in the execution of the Work, the imposition or payment of Original Project Liquidated Damages or Expansion Project Liquidated Damages (as applicable) under Section 4.4.1 shall not in any way limit Contractor’s liability for any other act or omission, or for any breach or default of

Contractor, Subcontractor or any Vendor under any of the Contract Documents, other than for delay in the execution of the Work, or any way limit Owner's other rights and remedies under this Agreement, including, but not limited to, Owner's right to terminate Contractor as the contractor with respect to the Work and to retain a different contractor to complete the Work.

**4.4.3** Notwithstanding the provisions of this Section 4.4, the foregoing Original Project Liquidated Damages and Expansion Project Liquidated Damages shall not apply to or limit in any way any of Contractor's obligations and covenants under Section 11.8 hereof, including, but not limited to, Contractor's obligation to provide and implement any Recovery Plan and/or take all available steps to overcome or mitigate against the adverse effects of all delays identified by Owner; provided, however, that the aggregate liability of Contractor with respect to Original Project Work for (i) Recovery Plan Liabilities, as provided in Section 4.2, and (ii) Original Project Liquidated Damages, as provided in this Section 4.4.3, shall not exceed the sum of Twenty Million United States Dollars (US\$20,000,000) and the aggregate liability of Contractor with respect to Expansion Project Work for (i) Recovery Plan Liabilities, as provided in Section 4.2, and (ii) Expansion Project Liquidated Damages, as provided in this Section 4.4.3, shall not exceed the sum of Ten Million United States Dollars (US\$10,000,000).

#### **4.5 Early Completion.**

**4.5.1** If Original Project Substantial Completion is achieved by Contractor prior to the Guaranteed Date of Original Project Substantial Completion, as may be adjusted pursuant to the Contract Documents, and Contractor has fully and timely performed all of its obligations under the Contract Documents and is not in default or breach thereunder, Contractor shall be entitled to an early completion bonus payment (in addition to the Original Project Contractor's Fee), to be paid to Contractor concurrently with the Original Project Final Payment, in the amount of Fifty Thousand United States Dollars (US\$50,000) per day for each day, up to but not to exceed a maximum total early completion bonus payment of One Million United States Dollars (US\$1,000,000), that the Contractor achieves Original Project Substantial Completion in advance of the Guaranteed Date of Original Project Substantial Completion. The early completion bonus will only be owed to Contractor if (a) Contractor is able to accelerate Original Project Substantial Completion without the use of excessive overtime labor funded as a Cost of the Work or other increase in the Cost of the Work which is incurred or arranged with the intent to achieve Original Project Substantial Completion prior to the Guaranteed Date of Original Project Substantial Completion and (b) the amount of the early completion bonus exceeds the cost of any recovery plan under Section 11.8.

**4.5.2** If Casino Area 4 is completed by Contractor prior to its applicable Expansion Project Interim Milestone identified in Attachment 5 to Exhibit B, as may be adjusted pursuant to the Contract Documents, and Contractor has fully and timely performed all of its obligations under the Contract Documents and is not in default or breach

thereunder, Contractor shall be entitled to an early completion bonus payment (in addition to the Expansion Project Contractor's Fee), to be paid to Contractor concurrently with the Expansion Project Final Payment, in the amount of Twenty-Five Thousand United States Dollars (US\$25,000) per day for each day, up to but not to exceed a maximum total early completion bonus payment, when aggregated with the early completion bonus payment under Section 4.5.3, of Five Hundred Thousand United States Dollars (US\$500,000), that the Contractor completes Casino Area 4 in advance of its applicable Expansion Project Interim Milestone. The early completion bonus will only be owed to Contractor if (a) Contractor is able to accelerate the completion of Casino Area 4 without the use of excessive overtime labor funded as a Cost of the Work or other increase in the Cost of the Work which is incurred or arranged with the intent to complete Casino Area 4 in advance of its applicable Expansion Project Interim Milestone and (b) the amount of the early completion bonus exceeds the cost of any recovery plan under Section 11.8. The determination of whether Casino Area 4 has been completed for purposes of this Section 4.5.2 shall be made in accordance with the provisions in Section 12.1 governing substantial completion, as if Casino Area 4 is the "Expansion Project" thereunder.

**4.5.3** If Casino Area 5 is completed by Contractor prior to its applicable Expansion Project Interim Milestone identified in Attachment 5 to Exhibit B, as may be adjusted pursuant to the Contract Documents, and Contractor has fully and timely performed all of its obligations under the Contract Documents and is not in default or breach thereunder, Contractor shall be entitled to an early completion bonus payment (in addition to the Expansion Project Contractor's Fee), to be paid to Contractor concurrently with the Expansion Project Final Payment, in the amount of Twenty-Five Thousand United States Dollars (US\$25,000) per day for each day, up to but not to exceed a maximum total early completion bonus payment, when aggregated with the early completion bonus payment under Section 4.5.2, of Five Hundred Thousand United States Dollars (US\$500,000), that the Contractor completes Casino Area 5 in advance of its applicable Expansion Project Interim Milestone. The early completion bonus will only be owed to Contractor if (a) Contractor is able to accelerate the completion of Casino Area 5 without the use of excessive overtime labor funded as a Cost of the Work or other increase in the Cost of the Work which is incurred or arranged with the intent to complete Casino Area 5 in advance of its applicable Expansion Project Interim Milestone and (b) the amount of the early completion bonus exceeds the cost of any recovery plan under Section 11.8. The determination of whether Casino Area 5 has been completed for purposes of this Section 4.5.3 shall be made in accordance with the provisions in Section 12.1 governing substantial completion, as if Casino Area 5 is the "Expansion Project" thereunder.

#### **4.6 Guarantees of Completion and Performance.**

**4.6.1 Parent Completion Guarantee.** Contractor shall cause Leighton Holdings Limited and China Overseas Holdings Limited (each, a "Guarantor", and jointly and severally, the "Guarantors") to execute and deliver to Owner, on or before the date that is the earlier of (A) thirty days following the execution of this Agreement and (B) the consummation of Owner's refinancing of

the Project (currently scheduled to be on or about August 15, 2005), (i) the Guarantee and (ii) a consent to the assignment of the Guarantee by Owner to Owner's Lenders.

**ARTICLE V.  
PAYMENTS TO CONTRACTOR**

In consideration of Contractor's performance of the Work in full compliance with the Contract Documents, Owner shall pay Contractor as follows:

**5.1 Schedule of Values.**

**5.1.1** Upon execution of this Agreement, Contractor shall submit to Owner and Owner's Lenders an initial "Expansion Project Schedule of Values" for the Expansion Project Work, allocating values among all categories or portions of the Expansion Project Work. the Expansion Project Schedule of Values shall be prepared in such form and supported by data to substantiate its accuracy to the extent as Owner may reasonably require, shall be based upon the latest cost information available to Contractor, and shall be subject to Owner's approval which approval shall not be unreasonably withheld or delayed. By way of example and not by limitation, the Expansion Project Schedule of Values should include and delineate: (a) each trade subcontract and major component thereof; (b) each significant purchase order and the installation costs for all procured materials and equipment, so that logical and realistic cost breakdowns are established and set forth for all facilities, phases, areas, trade disciplines, utility and electrical systems, FF&E items and major components of each of the foregoing. The Owner accepted Expansion Project Schedule of Values together with the payment terms of subcontracts and purchase orders approved by Owner (as Work is performed pursuant to such subcontracts and purchase orders) shall be used as a basis for the Contractor's Applications For Progress Payments described in Section 5.2 below. Owner shall have the right to reject all or any portion of the Expansion Project Schedule of Values which Owner determines does not accurately define the Work in reasonable detail, or if the detail provided does not accurately reflect an appropriate cost, allocation or proportion of the Work. At any time and from time to time if it reasonably appears to Owner or Contractor that any aspect of the Expansion Project Schedule of Values is incomplete or inaccurate, and following any Change Order or Construction Change Directive, the Expansion Project Schedule of Values shall be adjusted by Contractor, in each case subject to Owner's written approval, to reflect accurately the values of the various portions of the Expansion Project Work.

**5.1.2** The Original Project Schedule of Approved Values was delivered by Contractor to Owner on or about July 27, 2004.

## 5.2 Applications For Progress Payments.

### 5.2.1 Format of Applications

5.2.1.1 On or before the first (1<sup>st</sup>) day of each month, Contractor shall submit to Owner and Owner's Lenders an initial draft of a Contractor's Application for Progress Payment for the previous month itemized with respect to Original Project Work and Expansion Project Work.

5.2.1.2 On or before the fifth (5<sup>th</sup>) day of each month, Contractor shall submit to Owner and Owner's Lenders fully completed Applications For Progress Payment for Original Project Work and Expansion Project Work for the previous month in a format reasonably satisfactory to Owner and supported by such documentation to verify entitlement as Owner and Owner's Lenders may reasonably require, and certified by Contractor as correct. Each Application for Progress Payment, identified as a Original Project Work application or a Expansion Project Work application, shall be separately and sequentially numbered by Original Project Work or Expansion Project Work, and shall clearly identify, itemize and attribute all Costs of the Work in a manner which facilitates review by Owner. Such Applications for Progress Payment may only request payment for Cost of the Work actually incurred prior to the date of such Application for Progress Payment and that the Contractor has paid or intends to pay to a Subcontractor or Vendor promptly after receipt by the Contractor of the corresponding payment from the Owner, and may not include requests for payment of amounts Contractor does not intend to pay promptly to a Subcontractor or Vendor because of a dispute or other reason. Contractor shall not submit more than one Application for Progress Payment per Original Project Work or Expansion Project Work per month, unless otherwise requested by Owner. In addition, each Application for Progress Payment shall separately identify and itemize the following:

(a) Work performed during such preceding calendar month, together with a statement indicating what portion of such Work relates to the Hotel or the Casino, respectively.

(b) Amounts due for Contractor's initial scope of Work satisfactorily completed during the preceding month as measured by the Contractor's direct and actual costs incurred in accordance with the Cost of the Work described in Section 3.2 of this Agreement, a list of all bills for supplies, materials, equipment, and fixtures incorporated or to be incorporated in the Work (in detail reasonably sufficient to allow Owner to determine where each item is incorporated or to be incorporated) and labor performed (in detail reasonably sufficient to allow Owner to determine where and on what portion of the Work the labor was performed, including, but not limited to, labor payrolls with names, dates, hours and rates) in connection with the Work, together with copies of the actual bills payable to Subcontractors and Vendors under lump sum agreements or otherwise as they relate to such Application for Payment.

(c) For each category and portion of the Work as shown on the Original Project Schedule of Approved Values or Expansion Project

Schedule of Values (as applicable): (1) the amount requested on all previous Applications for Progress Payment, (2) the amount requested on the current Application for Progress Payment, and (3) the amount allocated to the Work yet to be completed.

(d) The percentage completion of each portion of the Work as of the end of the period covered by the Application for Progress Payment, shown as the percentage obtained by dividing (a) the expense which has actually been incurred by Contractor on account of that portion of the Work for which Contractor has made or intends to make actual payment prior to the next Application for Progress Payment, by (b) the amount allocated to that portion of the Work in the Original Project Schedule of Approved Values or Expansion Project Schedule of Values (as applicable).

(e) Amounts due which are attributable to the Original Project Contractor's Fee or Expansion Project Contractor's Fee (as applicable) earned as a result of the completion of Contractor's scope of Work during such period covered by and included in the Application for Progress Payment and approved by Owner. Under no circumstances shall Contractor include in any Application for Progress Payment, nor shall Owner be required to pay, an Application for Progress Payment for funds to pay an amount in excess of the then applicable pro rata portion of the Original Project Contractor's Fee or Expansion Project Contractor's Fee (as applicable), using the ratio that the portion of the Work then completed bears to the total Work (as determined by the total Costs of the Work disbursed to date for the Original Project Work or Expansion Project Work (as applicable) compared to the total approved Costs of the Work amount on the Original Project Schedule of Approved Values or Expansion Project Schedule of Values (as applicable)).

(f) For all amounts due as the result of Change Orders and Construction Change Directives, the Contractor shall make submittals for each Change Order and Construction Change Directive.

(g) Reflect Retention in the amount provided for pursuant to Section 5.6 of this Agreement.

(h) Such additional information and documentation regarding the progress of the Work as Owner or Owner's Lenders may reasonably require.

**5.2.2 Substantiation of Costs.** Contractor shall support its Applications for Progress Payment with relevant documentary evidence for cost verification purposes as Owner and Owner's Lenders may reasonably require. This obligation shall include providing Owner with such supporting documentation as necessary to enable Owner to verify Costs of the Work submitted pursuant to Section 3.2 of this Agreement, including any

Costs of the Work attributable to Change Orders or Construction Change Directives. To the extent requested by Owner, this shall include providing audit access to Contractor's books and records to the extent described in Article 19 of this Agreement. All blanks and columns in the Application for Progress Payment must be completed. With respect to all costs associated with deposits, advance payments or materials stored off-Site, Contractor must comply with the provisions of Sections 5.11 and 5.13 of this Agreement.

**5.2.3 Additional Costs For Change Orders and Claims.** Except for Construction Change Directives or pursuant to an Owner signed Change Order, Owner shall not have any obligation to pay any amounts to Contractor or any Subcontractor or Vendor for work outside the scope of Contractor's Work.

**5.2.4 Lien Waivers.** Each Application for Progress Payment shall include signed (along with company seal or chop, at Contractor's option) Waiver and Release of Lien Upon Progress Payment in the form attached hereto as Exhibit H from Contractor with regard to Work that is covered on the Application for Progress Payment. Owner's receipt of such executed waiver shall be a condition precedent to Owner's obligation to pay any amounts pertaining thereto. In addition, Owner may at any time direct Contractor to submit a certificate that all payrolls, invoices for material and equipment, and other indebtedness connected with the Work and associated with an Application For Progress Payment have been paid.

**5.2.5 Contractor Statements.** Each Application for Progress Payment (and for Original Project Final Payment and Expansion Project Final Payment) shall include a "Contractor's Certificate," in form and substance identical to Exhibit I attached to this Agreement, signed by Contractor. Further, unless otherwise stated by Contractor in the Contractor's Certificate and accepted by Owner, the issuance of an Application for Payment by Contractor will constitute a representation by Contractor to Owner that (a) the Work has progressed in accordance with the Original Project Schedule or Expansion Project Schedule (as applicable), (b) the quality of the Work performed up to the date of such Application for Payment is in compliance with the requirements set forth in the Contract Documents, (c) Contractor is not in breach of any of the provisions of the Contract Documents, and (d) Contractor is entitled to payment in the amount certified. The payment by Owner of any amount requested in an Application for Progress Payment shall not be deemed to represent in any way that (i) Owner has inspected the quality or quantity of the Work, (ii) Owner has reviewed the construction means, methods, techniques, sequences or procedures used by Contractor, or (iii) Owner has made any examination to ascertain how Contractor has used the progress payments previously made to it.

**5.3 Time of Payments.** Subject to the terms of the Contract Documents, Owner shall make to Contractor progress payments properly due and undisputed based on an approved Application for Progress Payment within twenty-five (25) calendar days after receipt of such fully completed Applications for Progress Payment which are submitted along with all requirements under Section 5.2 above, and substantiated in accordance with

Section 5.2.2 above, and otherwise reasonably satisfactory to and approved by Owner and Owner's Lenders, less any amounts that may be retained or withheld pursuant to the Contract Documents. Contractor recognizes that (i) any payment to it by the Owner is conditional upon the approval by Owner's Lenders of the related Application for Progress Payment, and that (ii) Owner's Lenders are entitled to request that the Contractor deliver further documents or substantiation of costs before approving any Application for Progress Payment. Owner shall promptly inform Contractor if Owner becomes aware that any of Owner's Lenders will not be funding all or any portion of a particular Application for Progress Payment, notwithstanding that Owner shall have approved such Application for Progress Payment.

**5.4 Owner's Right To Withhold.** Notwithstanding anything to the contrary herein, and in addition to Retention, Owner may, upon written notice to Contractor, together with a written explanation of all such withholding and the calculation of the amounts withheld, withhold from any payments otherwise due to the Contractor (including Final Payment), up to one hundred percent (100%) of the amount which, in Owner's reasonable opinion, is necessary to protect Owner against or compensate Owner for any and all damages, costs, lawsuits claims, overpayments, expenses and losses, including, but not limited to, for the cure of any breach, default or failure to perform, or to assure the payment of claims of third persons, in each case attributable to any of the items or circumstances listed below in this Section 5.4 (such items or circumstances, the "**Bases for Withholding**"). Owner, at its option, may apply such sums in such manner as Owner may in good faith deem necessary or proper to secure protection from or to satisfy such claims, and Owner shall not be deemed in default by reason of withholding payment under this Agreement in good faith. Contractor shall not be entitled to receive payment with respect to any portion of an Application for Progress Payment that is inaccurate or incomplete or that contains any misrepresentation. If Owner becomes aware of any problems developing with respect to the Contractor or the Work which could form the basis for withholding, Owner shall notify Contractor thereof (provided, however, that any failure by Owner to so notify Contractor shall in no way limit Owner's right to withhold funds as provided in this Section 5.4). The rights and remedies of Owner under this Section 5.4 shall be non-exclusive and shall be in addition to all other remedies available to Owner under this Agreement or at law, in equity or otherwise. The Bases for Withholding shall be limited to the following:

**5.4.1** The overall percentage of Original Project Work or Expansion Project Work (as applicable) satisfactorily completed by Contractor and each relevant Subcontractor and/or Vendor (determined by comparing the amount of Original Project Work or Expansion Project Work (as applicable) satisfactorily completed to the total amount of Original Project Work or Expansion Project Work (as applicable) to be completed), is less than the overall percentage of payments determined by comparing (i) the sum of (a) all amounts previously paid by Owner with respect to the Original Project Work or Expansion Project Work (as applicable); and (b) the pending invoice to be paid, to (ii) the total amount of the Cost of Work for the Original Project Work or Expansion Project Work (as applicable) within the Original Project Guaranteed Maximum Price or Expansion Project



Guaranteed Maximum Price (as applicable); provided, however, that Owner shall not be entitled to withhold on such basis to the extent that Contractor is otherwise entitled to receive the applicable payment from amounts available in the Original Project Construction Contingency or Expansion Project Construction Contingency (as applicable).

**5.4.2** Contractor's failure to perform any Original Project Work or Expansion Project Work (as applicable) and its other obligations hereunder in accordance with the Contract Documents, including, but not limited to, failing to comply with any applicable Laws, failure to submit or carry out Recovery Plans in accordance with Section 11.8 of this Agreement, and/or failure to maintain insurance in compliance with the requirements of this Agreement; provided, however, that Owner shall not be entitled to withhold on such basis to the extent that Contractor is otherwise entitled to receive the applicable payment from amounts available in the Original Project Construction Contingency or Expansion Project Construction Contingency (as applicable).

**5.4.3** Defective Work not remedied in a timely manner after receipt of notice from Owner during the course of the Work, during the Original Project Defects Liability Period or during the Expansion Project Defects Liability Period (as applicable). If any Work inspected by Owner is not to Owner's reasonable satisfaction in accordance with the Contract Documents, a condition of any additional payments to Contractor shall be the correction of any such unsatisfactory Work to Owner's reasonable satisfaction in accordance with the Contract Documents.

**5.4.4** Failure by Contractor to make timely or properly due payments to Subcontractors or Vendors in the amounts for which Contractor has received payments from Owner.

**5.4.5** Contractor's failure to submit lien waivers as required pursuant to Section 5.2.4 above.

**5.4.6** The exercising by Contractor or any Subcontractor or Vendor of mechanic's lien rights or other claims relating to the Work against Owner, the premises of Owner, the Project and/or the Site, or the making of any claim against the same by any other party arising out of or relating to the Work or acts or omissions of Contractor, any Subcontractor or any other person for whose acts Contractor is responsible or liable at law or under the Contract Documents, except for those lien rights exercised as a result of Owner's failure to make payment when due to Contractor under the Contract.

**5.4.7** Contractor's failure to expeditiously remove or release mechanic's or similar liens made against the premises of Owner and/or the Site, except for those liens made as a result of Owner's failure to make payment when due to Contractor under the Contract.

**5.4.8** Any failure by the Contractor to provide timely access to the Contractor's books and records for audit purposes to the extent described in Article 19 of this Agreement.

**5.4.9** Any failure by Contractor to provide the Schedule Updates as required by Article 11 of this Agreement.

**5.4.10** Any failure by Contractor to satisfy any of its obligations under this Agreement to provide certificates or other information requested by Owner's Lenders.

**5.4.11** Any failure by Contractor to satisfy its obligations under Section 3.1.5 of this Agreement.

**5.4.12** Regarding any particular portion of the Original Project Work or Expansion Project Work (as applicable) as shown on the Original Project Schedule of Approved Values or Expansion Project Schedule of Values, respectively, any amount requested is attributable to a portion of the Work not actually completed; provided, however, that Owner shall not be entitled to withhold on such basis to the extent that the applicable payment to be made to Contractor is in respect of a deposit or advance payment to be made by Contractor to a Subcontractor or Vendor and Contractor is otherwise entitled to receive such payment in accordance with the terms of this Agreement.

**5.4.13** Owner's or Owner's Lenders' good faith belief based on reasonable evidence that any Work will not be completed within the applicable Contract Time, provided that Contractor has been notified of such belief and fails to provide within seven (7) days either satisfactory evidence to the contrary or an acceptable Recovery Plan pursuant to Section 11.8.

**5.4.14** Damage to property or Work or injury to persons attributable to the acts or omissions of Contractor, any Subcontractor or any person for whose acts or omissions Contractor is responsible or liable at law or under the Contract Documents.

**5.4.15** Deviations from the Contract Documents other than those approved or permitted in accordance with the Agreement without an applicable Change Order or Construction Change Directive.

**5.4.16** Any material breach or default or failure to perform by Contractor under the Contract Documents, including, but not limited to, failure to maintain any required insurance, or any material inaccuracy in any of Contractor's representations or warranties.

**5.4.17** A determination by Owner to nullify in whole or in part a prior approval of an Application for Progress Payment and/or prior payment made, because of subsequently discovered evidence or subsequent observations which otherwise would allow Owner to withhold pursuant to this Section 5.4 or elsewhere in the Contract Documents.

**5.4.18** Contractor's failure to obtain, comply with and keep valid and in full force, and deliver copies to Owner of, all approvals, permits, certifications, consents and licenses of governmental authorities or other parties having jurisdiction over the Site, the Project or the Work or contractual rights to approve or inspect any of the foregoing which are necessary at the stage of construction and/or otherwise existing and required to be complied with or satisfied when such disbursement to Contractor is to be made to enable Original Project Final Completion or Expansion Project Final Completion on or before the applicable Contract Time.

**5.4.19** Except as contemplated by the Contract Documents or otherwise approved by Owner, encroachments by any part of the Work being constructed on property located outside the boundaries of the Site.

**5.4.20** An order or statement shall have been made by or received from any governmental, administrative or regulatory authority or agency stating that the whole or any part of the Work, and/or any proposed change thereto, for which Contractor or any Subcontractor is responsible or which relates to Contractor's or any Subcontractor's activities is in violation of any Laws, unless such order or statement has been timely corrected to the satisfaction of both the applicable governmental agency and Owner and evidence of such timely correction shall have been provided to Owner in form and substance satisfactory to Owner.

**5.4.21** Contractor's failure to comply with the requirements of Section 5.13 of this Agreement relating to off-Site materials.

**5.5 Joint Payee Checks.** Owner shall have the right at any time and from time to time upon notice to Contractor, to issue one or more checks for portions of a progress payment, Original Project Final Payment or Expansion Project Final Payment which are payable jointly to Contractor and its Subcontractors or Vendors of any tier or the parties owed. This right includes, but is not limited to, issuing jointly payable checks in circumstances where a dispute exists between Owner and Contractor with respect to the value of any partially or fully completed Work, including disputed Change Proposal Requests and Claims, and circumstances where Contractor has failed to provide lien waiver documents as required herein. Any such checks shall be forwarded to Contractor for further handling. Without limiting the generality of the foregoing, if Contractor fails, neglects, or refuses to pay for labor or services performed or materials or equipment supplied in connection with the Work for which Contractor has been paid by Owner, Owner shall have the right (but not the obligation), after giving Contractor written notice thereof, and provided that Contractor fails within fifteen (15) days after such notice to cure such situation or to put forward satisfactory reasons to justify such non-payment, to make payments directly for any and all such labor, materials, or equipment and to deduct the amount of such payment from any payments otherwise due to Contractor and from the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable).

## 5.6 Retention.

5.6.1 From each Progress Payment made by Owner on an approved Application for Progress Payment, Owner shall retain and withhold “Retention” in an amount equal to ten percent (10%) of the approved amounts to be paid with respect to the Work performed directly by Contractor (as distinguished from Work performed by Subcontractors, Vendors or any other third party). Upon Original Project Substantial Completion, fifty percent (50%) of the Retention withheld with respect to the Original Project Work shall be released on the next regularly scheduled payment date. Subject to Section 5.6.2, all remaining Retention withheld with respect to the Original Project Work shall be released on the first (1<sup>st</sup>) anniversary of the date of Original Project Substantial Completion. Upon Expansion Project Substantial Completion, fifty percent (50%) of the Retention withheld with respect to the Expansion Project Work shall be released on the next regularly scheduled payment date. Subject to Section 5.6.2, all remaining Retention withheld with respect to the Expansion Project Work shall be released on the first (1<sup>st</sup>) anniversary of the date of Expansion Project Substantial Completion.

5.6.2 With respect to any portions of the Work for which the Original Project Defects Liability Period or the Expansion Project Defects Liability Period has been extended pursuant to Section 10.2 of this Agreement, Owner shall retain and withhold from the Retention an amount (the “Defects Liability Retainage”) equal to three times the Owner’s reasonable estimate of the cost to correct, repair or replace such portions of the Work; thereafter, at the expiration of the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as extended) for such Work, the Defects Liability Retainage shall be either (i) retained by Owner in the event the Owner exercised its right to correct such Work in accordance with Section 10.7 hereof prior to the expiration of the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as extended) or (ii) released to Contractor.

5.6.3 Except as may otherwise be agreed to by Owner pursuant to Section 9.3, Contractor shall retain and withhold from payments due to Subcontractors and Vendors a retention as follows: (i) in the case of Work performed by Subcontractors providing labor and materials, ten percent (10%) on the approved amounts to be paid, provided that after retaining an aggregate amount equal to five percent (5%) of the total contract price of the applicable subcontract or purchase order, Contractor is not required to withhold further retention with respect to such Work; (ii) in the case of Work performed by Subcontractors providing only labor, an amount equal to two and one-half percent (2-1/2%) on the approved amounts to be paid; and (iii) in the case of materials or equipment to be supplied by Vendors, ten percent (10%) on the approved amounts to be paid, provided that Owner in its sole discretion may agree to reduce such amount in the case of certain Vendors. Except as may otherwise be agreed to by Owner pursuant to Section 9.3, Contractor shall not request in any Application for Progress Payment, and Owner shall have no obligation to include in any Progress Payment made pursuant thereto, any retention amounts that Contractor is required to withhold pursuant to the foregoing, until such time as the retention is required to

be released to the Subcontractor or Vendor in accordance with the applicable approved subcontract or purchase order. For purposes of clarity, as used in this Section 5.6.3, “approved amounts to be paid” means the approved amounts payable to the applicable Subcontractor or Vendor without subtraction of the required retention.

### **5.7 Substantial Completion Payments.**

**5.7.1** Payment by Owner of the first half of the Retention withheld with respect to Original Project Work upon Original Project Substantial Completion shall be in consideration of Contractor’s unconditional covenant and agreement to complete all final Original Project Punch List Items. At Owner’s option, upon Original Project Substantial Completion, Owner may elect to release any Retention withheld with respect to Original Project Work then being held by Owner, less a sum equal to one hundred percent (100%) of the costs reasonably estimated by Owner to be necessary to complete any such Original Project Punch List Items, which sum shall be retained by Owner until such Original Project Punch List Items are completed. Thereafter, Owner shall pay to the Contractor monthly the amounts retained for such Original Project Punch List Items to the extent that each Original Project Punch List Item is satisfactorily completed by Contractor and accepted by Owner. It shall be a condition precedent to payment to Contractor of the first half of the Retention withheld with respect to Original Project Work related to Original Project Substantial Completion that Contractor obtain and deliver to Owner all certificates of occupancy (or any other equivalent permits required for occupancy and use) as may be required by Owner. Contractor shall obtain all such certificates of occupancy and other permits as soon as practicable after they are first available to be obtained (unless due to the fault of Owner such certificates are not obtainable).

**5.7.2** Payment by Owner of the first half of the Retention withheld with respect to Expansion Project Work upon Expansion Project Substantial Completion shall be in consideration of Contractor’s unconditional covenant and agreement to complete all final Expansion Project Punch List Items. At Owner’s option, upon Expansion Project Substantial Completion, Owner may elect to release any Retention withheld with respect to Expansion Project Work then being held by Owner, less a sum equal to one hundred percent (100%) of the costs reasonably estimated by Owner to be necessary to complete any such Expansion Project Punch List Items, which sum shall be retained by Owner until such Expansion Project Punch List Items are completed. Thereafter, Owner shall pay to the Contractor monthly the amounts retained for such Expansion Project Punch List Items to the extent that each Expansion Project Punch List Item is satisfactorily completed by Contractor and accepted by Owner. It shall be a condition precedent to payment to Contractor of the first half of the Retention withheld with respect to Expansion Project Work related to Expansion Project Substantial Completion that Contractor obtain and deliver to Owner all certificates of occupancy (or any other equivalent permits required for occupancy and use) as may be required by Owner. Contractor shall obtain all such certificates of occupancy and other permits as soon as practicable after they are first available to be obtained (unless due to the fault of Owner such certificates are not obtainable).

**5.8 Final Payment.** Contractor's "Applications For Final Payment" shall be submitted in accordance with the following:

**5.8.1** "Original Project Final Payment" means the payment to Contractor of all amounts due and owing and remaining to be paid to Contractor under the Contract Documents with respect to Original Project Work, including any Retention, based on Contractor's Application for Original Project Final Payment and Owner's Original Project Certificate of Final Completion. Original Project Final Payment shall not be due, and Contractor's Application for Original Project Final Payment shall not be considered, until (i) the Contractor completes all of the Original Project Work in accordance with the Contract Documents, including the requirements set forth in this Section 5.8.1 and the prerequisites for a Original Project Certificate of Final Completion set forth in Section 12.2 of this Agreement, and (ii) the first (1<sup>st</sup>) anniversary of the date of Original Project Substantial Completion has occurred.

**5.8.2** "Expansion Project Final Payment" means the payment to Contractor of all amounts due and owing and remaining to be paid to Contractor under the Contract Documents with respect to Expansion Project Work, including any Retention, based on Contractor's Application for Expansion Project Final Payment and Owner's Certificate of Expansion Project Final Completion. Expansion Project Final Payment shall not be due, and Contractor's Application for Expansion Project Final Payment shall not be considered, until (i) the Contractor completes all of the Expansion Project Work in accordance with the Contract Documents, including the requirements set forth in this Section 5.8.2 and the prerequisites for a Certificate of Expansion Project Final Completion set forth in Section 12.2 of this Agreement, and (ii) the first (1<sup>st</sup>) anniversary of the date of Expansion Project Substantial Completion has occurred.

**5.8.3** It shall be a condition to each of Original Project Final Payment and Expansion Project Final Payment that Contractor deliver to Owner the following:

**5.8.3.1** A certificate that all payrolls (including all union dues, health, welfare, pension plan and other labor associated contributions), invoices for all labor, materials and equipment and all other indebtedness connected with the Original Project Work or Expansion Project Work (as applicable) for which Owner or its property might in any way be responsible, and for which Owner has paid the Contractor, have been paid or otherwise satisfied.

**5.8.3.2** Final Waivers in a form acceptable to Owner from Contractor and all Subcontractors and Vendors and all other persons providing any services, labor, materials or equipment in relation to the Original Project Work or Expansion Project Work (as applicable), including certified copies of waivers of all lien rights exercised during the course of the Original Project Work or Expansion Project Work (as applicable) and not previously provided to Owner, and no lien rights have been exercised, or other claims or encumbrances have been filed or are outstanding, with respect to the whole or any part of or

interest in either the Site or the Original Project Work or Expansion Project Work (as applicable).

**5.8.3.3** A certificate that Contractor has timely paid all applicable Taxes due and payable prior to Original Project Final Payment or Expansion Project Final Completion (as applicable) and arising out of the Original Project Work or Expansion Project Work (as applicable) in a form satisfactory to Owner.

**5.8.3.4** An accounting of the credits due to Owner for the value of any excess items paid for by Owner and a complete detailed statement of the Cost of the Original Project Work or Expansion Project Work (as applicable) showing, without limitation, all expenditures for which tax credits or deductions may be allowed (if applicable).

**5.8.3.5** Any documents, instruments, releases, certificates and indemnities reasonably required and that Contractor is able to obtain using its best efforts in order to establish that no mechanics or materialmen's lien rights have been exercised, that all Lender Liens are of first priority (including prior to any other liens or lien rights) as it relates to Contractor's obligations under the Contract, and that there are no encroachments or violations of any covenants, conditions or restrictions affecting the Site.

**5.8.3.6** If required by Owner or Owner's Lenders, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, the Original Project Work or the Expansion Project Work which may then or in the future affect Owner, Owner's property, the Original Project, the Expansion Project or the Site, and to the extent and in such form as may reasonably be designated by Owner or Owner's Lenders. If a Subcontractor or Vendor refuses to furnish a release or waiver required by Owner, Contractor shall within such time as set forth in Section 7.19 hereof furnish a bond satisfactory to Owner to indemnify Owner against such lien and cause it to be paid and released; if such lien remains unsatisfied after payments are made, Contractor shall immediately refund to Owner and indemnify Owner against all money that Owner may be compelled to pay in releasing Owner, Owner's property, the Original Project, the Expansion Project or the Site from such lien, including all costs and reasonable attorneys' fees.

**5.8.3.7** Such other certificates and instruments relating to the Original Project Work or Expansion Project Work (as applicable) as Owner's Lenders may reasonably require.

**5.8.4** Owner will have no obligation to make either of the Original Project Final Payment or the Expansion Project Final Payment as long as any unresolved mechanic's liens or claims exist relating to Owner, Owner's property, the Site, the Original Project and/or the Expansion Project, regardless of whether such liens are exercised or claims are made by Contractor, any Subcontractor or Vendor or any other party relating to the Work;

unless and until Contractor releases or causes the release of Owner, Owner's property, the Site, the Original Project or the Expansion Project, as applicable, from such liens and claims or, as directed by Owner, Contractor provides Owner and Owner's Lenders with indemnitees acceptable to Owner and Owner's Lenders and/or bonds around any mechanic's lien or claim in a manner acceptable to Owner and Owner's Lenders, all in accordance with Section 7.19 hereof.

**5.8.5** The Applications For Final Payment shall include a statement of all unresolved Claims (and for which payment has been and/or shall be withheld by Owner). Contractor shall separately list by Claim number the specific dollar amounts which have previously been submitted as Claims by Contractor in good faith and in full compliance by Contractor with this Agreement.

**5.8.6** Except for such unresolved Claims stated in specific dollar amounts which have been previously filed by Contractor in good faith and in full compliance with this Agreement, the submittal by Contractor of an Application For Final Payment shall constitute a final and irrevocable release and waiver by Contractor of any and all other Claims and causes of action for additional costs allowable under the Contract Documents with respect to Original Project Work or Expansion Project Work (as applicable). This release and waiver shall include, without limitation, any and all claims for amounts in addition to the specific dollar amounts relating to the unresolved Claims so identified by Contractor, and all other Claims or potential claims of Subcontractors and Vendors arising out of this Contract, whether or not any such Claims or potential Claims arise in contract or in tort or were known or unknown at the time of submittal of an Application For Final Payment. Contractor shall evidence such release and waiver by delivering a fully executed release and waiver with respect to the Original Project Work and the Expansion Project Work, as applicable, in the form attached hereto as Exhibit J.

**5.8.7** Upon Owner's concurrence that all conditions listed in Section 12.2 of this Agreement with respect to the Original Project Work or the Expansion Project Work have been fulfilled and that the balance set forth in the relevant Application For Final Payment is due and payable, and subject to the approval of Owner's Lenders, Owner shall make the Original Project Final Payment or Expansion Project Final Payment (as applicable) to Contractor in accordance with this Agreement.

**5.8.8** Original Project Final Payment or Expansion Project Final Payment (as applicable) shall not relieve Contractor of any warranty obligations (including, but not limited to, warranty obligations contained in the Contract Documents or at law).

**5.9 Disputed Payments.** When the reason(s) for withholding a particular payment are removed to Owner's reasonable satisfaction, Owner will pay such previously withheld amounts for such matters (less amounts properly withheld or retained) with the next regularly scheduled payment. In the event of a dispute with respect to amounts payable under an Application for Progress Payment, the Original Project Final Payment or the



Expansion Project Final Payment, Owner shall pay all undisputed amounts. If Contractor disputes any determination by Owner with regard to any Application for Progress Payment or any withheld amounts, Contractor shall nevertheless expeditiously continue to execute the Work. Any amounts in dispute and withheld by Owner shall be promptly paid after the earlier of: (a) settlement of the dispute by execution of a final Change Order document; or (b) final resolution of the dispute pursuant to Section 22.1 of this Agreement. The payment of any undisputed amounts shall not waive or otherwise limit Owner's rights as set forth in this Agreement, including, but not limited to, in Article 19 below.

**5.10 Ownership of Materials.** All material and work covered by progress payments made shall upon such payment become the sole property of Owner, however the Contractor shall not be relieved from the risk of loss and responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work. Contractor represents and warrants to Owner that (i) title to all of the Work, materials and equipment covered by any Application for Progress Payment will pass to Owner upon the earlier of incorporation in the Work or receipt of payment by Contractor, and such title shall be free and clear of all liens, claims, security interests or encumbrances; (ii) the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract Documents; (iii) Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, except for Excepted Risks, until responsibility for the Work has been accepted by Owner in the manner set forth in Article 12 of this Agreement; and (iv) no Work covered by an Application for Progress Payment and no material or equipment incorporated in the Work will have been acquired or incorporated into the Work, subject to an agreement under which an interest in the Work or an encumbrance on the Work is retained by the seller or otherwise imposed by Contractor or any other person. "Excepted Risks" means all events listed in Section 11.4 as events of Force Majeure, except to the extent that any damage to or loss of the Work is caused by Contractor's failure to comply with the provisions of Section 7.2.7.

**5.11 Deposits and Advance Payments.** If any deposits or advance payments are required in connection with the execution of the Work, such deposits or advance payments will be specifically identified by category and credited against amounts as billed in that category. Contractor shall provide Owner with a monthly statement of the total amount of all such deposits and advance payments then outstanding. In addition, Contractor will, promptly upon written request from Owner, account for any and all funds theretofore received by Contractor from Owner. Contractor agrees to arrange to purchase such materials or equipment in advance of the time for installation in the Project as are deemed advisable by Owner or Contractor, provided such purchases in excess of US\$25,000 are approved by Owner and Owner's Lenders. Upon Owner's request, Contractor shall provide Owner with an assignment of Contractor's rights relating to such deposit made and agreement for purchase of such item.

**5.12 Waiver.** Any waiver by Owner of the requirement that Contractor provide lien waivers with respect to any Application for Progress Payment, the Application for

Original Project Final Payment or the Application for Expansion Project Final Payment shall not constitute a waiver of the obligation of Contractor to remove or satisfy any and all liens exercised against Owner, Owner's property, the Site, the Original Project or the Expansion Project, which obligation shall at all times remain the responsibility of Contractor hereunder. Owner's allowance or payment of any item pursuant to any Application for Progress Payment or otherwise shall not constitute approval of the Work or the Application for Progress Payment, or result in Owner's waiver of any claims, all of Owner's rights being specifically reserved, and no such payments shall operate as an admission on the part of Owner as to the propriety or accuracy of any amounts on such Application for Progress, Original Project Final Payment or Expansion Project Final Payment. A progress payment or partial or entire use or occupancy of the Original Project or the Expansion Project by Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. Owner shall not be bound by any entries in previous Applications for Progress Payment and shall be permitted to make corrections for errors therein. Owner's final Original Project Contractor's Fee installment payment, final Expansion Project Contractor's Fee installment payment, Original Project Final Payment and Expansion Project Final Payment shall in no way relieve Contractor of any obligations or responsibilities under the Contract Documents which extend beyond the date of such payment.

**5.13 Materials Off-Site.** Subject to Section 5.11 and except as otherwise approved by Owner pursuant to Article 9, all materials which are the subject of an Application for Progress Payment (or an application for Original Project Final Payment or Expansion Project Final Payment, if applicable) shall be stored at all times at the Project, in a bonded warehouse or such other secured facility satisfactory to Owner and Owner's Lenders, or at the premises of the manufacturer or fabricator (in which event the materials shall be appropriately marked and identified with the applicable purchase contract and physically segregated in an area with access to a public street), until the materials are incorporated into the Project; provided that if the materials are stored with the manufacturer or fabricator, Owner must receive evidence satisfactory to Owner of the creditworthiness of the manufacturer or fabricator and/or Contractor shall procure and deliver or cause to be procured and delivered to Owner such dual obligee performance and labor and material payment bond or bonds, in form, substance and amount satisfactory to Owner and Owner's Lenders, as Owner and Owner's Lenders may require. All materials that are stored off-Site shall be marked and identified as the property of Owner, and Owner shall have the right to access all materials stored off-Site and to remove them from such off-Site location(s). Furthermore, Contractor shall:

**5.13.1.1** use the materials only for construction of the Project, and not make any transfer thereof or permit any lien to attach thereto which could materially impair the ability of Owner to use the materials for such purpose;

**5.13.1.2** take or cause to be taken all actions necessary to insure, maintain, preserve and protect the materials and keep them in good condition and repair, and

to comply with all laws, regulations and ordinances relating to the ownership, storage or use of the materials;

**5.13.1.3** cause to be delivered to Owner any applicable bailee waivers where such bailee rights exists, and the original warehouse receipt covering any stored materials, and ensure that such stored materials have been stored in such a way as to eliminate the possibility that they will be commingled with other materials or projects; and

**5.13.1.4** if Contractor shall fail to perform any of its obligations under this Section 5.13 after Owner has made payment to Contractor for the materials, Owner or Owner's Lender may, but shall not be obligated to, take such actions and expend such sums as either may deem necessary to protect and preserve Owner's and/or Owner's Lenders' security interest in such materials, and all such expenditures so incurred (including, but not limited to, attorneys' fees and disbursements) shall be reimbursed by Contractor promptly on demand and shall be Non-Allowable Costs of the Work.

**ARTICLE VI.  
OWNER'S RESPONSIBILITIES**

**6.1 Information and Services.** Owner shall, at such times as are reasonably required for the successful and expeditious completion of the Work, provide Contractor with the following information and services at Owner's expense and/or perform the following obligations:

**6.1.1** Purchase and deliver to Contractor in accordance with the Original Project Schedule and the Expansion Project Schedule (as applicable), the material and equipment to be provided by Owner for installation by the Contractor, if any;

**6.1.2** Pay any real property taxes assessed against the Work, to the extent applicable (Owner acknowledging that such taxes shall not be included in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price);

**6.1.3** Prepare the Owner's Design or cause the Owner's Design to be prepared in accordance with the Original Project Schedule and Expansion Project Schedule (as applicable) in order not to delay the execution of the Work, provided that Contractor agrees to use all reasonable efforts to mitigate the effect of any delay in the performance of the Owner's Design (provided, however, that the foregoing shall in no way alter the definition of what constitutes an Owner Delay or the application of the provisions of this Agreement relating to any Owner Delay);

**6.1.4** Generally perform in a timely manner all of Owner's obligations under the Contract Documents;

**6.1.5** Prior to the Original Project Date of Commencement, obtain all licenses, approvals, consents, permits and authorizations required to be obtained by Owner

under the Contract Documents to allow the commencement of the Original Project Work, all of which Contractor acknowledges that, to the best of its knowledge, have been obtained; provided, however, that upon Owner's request, Contractor shall use commercially reasonable efforts to assist Owner in obtaining any remaining licenses, approvals, consents, permits and authorizations necessary for the orderly prosecution of the Original Project Work;

**6.1.6** Prior to the Expansion Project Date of Commencement, obtain all licenses, approvals, consents, permits and authorizations required to be obtained by Owner under the Contract Documents to allow the commencement of the Expansion Project Work; provided, however, that upon Owner's request, Contractor shall use commercially reasonable efforts to assist Owner in obtaining all licenses, approvals, consents, permits and authorizations necessary for the orderly prosecution of the Expansion Project Work; and

**6.1.7** Include in all subcontracts, purchase orders and other agreements entered into with any of Owner's Contractors or Owner's Consultants a requirement that such Owner's Contractor or Owner's Consultant must comply with the direction of Contractor in connection with the execution of the Work.

**6.2 Limitations.** Information on the Site and local conditions affecting the Site and any and all other information, reports, studies, surveys and materials provided by, or on behalf of, Owner is furnished solely for the convenience of Contractor only, and without any representation, warranty or guarantee of accuracy, adequacy, correctness or completeness by Owner and Owner hereby disclaims all such warranties, guarantees and representations. Except to the extent set forth in Article 13 below, and except to the extent the information and materials supplied by Owner contain inaccurate information that was not known to Contractor to be inaccurate (and such inaccuracy would not have been reasonably discovered by Contractor in the exercise and/or performance of its obligations under the Contract Documents), Contractor assumes the risk of such conditions and shall fully complete the Work without an increase in the Expansion Project Guaranteed Maximum Price or the Original Project Guaranteed Maximum Price (as applicable) and within the applicable Contract Time (subject to Contractor's right to use the Original Project Construction Contingency and the Expansion Project Construction Contingency (as applicable) as provided in Section 3.1.8 hereof, to the extent there remain funds therein).

**6.3 Owner's Representative.** Owner has designated Todd Nisbet and Gary Chin, each as "Owner's Representative" to be Owner's authorized representative (each acting alone) to provide approvals and directives necessary for the day-to-day administration of the Project, including the Work. Each Owner's Representative shall have the authority to bind the Owner and the decision of any Owner's Representative shall be binding on the Owner. Contractor acknowledges and confirms that no apparent authority, agency or similar claims may be made by Contractor with respect to any approval, authorization, order or decision given or made from and after the execution date of this Agreement by any purported representative or employee of Owner other than any of Owner's Representatives in writing

(or such other individual authorized in writing by Owner), and all such claims are hereby waived by Contractor.

**6.4 Site Access.** Owner, Owner's Lenders, Owner's Lenders' technical advisor, Owner's Consultants, Owner's Contractors, Macau SAR representatives and any party designated by Owner shall at all times have, and Contractor shall provide, complete and unfettered access to the Site and the Work in progress and preparation wherever located at all times for any and all purposes as Owner and/or Owner's Lenders may desire or as may be required under the Gaming Concession Agreement. Visits to the Site or observations of the Work by Owner, Owner's Consultants, Owner's Contractors, Macau SAR representatives, any party designated by Owner, Owner's representatives or contractors, or Owner's Lenders or Owner's Lenders' technical advisor shall in no way relieve Contractor from its obligations to carry out the Work in accordance with the Contract Documents. Subject to the terms of the Contract Documents, Owner shall, and shall require Owner's Consultants and Owner's Contractors to, work without causing labor disharmony, coordination difficulties, delays, disruptions or interferences with Contractor, Subcontractors and Vendors.

**6.5 Payments.** Owner shall timely make payment to Contractor of amounts properly due to Contractor under and subject to (including Owner's right to offset and withhold as provided in) the Contract Documents.

**6.6 Proof of Funding.** Upon Contractor's request, and subject to availability to Owner and the rights of the Owner's Lenders, Owner will provide to Contractor a copy of the loan commitment and loan common terms agreement between Owner and Owner's Lenders relating to the provision and disbursement of funds to Owner for its obligations under this Contract (excluding therefrom information deemed proprietary or confidential by Owner or Owner's Lenders).

**6.7 Good Faith.** Owner shall use good faith in performing its obligations under the Contract Documents, and, in addition to any specific obligations of Owner hereunder in this respect, it is agreed that Owner shall not unreasonably delay its review of and/or response to matters requiring Owner's review and/or response under the Contract Documents.

## **ARTICLE VII. CONTRACTOR'S RESPONSIBILITIES**

**7.1 Contractor's Specific Representations, Warranties and Covenants.** By entering into this Contract, Contractor undertakes to furnish its best skill and judgment and to cooperate with Owner in furthering the best interests of Owner, the Work and the Project, and shall use good faith in performing its obligations under the Contract Documents. By entering into this Contract, Owner is relying upon the specific undertakings, representations and warranties of Leighton, China/HK and China/Macau in favor of Owner as follows, and

Leighton, China/HK and China/Macau each hereby represents, warrants and covenants to Owner that:

**7.1.1** As of the Original Project Date of Commencement and the Expansion Project Date of Commencement, Contractor shall be duly authorized and shall have the necessary license(s), approvals, consents, permits and other authorizations to practice and perform all Work in this jurisdiction, and Contractor shall remain so licensed at all times relevant to the Work. Contractor shall ensure that all Subcontractors are duly authorized and have the necessary license(s), approvals, consents, permits and other authorizations to practice and perform all Work to be performed by such Subcontractors in this jurisdiction and will remain so licensed at all times relevant to the Work. Contractor shall produce such license(s), approvals, consents, permits and other authorizations to the Owner upon request, and Contractor shall be responsible to obtain copies of such license(s) from all Subcontractors prior to allowing them to perform Work on Site. Contractor has substantial experience in performing major projects with scopes of work similar to the Work defined herein, is familiar with the activities of the governmental bodies having authority over the Project and has expertise and experience managing Subcontractors on projects of similar scope within the region. Contractor also represents that such experience includes performing major projects with stringent time constraints and where construction begins before all drawings and specifications have been issued for construction purposes, as is the case with the Work and Project. The standard by which Contractor shall be judged in its performance of this Agreement and its exercise of judgment hereunder shall be that of a contractor with the level of skill, experience and expertise necessary for the planning and construction of a “five-star” first class international luxury resort and casino, including the foregoing qualifications and consistent with such other Contractor representations, warranties and covenants contained in the Contract Documents.

**7.1.2** All of Contractor’s management involved with the Project and key supervisory personnel shall speak fluent English and shall remain committed to and available for full-time assignments (except when on leave approved in advance by Owner) devoted to the Work until at least sixty (60) days after the later of Expansion Project Substantial Completion and Original Project Substantial Completion. If Owner is dissatisfied with the services rendered by any of such persons, then upon Owner’s written request, Contractor shall promptly substitute a person who is fluent in English of at least equal qualifications to perform the same function. Owner shall include in its written request Owner’s reasons for requiring such removal and substitution. If any of such persons or any replacements thereof under the preceding sentence are no longer employed by Contractor, then Contractor shall promptly substitute a person who is fluent in English of at least equal qualifications to perform the same function and notify Owner of the name of the substitute and his or her qualifications. Owner shall retain the right to approve all key personnel of Contractor involved in the Project. The individuals who shall be responsible on behalf of Contractor for supervising the Work are set forth on Contractor’s Personnel list attached as Exhibit C to this Agreement. Except for reasons beyond its control, Contractor shall not change any of the individuals designated in said Exhibit C during the term of the Agreement

without the prior approval or specific direction of Owner, which approval shall not be unreasonably withheld or delayed. At least one Project Superintendent or Project Manager shall be at the Site on a full-time basis and at all times while any Work is being performed. In no event shall Mr. Michael Derrington Harvey be removed as a Contractor's Representative from the Project (other than due to death, serious illness or incapacity), or be transferred to a different position with respect to the Project, without Owner's prior written consent, which Owner may withhold in its sole discretion.

**7.1.3** Contractor has examined and will continue to examine all Contract Documents provided by Owner pertaining to the Work and the Site. Contractor fully accepts the lack of completeness of such documents. Contractor also represents that the Original Project Guaranteed Maximum Price Premises and Assumptions and the Expansion Project Guaranteed Maximum Price Premises and Assumptions were sufficiently detailed and comprehensive to enable Contractor to have reliably estimated and established each of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price set forth in Article 3 of this Agreement. Subject to the provisions of this Agreement, Contractor further agrees that all Work shall be performed within the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price and within the applicable Contract Time set forth in Article 4 of this Agreement, notwithstanding that the Contract Documents, including the Drawings and Specifications, are not complete in every detail and are still being developed.

**7.1.4** Contractor has had ample time to and has visited and examined the Site and has reviewed the physical conditions affecting the Work, and will continue to do all of the foregoing, and, subject to the provisions of Article 13 hereof, is familiar with all of the conditions on, under, and affecting the Site, as Contractor deemed necessary or desirable based on Contractor's skill, experience and knowledge and the scope of the Work and terms of the Contract Documents. Furthermore, Contractor has satisfied itself as to the nature and location of the Work, the general and local conditions, and traffic, particularly those bearing upon transportation, handling, and storage of materials, availability of labor, water, power, roads, weather, above-ground and sub-surface conditions at the Site and all other matters which can affect the Work or the cost thereof. Contractor has verified field conditions, and carefully and fully compared such field conditions, Site observations and other information known to Contractor with the Contract Documents (including the requirements thereof) and has not found any omissions, errors or discrepancies and has satisfied and will continue to satisfy itself as to: (a) access thereto; (b) the location of all utility pipelines and wiring conduits which can be ascertained through Site visits or by any documents which are provided by Owner; (c) the type of equipment and facilities needed before and during prosecution of the Work; (d) the general and local labor and weather conditions and availability of materials and equipment under which the Work is to be performed; (e) the presence of construction hazards, if any; (f) the nature, location, and character of the Work and the Site, including, but not limited to, all improvements and obstructions on and under the Site, both natural and man-made, and coordination of the execution and completion of all phases of the Original Project and Expansion Project; and (g) all other matters which may

affect the Contractor's means, methods, techniques and procedures necessary to construct the Work in strict accordance with the Contract Documents and otherwise fulfill its obligations under the Contract Documents, including but not limited to its obligation to complete the Work for an amount not in excess of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price on or before the applicable Contract Time. Any condition at the Site, whether or not consistent with conditions shown or called for on the Contract Documents, shall not be allowed as a basis for claims for increase of the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price or extensions of the applicable Contract Time, except as otherwise specifically provided for in Article 13 below or otherwise in this Agreement, notwithstanding any statements or representations by Owner or any party on behalf of Owner, oral or written, with respect to the conditions of the Site or improvements thereon, or regarding the completeness, correctness, or adequacy of any Contract Documents (provided that such statements or representations were made in good faith).

**7.1.5** Prior to commencing its procurement and construction activities, Contractor shall further verify at the Site all measurements and levels necessary for proper construction of the Work, including the fabrication, assembly and installation of materials and equipment to be incorporated into the Work and shall further carefully compare such verified field measurements and conditions with the requirements of the Contract Documents.

**7.1.6** If the Contractor observes any failure of the Contract Documents to conform with applicable Laws, Contractor shall immediately notify Owner in writing and identify any such discrepancies and shall be responsible for rectifying the Contract Documents so that they shall conform with all applicable Laws. Subject to Section 7.2, if the Contractor performs Work that it knows or reasonably should have known to be in non-compliance with applicable Laws, the Contractor shall assume full responsibility for such Work and shall bear all costs (including loss and damage due to delays) of correction, repair and replacement attributable thereto as Non-Allowable Costs of the Work.

**7.1.7** If Contractor discovers or otherwise becomes aware of any errors, discrepancies, omissions, duplications or conflicts in the Contract Documents at any time during the course of the Work, Contractor shall immediately notify Owner in writing and shall be responsible for rectifying the same. If the Contractor performs any Work relating to any such errors, discrepancies, omissions, duplications or conflicts in the Contract Documents, neither the Original Project Guaranteed Maximum Price nor Expansion Project Guaranteed Maximum Price shall be increased. Contractor shall continue being paid for the Cost of the Work (but shall not be entitled to payment and/or reimbursement with respect to Non-Allowable Costs of the Work), all in accordance with the terms of this Agreement.

**7.1.8** Contractor will not use the Site for any purpose other than the performance of the Work. Contractor will not engage in, nor commit its personnel to engage in, any other projects while performing Work on the Project to any extent that such other



projects may materially and adversely affect the quality or efficiency of the Work required to be performed by Contractor in connection with this Project or which will otherwise be detrimental to the carrying on and completion of this Project.

**7.1.9** Contractor acknowledges (a) that the Project involves the construction of a “five-star” first class Las Vegas-style luxury resort and casino in accordance with the Original Project Guaranteed Maximum Price Premises and Assumptions, the Expansion Project Guaranteed Maximum Price Premises and Assumptions and the Contract Documents, (b) that the Contract Price reflects a premium in the amount Contractor (or a third party contractor with similar experience, skill and reputation as Contractor) would charge for the construction of the Work, and (c) that such premium is a direct reflection of Owner’s stringent requirements and high expectations for the quality of the Work. Contractor agrees that it will utilize the highest level of care and diligence in carrying out its obligations hereunder.

**7.1.10 Gaming Concession Agreement.** Contractor has been provided with a copy of the Gaming Concession Agreement and (a) has reviewed the provisions thereof, (b) has familiarized itself with each of the obligations of Owner under the Gaming Concession Agreement (including, but not limited to, Clauses 3, 4, 35, 36, 37, 40, 42, 67, 69, 79, 80, 84, 85 and 92 thereof), and (c) is aware of the consequences of Owner’s non-compliance with such obligations. Contractor hereby covenants that (i) it will comply with each of the provisions of the Gaming Concession Agreement applicable to the Work and the duties and obligations of Contractor hereunder, and (ii) it will not, and it shall procure that the Subcontractors and Vendors to not, cause Owner to breach Owner’s obligations under the Gaming Concession Agreement. In furtherance of the foregoing, if Contractor becomes aware of any action or omission by any Subcontractor or Vendor that could reasonably be expected to result in a breach by Owner of Owner’s obligations under the Gaming Concession Agreement, Contractor shall immediately notify Owner thereof and immediately terminate such Subcontractor or Vendor. Without limiting the foregoing provisions of this Section 7.1.10, Contractor acknowledges that pursuant to Clause 37 of the Gaming Concession Agreement, the Macau SAR may suspend construction of the Project if it determines that the construction plans are not adequately implemented.

**7.1.11 Land Concession Agreement.** Contractor understands that the Land Concession Agreement entered into by Owner contains various obligations on the part of Owner with respect to the use of the Site. Owner has provided a copy of the Land Concession Agreement to Contractor. Contractor hereby covenants that it shall comply with each of the following requirements set forth below in this Section 7.1.11 (it being acknowledged and agreed by Contractor that such requirements represent excerpts of certain of Owner’s obligations under the Land Concession Agreement):

**7.1.11.1** Contractor shall not, and shall not permit any of its subcontractors (of any tier) to, remove or allow the removal from the Site of any materials such as land, rocks, fill, sand or other similar materials (collectively referred to as “**Fill Materials**”) without the prior written consent of Owner. Contractor recognizes that such

prior written consent may be subject to Owner's obtaining prior written consent from the Macau SAR under the Land Concession Agreement, and that Owner cannot ensure the timing or approval of such consent from the Macau SAR. Any such removal of any Fill Materials from the Site without Owner's prior written consent shall constitute a breach hereunder. Contractor shall cause any Fill Materials removed from the Site to be deposited in such location as may be specified by the Macau SAR.

**7.1.11.2** Contractor will take necessary and appropriate measures to ensure that no Fill Materials are removed from the Site by others (including without limitation by providing adequate 24 hour security at the Site, and ensuring that trucks and other vehicles are inspected prior to their exit from the Site).

**7.1.11.3** Contractor shall provide adequate training and instructions to all Persons who enter the Site so that all such Persons are made aware of the restriction against removal of Fill Materials described herein. The Contractor shall post appropriate signage in and around the Site advising of the restriction.

**7.1.11.4** Contractor shall inform its Subcontractors about the restriction on removal of Fill Materials, and shall (unless otherwise agreed by Owner) include in every subcontract similar provisions to those provided herein regarding the restriction on removal of Fill Materials and the other precautionary and remedial measures set out herein.

**7.1.11.5** Owner shall have the right to require the immediate removal or dismissal of any employee or agent of Contractor or any Subcontractor who Owner believes has violated the restrictions against removal of Fill Materials set forth herein, including the right to remove or dismiss any supervisory personnel and others who permitted, or failed to prevent, the removal of Fill Materials as provided herein.

**7.2 Further Covenants.** Contractor covenants and agrees that all Work performed by Contractor or any Subcontractor or Vendor shall be carried out: (a) with a proper supply of skilled labor, materials and equipment; (b) in full compliance with the requirements contained in, indicated on and reasonably inferable from the Contract Documents given Contractor's status as a contractor experienced with construction projects similar in size, quality and complexity to the Work, (c) in full compliance with all applicable laws, consents, ordinances, mitigation measures, codes, rules, directives, orders, permits, approvals, entitlements, statutes, and regulations, whether governmental or public administrative (including, but not limited to, all applicable Laws of Macau relating to noise control and pollution) (collectively, "Laws"); (d) diligently and in the best manner to assure completion on or before the respective Original Project Interim Milestone Dates, the Expansion Project Interim Milestone Dates, the Guaranteed Date of Original Project Substantial Completion and the Guaranteed Date of Expansion Project Substantial Completion, (e) by qualified design professionals where applicable, and (f) in full compliance with the terms of insurance applicable to the Work. Contractor shall be

responsible for ensuring that the Drawings and Specifications (including, but not limited to, the construction documents prepared by Owner's Consultants) conform to Laws applicable to the design aspects of the Drawings or Specifications. Applicable Laws shall supersede the Contract Documents if there is any conflict; provided, however, that if any applicable Laws shall necessitate a Change to or deviation from the Contract Documents, Contractor shall obtain Owner's written consent prior to implementing that Change. Contractor shall be responsible for failing to report any discrepancy between the Contract Documents and applicable Laws of which Contractor knows or should have reasonably known in the exercise of due diligence and prudent judgment and consistent with the terms of the Contract Documents. If Contractor performs any part of the Work in violation of any such applicable Laws, Contractor shall bear the costs of remedying such Work so as to be in compliance with such Laws, the Original Project Guaranteed Maximum Price and the Expansion Project Guaranteed Maximum Price shall not be adjusted and Contractor shall not have the right to use the Original Project Construction Contingency or the Expansion Project Construction Contingency to pay the costs arising therefrom. If any new Law is enacted or any change to existing Law applicable to the Work occurs after the Effective Date, and to the extent that such new Law or change in Law has an impact on the Work and/or the cost of performing the Work, Contractor shall (i) subject to consultation with and the written approval of Owner, perform and construct the Work in accordance with such applicable Law, and (ii) such impact shall constitute a Change and the provisions of Article 18 shall apply (including with respect to the determination of any adjustment to the Guaranteed Maximum Price and/or the Contract Time). In fulfilling its responsibilities under the Contract Documents, Contractor shall furnish, coordinate, manage and pay for all services and personnel, labor, machinery, tools, materials and equipment, necessary to:

**7.2.1** Cause the Work to be constructed in compliance with: (a) the latest approved Drawings and Specifications for construction purposes; and (b) all applicable Laws (including all changes in Laws as provided above in this Section 7.2);

**7.2.2** Provide at all times until the later of the Expansion Project Final Completion or the Original Project Final Completion a sufficient and competent organization, which shall include the skilled services of all senior managers, architects, designers, engineers, site supervisors, qualified scheduling personnel, superintendents, foremen, engineers, skilled and unskilled craft labor and supervisors and all other personnel necessary or desirable to plan, prosecute and construct the Work in accordance with the Contract Documents;

**7.2.3** Provide the skilled services of buyers, expeditors and other personnel necessary to achieve the timely delivery and use of (a) all materials, supplies and equipment to be incorporated into the Work by Contractor, Subcontractors and Vendors, and (b) all construction machinery and equipment, tools and expendable construction materials and supplies necessary or desirable for the Work;

**7.2.4** Prepare and provide the Original Project Schedule and the Expansion Project Schedule and Schedule Updates for the Work in accordance with Article 11 below, or as reasonably requested by Owner's Lenders;

**7.2.5** Coordinate the schedules and operations of all Subcontractors and Vendors of every tier and cooperate with Owner, Owner's Consultants and Owner's Contractors so that the Contractor's Work and the work of others will progress smoothly with a minimum of disruptions and interference to any party;

**7.2.6** Obtain and provide to Owner and pay for (as a Cost of the Work): (a) all Work-related authorizations, building permits, licenses, consents and approvals which are required by governmental authorities to be taken out in Owner's name for construction and completion of the Work, and (b) all temporary and final certificates of occupancy;

**7.2.7** Be responsible for protection of the Work, including all materials and equipment to be utilized during the Work, from theft or damage or other harm, whether in transit or in storage on-Site or off-Site, until the later of the Expansion Project Final Completion or Original Project Final Completion pursuant to Section 12.2 of this Agreement, provided that Contractor shall not be responsible for damage resulting from the occurrence of Excepted Risks so long as Contractor has used reasonable efforts to protect the Work, including said materials and equipment, from damage due to the occurrence of such Excepted Risks;

**7.2.8** Promptly notify Owner in writing of any errors, omissions or discrepancies discovered by Contractor in the Contract Documents, including any observed failures to comply with applicable Laws, and advise on how the same should be resolved and rectified;

**7.2.9** Enforce strict discipline and good order among the employees of Contractor, Subcontractors and Vendors while at the Site or otherwise performing this Contract;

**7.2.10** Give all notices and secure all required certificates of inspection, testing or approval necessary or incidental to the prosecution of the Work, for delivery to Owner;

**7.2.11** Be responsible for and pay (as a Cost of the Work to the extent provided in Section 3.2.8 hereof) all Taxes relating to or arising out of the Contractor's performance of the Work;

**7.2.12** Provide Owner with the full benefit of all Vendor's warranties applicable to all equipment and materials furnished by the Contractor;

**7.2.13** Maintain at the Site one record copy of all Drawings, Specifications and revisions thereto, the Project Schedule, all Schedule Updates, all Change Orders and

other Modifications, approved material lists, brochures, technical data submissions and RFI's, RFI responses, submittals, Construction Change Directives, Samples, all correspondence and transmittals pertaining to the Work and all other records relating to the status of all Work-related materials, equipment and construction activities;

**7.2.14** Provide Owner with three (3) complete sets of operating and maintenance manuals for all equipment installed as part of the Work;

**7.2.15** Provide Owner with two (2) sets each of complete as-built drawings (electronically when available and otherwise on reproducible mylar) with respect to the Original Project Work, prior to Original Project Final Payment and with respect to the Expansion Project Work, prior to Expansion Project Final Payment;

**7.2.16** Copy Owner on all correspondence, memoranda and bulletins by Contractor to Architect/Engineer, Owner's Consultants, Owner's Contractors and public or governmental agencies and deliver to Owner on a current and up-to-date basis copies of all written communications received from public or governmental agencies relating to the Work or the Project. Provide to all Subcontractors (with concurrent written notice to Owner), and cause all Subcontractors to provide, all notices required by applicable Laws relating to the Contract and/or Work, including but not limited to notice of payments received. Copy Owner on all default, stop work or termination notices sent to or received from Subcontractors at every tier, and any others performing any Work;

**7.2.17** Contractor shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer to Owner's and Owner's Lender's satisfaction; and

**7.2.18** Michael Derrington Harvey is authorized to act on behalf of Contractor as the Contractor's Representative with regard to the Work and Contract Documents, and is the individual with whom Owner may consult at all reasonable times, and the instructions, requests and decisions of said individual will be binding upon Contractor as to all matters pertaining to this Contract and the performance of the parties hereunder.

**7.3 Preconstruction Services.** Contractor shall as a Cost of the Work furnish, coordinate, manage and pay for all services, personnel, labor, material, equipment, machinery and tools for the Work, and shall:

**7.3.1** Search for and timely recommend from time to time to Owner various value engineering and other cost savings measures during the entire progress of the Work to reduce the Cost of the Work to the fullest extent possible while maintaining the quality required by the Contract Documents. Owner will then elect, in its sole discretion, whether or not to implement such measures in connection with the Work.

7.3.2 Timely review designs with Owner, including, but not limited to, to the extent applicable, architectural designs, structural, HVAC, plumbing, fire protection, power and lighting, security systems and communications, interior designs, and vertical transportation and assure compliance thereof with the Original Project Guaranteed Maximum Price Premises and Assumptions and the Expansion Project Guaranteed Maximum Price Premises and Assumptions, and the Project requirements established pursuant to the Contract Documents. Advise on the Site use and improvements, selection of materials, Project and Site systems and equipment, improvements to the Project and Site, call and security systems, and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, integration into existing Project and Site systems, and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economics.

7.3.3 Advise Owner in writing promptly upon discovery if, in the judgment of Contractor, the information provided on architectural or engineering documents is inadequate for the current purposes intended or if requirements of such documents conflict with other documents issued or with existing conditions at the Site. In any such event, Contractor will issue a Request for Information (“RFI”) to the Architect/Engineer or Owner’s Consultant (with a copy to Owner).

7.3.4 Systematically review the Contract Documents (including, but not limited to, the documents prepared by Owner’s Consultants), as the same are being prepared and check the same for (a) obvious conflicts, discrepancies and omissions, and (b) variations from customary construction practices and methods which, in the opinion of Contractor, may cause difficulties or occasion delay in the performance of the Work and timely advise Owner, Owner’s Consultants and Owner’s Contractors (if applicable) and the Architect/Engineer promptly, in writing, of any such observed problems. Coordinate the Contract Documents (including, but not limited to, the documents prepared by Owner’s Consultants) by consulting with Owner, Owner’s Consultants (if applicable) and the Architect/Engineer regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedule. Timely advise Owner, using Contractor’s professional skill and judgment, regarding any missing or incomplete aspects of the Work scope.

7.3.5 Assist Owner as Owner may reasonably request in the bidding preparation process, solicitation and requests for bids, and review of bids received for items specifically outside Contractor’s scope of Work.

**7.4 Systems and Procedures.** Contractor shall develop, for Owner’s review and approval, and implement a system and procedures for:

7.4.1 Reviewing its own Work and the Work of its Subcontractors and Vendors for defects and deficiencies, including the preparation of all appropriate quality

control documentation, to assure that all such defects and deficiencies are discovered and corrected as soon as possible. Contractor represents and warrants that Contractor is ISO certified and covenants to conform such quality control procedures to ISO standards.

7.4.2 Reviewing, processing, recording and paying Subcontractors and Vendors in a manner fully consistent with the requirements to be fulfilled by the Contractor pursuant to Article 9 of this Agreement.

7.4.3 Preparing, reviewing and processing Change Orders in a manner that fully complies with Article 18 of this Agreement.

7.4.4 Evaluating all Change Proposal Requests and Claims submitted by Subcontractors or Vendors for compliance with the requirements of the Contract Documents, recommending resolutions and options to Owner in writing with respect to such Change Proposal Request and Claims; and implementation of written Construction Change Directives and Change Orders issued in accordance herewith.

7.4.5 Implementing a Site access and staging plan to ensure the smooth, orderly, organized and efficient movement and staging of Subcontractors and Vendors at the Site.

**7.5 Schedule Meetings and Records.** After execution of the Agreement and prior to commencement of the Expansion Project Work, Owner shall schedule one or more meetings with Contractor for the purpose of outlining and clarifying the proposed Expansion Project Work, security and use of the Site, potentially difficult aspects of the Work of which Owner is actually aware, interface and coordination issues between the Original Project and the Expansion Project and responding to questions of those attending.

7.5.1 Contractor shall schedule and conduct pre-construction and construction progress meetings at the Site on a regular basis (at least weekly) at which Owner, Architect/Engineer, Contractor and Subcontractors may jointly discuss such matters as Work procedures, progress, scheduling and coordination. Owner's Lenders, Owner's Consultants and Owner's Contractors may attend such meetings. Contractor shall be responsible for securing attendance of its Subcontractors, Vendors, suppliers and other personnel as are required at such meetings. Contractor shall keep and distribute timely in advance of the next meeting minutes of such meetings, including a list of the action items, responsible parties and dates necessary to complete actions to enable the Contractor to maintain the progress of the Work in accordance with the Original Project Schedule and the Expansion Project Schedule.

7.5.2 Contractor shall regularly monitor and provide to Owner and Owner's Lenders written reports on a monthly basis describing the status of the actual progress of the Work in relation to the Original Project Schedule and the Expansion Project Schedule, in accordance with Article 11 below.

7.5.3 For purposes of Schedule Updates and requested changes in Contract Times, Contractor shall maintain daily logs which shall be available for Owner's and Owner's Lenders review at any time during normal working hours, and which shall record the progress of the Work.

7.5.4 Contractor shall also provide monthly to Owner and Owner's Lenders, on or before the tenth (10<sup>th</sup>) day of each month, an "Anticipated Cost Report" prepared by Contractor in substantial conformance with Owner's standards and containing detailed information on pending Change Orders, contracts awarded and to be awarded, and similar budget related items.

## **7.6 Contractor's Operations.**

7.6.1 Contractor shall: (a) confine its operations at the Site to areas designated by Owner; (b) not unreasonably encumber the Site or encumber areas in the vicinity of the Site with materials, equipment or debris; (c) coordinate its activities with the Owner's Representative, Owner's Consultants and Owner's Contractors in advance; and (d) not block or hinder parking facilities without Owner's prior written approval. To the extent reasonably possible, Contractor shall preserve and protect all existing vegetation on or adjacent to the Site which is not to be removed or required to be disturbed in the performance of the Work. Contractor shall be solely responsible for all costs and expenses incurred as a result of failure to adhere to the requirement of this Section 7.6.1 (subject to Contractor's right to use the Construction Contingency as provided in Section 3.1.8 hereof, to the extent there remain funds therein and regardless of whether any funds remain in the Original Project Construction Contingency or the Expansion Project Construction Contingency, Contractor shall still be liable for such damages, costs and expenses). Contractor shall make itself familiar with and use all best efforts to protect all existing improvements and/or utilities at or near the Site from damage. Contractor shall be solely responsible for repairing any such damage and for the related costs and expenses (subject to Contractor's right to use the Original Project Construction Contingency or the Expansion Project Construction Contingency as provided in Section 3.1.8 hereof, to the extent there remain funds therein and regardless of whether any funds remain in the Original Project Construction Contingency or the Expansion Project Construction Contingency, Contractor shall still be liable for such damages, costs and expenses). Neither Contractor nor any Subcontractor or Vendor shall post, erect or place on the Site, the Work, Owner's premises or the Project any sign, banner, billboard, flag or display for marketing, advertising, promotional or other similar reasons, and no trade names or other identification shall appear on any item of the Work or at any place on the Project where such name or identification will be seen by the general public, except as approved in writing by Owner and except as may be required by the Laws of Macau. In the performance of the Work, Contractor shall, at all times, exercise every reasonable precaution to protect, preserve and prevent from accident, damage and injury arising out of the Work, all persons and property, including the Work and any existing structures. Contractor shall, in addition, comply with all applicable Laws (including those on safety and health) and all requirements of the insurance carriers providing insurance for the Project.



7.6.2 Contractor acknowledges and understands that Original Project and Expansion Project are contiguous to and/or in some cases contained within one another. Execution of each of the Original Project Work and Expansion Project Work may affect, and be effected by, the Expansion Project Work and Original Project Work, respectively; furthermore, upon the Original Project Substantial Completion or Expansion Work Substantial Completion, or the Original Project Final Completion or Expansion Project Final Completion, Contractor's preferred access to certain portions of the uncompleted Project will be subject to additional restrictions and rules required by Owner in furtherance of Owner's intent to open portions of the Site (such as the Original Project Casino) to the public as soon as practicable consistent with the terms of this Agreement, all as set forth in the Original Project Guaranteed Maximum Price Premises and Assumptions or the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable). Contractor and Owner agree that at the meetings contemplated in Section 7.5 either party may also address the scheduling and coordination of the Original Project Work and Expansion Project Work as necessary, it being understood that all scheduling and coordination issues related to the Original Project Work and Expansion Project Work are included in the Original Project Guaranteed Maximum Price Premises and Assumptions or the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable), and any revisions thereto shall be addressed as a Change Order or Construction Change Directive.

**7.7 Site Discipline.** Contractor shall employ, and require all Subcontractors and Vendors to employ, only skilled workers properly qualified by experience and ability to perform the tasks assigned to them, who are properly credentialed with visas and/or work permits allowing them to be legally employed at the Site. Contractor shall at all times be responsible for strict discipline and good order among its employees, craft labor, agents and representatives as well as the employees, craft labor, agents and representatives of its Subcontractors and Vendors while performing Work and all other persons performing any Work. When requested by Owner, Contractor shall remove and shall not re-assign to the Work any person who, in Owner's reasonable opinion, is disorderly, insubordinate, unsafe, unskilled, incompetent or otherwise unfit for tasks assigned to them or lacks proper work credentials for the tasks assigned or proper immigration papers. No workers shall be permitted to reside at the Site under any circumstances.

7.7.1 At all times during performance of the Work, including during any partial use or occupancy by Owner or others, Contractor shall, and shall require all Subcontractors and Vendors to, abide by each and all of the following requirements:

7.7.1.1 Access to the Work area by construction personnel shall be the most inconspicuous route available, in order that the general public and the Owner's personnel are not inconvenienced. Access shall be arranged with Owner prior to commencement of Work. Access to restricted and/or limited access areas required by Work shall be coordinated with Owner. Alterations to and restrictions of access to Work areas in connection with the Original Project Substantial Completion, Expansion Project Substantial Completion, Original Project Final Completion and/or Expansion Project Final Completion,

in order that remaining portions of the Project can be opened, and with as little inconvenience as possible, to the general public, are included in the Original Project Guaranteed Maximum Price Premises and Assumptions or the Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable).

**7.7.1.2** Owner's toilet facilities and the Project's permanent toilet facilities are not to be used by construction personnel.

**7.7.1.3** During the FF&E and finish phase of construction, construction personnel are not permitted to eat or smoke where materials are in place nor use tables and chairs or other furniture that are part of the Project. During this phase of the Project, Owner will designate appropriate places for eating.

**7.7.1.4** Quiet and courtesy with respect to Owner's employees and guests is mandatory.

**7.7.1.5** Use all best efforts to insure that Contractor's and all Subcontractors' activities do not interfere with any Project and Site systems (i.e., electric, elevator, plumbing, fire protection, HVAC, etc.) necessary to maintain ongoing operations of the Project and Site.

**7.7.1.6** Power outages, mechanical shutdown and so forth shall be carefully coordinated with Owner. Contractor will provide Owner with two (2) full business days, advance notice of any planned shutdowns of any basic Project or Site systems, and will obtain Owner's written approval prior to commencing any such shutdown.

**7.7.1.7** All life safety systems requiring shut-down or tie-ins, in accordance with the above clause 7.7.1.6, shall be coordinated with Owner and shall be performed at such a time to minimize any effect of the safety, health and welfare of the building's occupants. At the conclusion of each work-day, all operable life safety systems shall be energized and operative.

**7.7.1.8** Without limiting any other provision in this Section 7.7.1, any planned shutdowns of any basic Project or Site systems for the Original Project or Expansion Project following the Expansion Project Substantial Completion or Original Project Substantial Completion, respectively, require advance notice to and written advance approval from Owner prior to commencing any such shutdown.

**7.7.1.9** Contractor shall be responsible to Owner for acts and omissions of Contractor's employees and agents, Subcontractors and Vendors and their respective agents and employees, and other persons performing portions of the Work under a contract or arrangement with or under the direction of Contractor or with or under the direction of any Subcontractor or Vendor. Except to the extent expressly provided otherwise in this Agreement, Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of Owner or

Architect/Engineer, or, by any request, approval or consent of Owner or Architect/Engineer, or by tests, inspections or approvals required or performed by persons other than Contractor. Contractor shall require and ensure that each Subcontractor and Vendor complies with all applicable requirements set forth in the Contract Documents for Contractor. Except to the extent the Contract Documents expressly provide otherwise, if any dispute arises between Owner, on the one hand, and Contractor, on the other hand, unless Owner directs otherwise, Contractor shall proceed with the performance of its obligations under the Contract with reservation of all rights and remedies it may have under and subject to the terms of the Contract Documents.

**7.7.1.10** Without limiting the provisions of Sections 7.7.1.1 through 7.7.1.9, Contractor acknowledges that upon opening portions of the Project to the general public, such portions are intended to be operated as a “five-star” first class Las Vegas-style resort; accordingly, Contractor shall, and require all Subcontractors and Vendors to, carry out their obligations under the Contract Documents with the utmost duty of care with respect to the general public.

**7.8 Site Security.** In cooperation with Owner, Contractor shall develop and implement an effective security program for protection of the Work in progress. Contractor shall secure, protect and be responsible for, and shall provide all necessary or desirable measures for security and protection at and on the Site and the Work, and of all materials, supplies, tools and equipment and all other improvements and personal property at the Site or in the vicinity of the Site, whether or not incorporated into the Work (collectively, the “On-Site Property”), including, but not limited to, utilizing fences, gates, cameras, and patrols (which shall include such number of duly qualified guards, on a 24-hour basis, as Contractor (in consultation with and to the satisfaction of Owner) shall deem adequate or such larger number as shall be required to ensure security of the Site, the Work and the On-Site Property). Contractor shall bear the cost of, and be liable for as a Non-Allowable Cost of the Work (subject to Section 3.2 hereof), and promptly shall remedy, all loss and damage to any Work, tools, equipment and all other improvements and personal property of the Site from any cause whatsoever, except to the extent of loss or damage caused by Force Majeure, by Owner’s negligence or willful misconduct or by the negligence or willful misconduct of Owner’s separate contractors and their agents and employees (subject to Contractor’s obligations under the Contract Documents to coordinate and monitor the work of such other Owner contractors). Owner may elect to provide and/or maintain security (including patrol guards) of its own choosing for the whole or portions of the Work and/or Site and/or adjacent property, but Owner shall not have any obligation, responsibility or liability of any kind to any party whether or not Owner arranges for any security. Such Owner arranged or provided security shall in no event release Contractor from or diminish any of Contractor’s obligations under the Contract Documents, including, but not limited to, this Section 7.8, and Contractor shall be solely responsible for security at and of the Work and Site, regardless of any security arranged for by Owner. Owner shall not assume or incur any responsibility or liability relating to any security arranged by Owner. Contractor shall

cooperate with Owner's security personnel and shall comply with all requests made by such personnel to secure and protect the Work and the Site.

**7.9 Coordination With Others.** Contractor acknowledges that Owner reserves the right to engage other contractors, engineers, inspectors, consultants and/or its own personnel to provide work or services relating to the Project which may be carried out concurrently with Contractor's Work. Specifically, and without limitation, Contractor acknowledges that FF&E procurement is excluded from Contractor's Work but completion of installation of the same within the times set forth on the agreed upon Original Project Schedule and the Expansion Project Schedule is necessary to achieve Original Project Substantial Completion and Expansion Project Substantial Completion. Contractor further acknowledges that a portion of Contractor's Work will include installing materials and equipment in the Project procured by Owner and provided by Owner to Contractor. Owner shall retain separate contractors and vendors for FF&E procurement as Owner desires; provided, however, upon Owner's request Contractor agrees to cooperate with Owner, including joint purchase arrangements, with respect to purchases of materials, supplies and equipment, including FF&E, where such cooperation and joint purchase may lead to a savings in purchase costs relating to such items as determined by Owner. Contractor shall fully cooperate by coordinating its Work with any work or services being performed by Owner, Owner's Consultants, Owner's Contractors and Owner's other engineers and inspectors as follows:

**7.9.1** Contractor shall coordinate its construction activities with the activities of Owner, Owner's Consultants, Owner's Contractors and Owner's other engineers and inspectors and provide the necessary personnel and services to coordinate and interface its Work with Owner's activities at the proper time and in a manner not to delay others or increase costs.

**7.9.2** Contractor shall provide Owner and Owner's Contractors with opportunities for the necessary storage and handling of materials and equipment necessary for execution of their activities.

**7.9.3** Contractor shall participate with Owner, Owner's Consultants and Owner's Contractors in reviewing their respective construction schedules when requested to do so. Contractor acknowledges that the time allowed for each of Original Project Substantial Completion and Expansion Project Substantial Completion includes the necessary allowance of time for Contractor to coordinate and schedule the work of Owner's Consultants and Owner's Contractors, and Contractor has included a specific allowance of time as it relates to Owner's pre-opening activities with respect to each of the Original Project and the Expansion Project.

**7.9.4** At its own expense as a Non-Allowable Cost of the Work, Contractor shall promptly remedy any damage wrongfully caused by Contractor or any Subcontractor or Vendor to Owner's existing property or completed or partially completed construction

work performed by Owner, Owner's Consultants, Owner's Contractors or Owner's other engineers and inspectors.

**7.9.5** If any part of the Work depends upon proper execution of any completed work and services performed or otherwise provided by or on behalf of Owner, Contractor shall, prior to proceeding with its Work, inspect such work and promptly report to Owner any apparent discrepancies or defects in Owner's activities. The failure of Contractor to examine and report any such apparent discrepancies which are or should have been reasonably apparent to Contractor in the exercise of due diligence and prudent judgment and consistent with the terms of the Contract Documents shall bar any Claims thereafter that any defects or delays in Contractor's Work are due to defects, delays or disruptions in the activities performed or otherwise provided by Owner.

**7.9.6** Contractor shall use, and Contractor shall cause its Subcontractors and Vendors to use, all best efforts to work without causing labor disharmony, coordination difficulties, delays, disruptions, impairment of guarantees or interferences of any other obligations of any of Owner's Consultants, Owner's Contractors and Owner's other engineers and inspectors.

**7.9.7** Contractor shall cooperate with Owner's contractors, engineers, inspectors and vendors performing FF&E procurement and installation services and shall incorporate such services in the Original Project Schedule and the Expansion Project Schedule and provide vertical transportation for the timely installation of FF&E. Contractor agrees to cause the Work to be performed in such a manner so that prior to achievement of Original Project Substantial Completion and Expansion Project Substantial Completion (and as early as reasonably practicable), Owner will have access to the Site and the Original Work and Expansion Project Work (as applicable) in order to (a) begin installing FF&E, the installation of which is not part of the Work except as otherwise provided in the Contract Documents, at the Site, (b) begin training its personnel at the Site, and (c) and perform other tasks Owner deems necessary in connection with the opening of each of the Original Project and Expansion Project.

#### **7.10 Product and Design Substitutions**

**7.10.1** All requests for Substitutions shall be made in writing and sufficiently in advance of Work performance needs to permit a reasonable time for evaluation and written response by Owner without jeopardizing the Contract Time.

**7.10.2** The acceptance of any Substitutions shall be at Owner's sole discretion.

**7.10.3** All Substitutions, including design changes recommended by the Contractor, must be specifically accepted in writing by Owner prior to the use or implementation thereof by Contractor or any Subcontractor.

**7.10.4** In reviewing any Substitution, including design changes, Owner may consider, without limitation, the comparative advantages and responsibilities, including, but not limited to: (a) any and all additional costs pertaining to any redesign and adverse consequences of such redesign, (b) any and all costs of replacement, corrections or adjustments to the Work, adjoining Work and Owner's existing property, and (c) any and all costs arising from adverse impacts to the critical path of the Original Project Schedule or the Expansion Project Schedule and/or any delays in the Contract Time arising out of such Substitution.

**7.10.5** Contractor shall promptly notify Owner in writing if any items in the Contract Documents shall not be readily available, and Contractor shall propose an available substitute item for Owner's approval. Nothing in this Section 7.10.5 or elsewhere in the Contract Documents shall derogate from Contractor's responsibility to select, order, and timely purchase such items. If Contractor does not timely order or arrange for delivery of items or materials required for the Work, then upon at least five (5) days' prior written notice to Contractor, Owner may (but is not obligated to) arrange for delivery or order such items and materials and in such event the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable) shall be reduced pursuant to a Construction Change Directive in accordance with Article 18.

#### **7.11 Tests and Inspections**

**7.11.1** All on-Site and off-Site material testing and inspections required by the Contract Documents or by Laws shall be arranged and supervised by Contractor in a timely manner to avoid any delays in the Work.

**7.11.2** Owner may elect to require additional testing and inspections at any time during the course of the Work and for a period of one (1) year after the date of issuance of the Original Project Certificate of Substantial Completion with respect to the Original Project Work and a period of one (1) year after the date of issuance of the Expansion Project Certificate of Substantial Completion with respect to the Expansion Project Work, pursuant to Section 12.1 below. Such additional testing shall be paid for by Owner (from the Owner's Contingency or otherwise) unless such testing discloses material deficiencies not discovered during initial testing. In the event material deficiencies are disclosed, Contractor shall be responsible for all costs of such additional testing and inspections, and Contractor shall pay such costs to Owner on demand therefor (or, at Owner's option, Owner may deduct, withhold and/or set off such costs from or against any amounts then or thereafter payable or due to Contractor from Owner). Contractor's responsibility with respect to the costs of additional tests and inspections shall survive any termination of the Contract.

**7.11.3** All certificates of such testing, inspection or approvals issued by all independent testing companies or governmental authorities shall be promptly delivered to Owner.

7.11.4 No inspection, or failure to inspect, by Owner or the independent testing companies or Owner's Lenders shall be construed as approval or acceptance of the Work or as a waiver of Contractor's obligations to perform the Work in full compliance with the Contract Documents.

7.12 Access to Stored Material. Owner, Owner's Lenders and Macau SAR representatives may enter upon the location where any material or equipment is manufactured or stored for purposes of inspection, checking, testing or for any other purpose Owner, Owner's Lenders or Macau SAR representatives deem reasonably necessary.

### 7.13 Shop Drawings, Product Data and Samples

7.13.1 "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by Contractor, its Subcontractors or Vendors of any tier to illustrate how certain specific Work components fit together and will be located in relation to each other.

7.13.2 "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor, its Subcontractors or Vendor of any tier to illustrate materials or equipment to be utilized for a portion of the Work.

7.13.3 "Samples" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

7.13.4 Contractor shall timely prepare and submit a schedule of Shop Drawings, Product Data, test reports, Samples etc., required to be submitted for the Work, in a format acceptable to Owner and Architect/Engineer.

7.13.5 Contractor shall review, approve (to the extent of their conformance to the Contract Documents) and submit to Owner or Architect/Engineer or the appropriate consultant all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the schedule therefor with promptness and in such sequence as to cause no delays in the Work or in the activities of Owner, Owner's Consultants or Owner's Contractors.

7.13.6 Contractor's submittal of Shop Drawings, Product Data, Samples and similar submittals shall be Contractor's representation that Contractor has determined and verified all materials, field measurements and field construction criteria, as appropriate, related thereto, and that Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

7.13.7 Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until such submittals have been accepted by Architect/Engineer. Such review and acceptance

shall be in a timely manner so as not to delay the progress of the Work. Contractor shall carry out the Work in such submittals as accepted by Architect/Engineer.

**7.13.8** Contractor shall make any corrections required by Owner or Architect/Engineer and shall resubmit the required number of corrected copies of Shop Drawings, Product Data, Samples or similar submittals until approved by Architect/Engineer. Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to any revisions other than those requested by Owner or Architect/Engineer on previous submittals.

**7.13.9** Contractor shall not be relieved of responsibility for errors or omissions contained in Shop Drawings, Product Data, Samples or similar submittals based upon the approval, modification or acceptance thereof by Owner or Architect/Engineer unless the Contractor has specifically informed Owner in writing of such deviation at the time of submittal and Owner has given prior written approval to the specific deviation.

**7.13.10** Contractor shall be responsible for furnishing its Subcontractors and Vendors with sufficient copies of Shop Drawings, Product Data and Samples, including any such construction data supplied by other Subcontractors and Vendors, as may be necessary for the coordination of the activities of all Subcontractors and Vendors.

**7.13.11** Contractor shall submit one (1) reproducible transparency copy and six (6) blue line prints thereof of all Shop Drawings for all shop-fabricated items and all detailed assemblies indicated on the Shop Drawings.

**7.14 Project Record Documents and As-Built Requirements.** Contractor shall maintain at the Site one (1) record copy of all Specifications, Drawings, approved Shop Drawings, Change Orders and other modifications, addenda, schedules and instructions, in good order.

**7.14.1** The record Drawings shall be one (1) set of black (or blue) and white prints of the Drawings on which must be recorded all "as-built" changes during the course of construction. This record set shall be maintained separate and apart from documents used for construction reference as described in Section 7.2.13 above.

**7.14.2** All as-built documents shall be kept current and Contractor shall not permanently conceal or cover any Work until all required information has been recorded.

**7.14.3** Records of exterior underground utilities shall be made at the time of installation.

**7.14.4** In marking any as-built conditions, Contractor shall ensure that such Drawings indicate by measured dimension to building corners or other permanent monuments the exact locations of all piping, conduit or utilities concealed in concrete slabs, behind walls or ceilings or underground. As built Drawings shall be made to scale and shall



also include exact locations of valves, pull boxes and similar items as required for maintenance or repair service. Prior to Original Project Final Completion and Expansion Project Final Completion (as applicable) and as a condition to Original Project Final Payment and Expansion Project Final Payment (as applicable), Contractor shall be responsible for providing Owner with a fully completed and accurate set of all as-built Drawings with respect to each of the Original Project and the Expansion Project (as applicable) in an acceptable electronic format, as Contract Documents for Owner's permanent records.

**7.14.5** All documents described in this Section 7.14, including the as-built Drawings, shall be readily accessible at the Site for inspection upon request by Owner, Owner's Lenders, Owner's Consultants, Owner's Contractors and/or their authorized representatives throughout the course of the Work.

**7.15 Site Clean Up.** All Work performed under this Contract shall comply with all Laws governing applicable noise, dust and pollution control requirements.

**7.15.1 Daily Clean Up.** Contractor shall regularly and on a daily basis during the course of the Work keep the Site and all Work-related areas in a clean and safe condition to Owner's reasonable satisfaction by promptly removing and properly disposing of all debris and rubbish generated by Contractor's operations. Contractor shall maintain ingress or egress from the Site in a clean condition, and shall remove from these areas all of Contractor's (and Subcontractors' and Vendors') spillage and tracking arising from the performance of the Work, and shall promptly repair any damage to the same. Contractor shall minimize to the extent reasonably possible the impact and effect of the Work and other activity on the Site on properties adjoining and nearby the Site, and shall take all necessary and commercially practical and reasonable precautions (and comply with all applicable Laws) to prevent any debris including, but not limited to, fugitive dust, from entering or interfering with any adjacent or nearby property.

**7.15.2 Substantial Completion Clean Up.** Except to the extent that Owner may designate otherwise in writing, the Contractor shall perform the following "clean up items" (a) with respect to the Original Project, prior to the date of issuance of the Original Project Certificate of Substantial Completion and (b) with respect to the Expansion Project, prior to the date of issuance of the Expansion Project Certificate of Substantial Completion (as applicable) pursuant to Section 12.1 below:

(a) removal of all wastes and rubbish;

(b) cleaning of all walls and other surfaces including tile, wood and glass surfaces, and cleaning of all corridors, skylights, doors, architectural metals, carpets, rugs, floors, woodwork and all other items to have the Work ready to operate for the purpose for which it is intended;

- (c) replacement of all broken glass (including removing labels, washing and polishing both sides);
- (d) cleaning and polishing of all plumbing fixtures and equipment;
- (e) restoring existing facilities such as roads, other paved surfaces, fencing and curbing at the Site to their pre-existing condition unless more is required by the Contract Documents;
- (f) requiring affected Subcontractors to promptly remove from the Site all temporary offices, tools, equipment, machinery and surplus materials not required for the continued performance of the Work and otherwise leaving the designated areas "vacuum clean;"
- (g) machine-sweep and clean all drive-way surfaces;
- (h) grind, smooth, and sweep clean any concrete surfaces, as necessary or desirable;
- (i) remove temporary protections;
- (j) remove marks, spots, dust, stains, fingerprints and other soil or dirt from all floors, tile, walls, finishes, marble, finished materials, fixtures, equipment and other Work, and wash or wipe clean and leave the same in undamaged, new condition;
- (k) clean tubs, toilets and other fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave the same in undamaged new condition;
- (l) clean all metal finished in accordance with recommendations of the manufacturer and accepted industry standards;
- (m) clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen;
- (n) clean all light fixtures and insure that they are fully lamped and operating; and
- (o) other items related to clean-up of the Site, as identified by the Owner's Representative.

The foregoing clean up items shall not include but shall be in addition to, any items of defective workmanship or omissions which are to be corrected at Contractor's cost pursuant to Article 10 of this Agreement.

**7.15.3 Final Completion Clean Up.** Prior to Original Project Final Completion and Expansion Project Final Completion (as applicable) pursuant to Section 12.2 below, Contractor shall complete any of the clean up items described above which were either not required by Owner at the time of Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) or which were not satisfactorily completed and accepted by Owner at the time of Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable).

**7.15.4 Site Clean Up By Owner.** In the event Contractor fails to maintain the Site in a manner satisfactory to Owner, and fails to complete appropriate clean up and/or removal activities within twenty-four (24) hours after receipt of Owner's written notice to do so, Owner shall have the right to perform such clean up and removal activities and the Original Project Guaranteed Maximum Price and Expansion Project Guaranteed Maximum Price (as applicable) shall be reduced by the amount of all costs incurred by Owner in connection therewith, provided that if the unspent balance of the Original Project Guaranteed Maximum Price and Expansion Project Guaranteed Maximum Price (as applicable) is insufficient to cover such amount, Contractor shall immediately pay the difference to Owner.

**7.16 Construction Facilities and Temporary Controls.** Contractor shall be solely responsible for the design (except as otherwise provided in the Contract Documents), transport, erection, inspection and maintenance of all temporary supports and structures; including, but not limited to, electricity and lighting, heat, telephone and fax, water, sanitary facilities, fire protection, hoisting equipment and machinery, staging and scaffolding, temporary equipment and materials, all shoring and bracing, all cranes, hoists, derricks and supports, barriers and fencing, water control, field office, storage facilities and all other types of temporary supports and structures required for the Work and provided by Contractor or its Subcontractors while performing the Work. Contractor shall provide and maintain reasonable safety precautions to protect the public and avoid obstruction or interference with vehicular or pedestrian traffic in public streets, alleyways or private rights-of-way. Contractor shall, or shall cause Subcontractors to, leave proper access to hydrants and other similar places, and shall provide sufficient lighting during working hours and from twilight of each day until full daylight of each following day. When work is suspended, Contractor shall, or shall cause Subcontractors to leave roadways and sidewalks in proper condition and restore all such to good condition on completion of the Work and in compliance with all Laws. Contractor shall, or shall cause Subcontractors to, maintain, keep in good repair, and shift and alter as conditions may require, all guard rails, passageways and temporary structures and remove the same when the Work is completed or when the need for their use has ceased.

**7.17 Cutting and Patching of Work.** Contractor shall be responsible for all cutting, fitting or patching of the Work that may be required to properly complete the Work or make its parts fit together properly. Any costs resulting from improper cutting, fitting and patching to any work performed by Owner or Owner's Consultants shall be Contractor's responsibility as a Cost of the Work. Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by Owner or a separate contractor except with consent of Owner, which shall not be unreasonably withheld or delayed. Contractor, if required by Specifications and Drawings, shall make connections to materials or equipment furnished, set, and/or installed by other contractors. No Work connecting to such materials or equipment provided by other contractors shall be done without giving such contractors a reasonable length of time to complete their work or until permission to proceed has been obtained from Owner. Owner shall secure and provide to Contractor the Shop Drawings from Owner's Contractors for such of their work as is to be built into Contractor's Work, or to which Contractor must make connection, and Contractor shall review and advise Owner of any discrepancy or unsuitability relative to its own Work. Each party shall cause its contractors to provide all openings and chases in its own work necessary for the installation of process equipment, and shall fill in around the same afterwards, if required.

## **7.18 On-Demand Bond Requirements**

### **7.18.1 Contractor's Bond Requirements.**

**7.18.1.1** On or before the date that is the earlier of (A) thirty days following the execution of this Agreement and (B) the consummation of Owner's refinancing of the Project (currently scheduled to be on or about August 15, 2005), Contractor shall furnish two (2) fully executed On-Demand Bonds, substantially in the form attached hereto as Exhibit L (with such changes to such form as may be required by Owner's Lenders prior to the actual issuance of the On-Demand Bond, so long as such changes do not materially or substantially alter Contractor's rights, duties or obligations thereunder), naming Owner and, if requested by Owner's Lenders, Owner's Lenders (as Owner's Lenders may change from time to time), as obligees and beneficiaries, covering both the Contractor's faithful performance of this Contract and the payment of all obligations arising hereunder. The On-Demand Bonds shall be in the aggregate amount equal to ten percent (10%) of the initial Original Project Guaranteed Maximum Price and ten percent (10%) of the initial Expansion Project Guaranteed Maximum Price, respectively. Thereafter, neither On-Demand Bond shall be increased or decreased unless Owner grants advance written approval of such increase or decrease. Each On-Demand Bond shall provide that it may be freely assignable by Owner to Owner's Lenders, and by Owner's Lenders to any subsequent lenders or successors and assigns. Each On-Demand Bond and all supplements shall be issued by a bank approved in writing by Owner and Owner's Lenders. Without limiting the approval rights of Owner and Owner's Lenders set forth in the previous sentence, the issuer of the On-Demand Bonds shall, both prior to the issuance of the On-Demand Bonds and at all times until such

On-Demand Bond expires or terminated pursuant to the terms thereof, be rated "A" or higher by Standard & Poor's Corporation or by Moody's Investors Service, Inc. (or an equivalent rating provided by a locally available rating agency, with such rating and such rating agency acceptable to Owner and Owner's Lenders). If the issuer of the On-Demand Bonds ceases to be rated at least "A" by either Standard & Poor's Corporation or by Moody's Investors Service, Inc. (or falls below the acceptable rating set by Owner and Owner's Lenders with respect to the local rating agency, if applicable), Contractor shall, within five (5) business days of such down-grading, obtain replacement On-Demand Bonds which conforms to the requirements of this Section 7.18.1. Concurrently with Contractor's delivery of the On-Demand Bonds pursuant to this Section 7.18.1.1, Owner shall return the On-Demand Bond previously delivered by Contractor to Owner pursuant to the Original Agreement.

**7.18.1.2** The parties acknowledge that the On-Demand Bonds specify that any demand made thereunder shall be accompanied by a written statement signed by the Owner or by an "Independent Expert" certifying that the Contractor has failed to perform all or any of its obligations under this Agreement and the amount of the damages claimed by the Owner as a result of such failure. Owner and Contractor hereby agree to appoint Geoff McCauley of WT Partnership as the Independent Expert for purposes of the On-Demand Bonds. If Geoff McCauley (or any successor Independent Expert) resigns, dies, becomes incapacitated or is otherwise unable to serve as the Independent Expert, Owner and Contractor shall attempt in good faith to agree upon a successor Independent Expert. If Owner and Contractor are unable to name a successor Independent Expert within thirty (30) days, the dispute shall be resolved by arbitration in accordance with Section 22.1. If Owner desires to make demand under either or both On-Demand Bonds, Owner shall deliver a notice to the Independent Expert requesting that the Independent Expert make a determination whether or not Contractor has failed to perform all or any of its obligations under this Agreement and the amount of the damages due Owner as a result of any such failure. If the Independent Expert determines that Contractor has failed to perform all or any of its obligations under this Agreement, the Independent Expert shall deliver a "Statement" pursuant to (and as defined in) the On-Demand Bonds. Except as provided in the next sentence, only the Independent Expert, and not Owner, shall have the right to deliver a Statement pursuant to the On-Demand Bonds. If (a) the Independent Expert fails to make a determination whether or not Contractor has failed to perform all or any of its obligations under this Agreement within twenty-one (21) days after receipt of Owner's notice, (b) the Independent Expert determines that Contractor has failed to perform all or any of its obligations under this Agreement and the Independent Expert fails to deliver a Statement pursuant to the applicable On-Demand Bond within twenty-one (21) days after receipt of Owner's notice, or (c) no Independent Expert is then serving and no successor has yet been appointed, then Owner shall have the right to deliver a Statement pursuant to the applicable On-Demand Bond if Owner determines in good faith that Contractor has failed to perform all or any of its obligations under this Agreement.

**7.18.2** Subcontractor's Bond Requirements. On a case-by-case basis for subcontracts with a contract value in excess of Five Million United States Dollars

(US\$5,000,000), Owner may elect to require that Contractor's Subcontractors provide an On-Demand Bond as described in Section 7.18.1 above using a form approved by Owner and Owner's Lenders. The amount of each such On-Demand Bond shall be equivalent to a minimum of ten percent (10%) of the full value of the relevant subcontract or such lesser amount as Owner may approve in writing. All costs of each On-Demand Bond for those Subcontractors so designated by Owner shall be quoted separately to Owner for Owner's prior written approval before such bond is obtained. Contractor shall recommend to Owner whether or not to require such On-Demand Bonds as to each respective Subcontractor. Nothing in this Section 7.18 shall preclude Contractor from requiring a bond, guarantee or other security from any Subcontractor or Vendor; provided, however, that in the event Owner does not grant prior written approval for an On-Demand Bond with respect to such Subcontractor or Vendor, Contractor's election to require such bond, guarantee or other security shall be at Contractor's sole cost and expense.

#### **7.19 Liens.**

**7.19.1** If at any time Owner receives any stop notice, mechanic's lien or similar claim pertaining to unpaid amounts for any labor, goods, materials, equipment or services provided as part of Contractor's scope of Work (and provided Owner has paid all sums then due and owing to Contractor pursuant to and within the time period set forth in the Contract Documents), Contractor agrees to immediately release or cause the release of Owner, Owner's property, the Site, the Original Project and/or the Expansion Project, as applicable, from such notices, liens or claims, or, at Contractor's option, to file a bond in lieu thereof in an amount satisfactory to Owner. All costs incurred by Contractor in effecting the foregoing shall be at Contractor's sole expense as a Non-Allowable Cost of the Work, except that should Contractor be successful in having Owner's property, the Site the Original Project and/or the Expansion Project, as applicable, released from such notices, liens or claims without the necessity of Contractor posting any bond and without the payment by Contractor to the lien claimant of any monies to effect such release, all of Contractor's reasonable fees and costs incurred in effecting such release shall be a Cost of the Work. It is expressly understood that all of Contractor's obligations with respect to this Section 7.19 begin immediately at the outset of any notice of a claim, either by correspondence or court proceeding or otherwise, and without regard to any showing of fault on the Contractor's part, and in all cases Contractor shall cause Owner, Owner's property, the Site, the Original Project and/or the Expansion Project, as applicable, to be released from all such liens and claims or, at Contractor's option, bond against such liens and claims in accordance with Section 7.19.2 below, in either case within fifteen (15) days of receipt of notice thereof (or such lesser period in any loan documents relating to Owner's Lenders).

**7.19.2** If any such notice or claim is received and Contractor does not release, or cause the release, of Owner, Owner's property, the Site, the Original Project and/or the Expansion Project, as applicable, from the lien or claim within the fifteen (15) day period set forth in Section 7.19.1 or, at Contractor's option, obtain a bond and file with the appropriate court a petition to substitute the bond for such lien or claim within fifteen

(15) days after receipt of notice thereof (or such lesser period in any loan documents relating to Owner's Lenders), and obtain a court order within thirty (30) days after filing such petition, allowing substitution of the bond for such lien, Owner shall have the right to pay all sums necessary to obtain the release of Owner, Owner's property, the Site, the Original Project or the Expansion Project, as applicable from such lien or claim and deduct all sums to be paid (including attorneys' fees and the amount of any obligations assumed by Owner) from the Original Project Guaranteed Maximum Price or the Expansion Project Guaranteed Maximum Price (as applicable).

**7.19.3** Contractor acknowledges (a) that pursuant to Clause 42 of the Gaming Concession Agreement, Owner is required to keep the Project and the Work free and clear of any liens, encumbrances or security interests, and (b) that a breach of this provision of the Gaming Concession Agreement will cause Owner to suffer substantial losses. Contractor agrees that it will not, and it shall use reasonable precautions to ensure that the Subcontractors and Vendors do not, impose, or exercise their rights with respect to, any liens, encumbrances or security interests on the Project and the Work. Further, all materials and equipment supplied by Contractor pursuant to the Contract Documents shall be delivered free and clear of all liens and not be subject to any conditional sale, purchase-money lien, security agreement, financing agreement or chattel mortgages. Contractor agrees that, to the extent it is permitted by law to claim a lien on any material or equipment at the Site or any component of the Work in accordance with the Contract Documents or applicable Law, it will not exercise such right.

**7.20 Royalties and Patents.** Contractor shall pay as a Cost of the Work in accordance with Section 3.2.11 hereof all royalties and license fees relating to the Work. Contractor shall defend suits or claims for infringement of patent rights and shall indemnify and hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if Contractor knows, or should know following due inquiry, that the required design, process or product is an infringement of a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to Owner.

**7.21 Training.**

**7.21.1** With respect to the Original Project, prior to and as a condition to payment of the Original Project Final Payment, Contractor shall orient and instruct the responsible maintenance personnel designated by Owner in the operations of all equipment and shall provide the maintenance personnel with pertinent literature and operational manuals for all equipment designated by Owner.

**7.21.2** With respect to the Expansion Project, prior to and as a condition to payment of the Expansion Project Final Payment, Contractor shall orient and instruct the responsible maintenance personnel designated by Owner in the operations of all equipment

and shall provide the maintenance personnel with pertinent literature and operational manuals for all equipment designated by Owner.

**7.22 Construction Photographs.** Contractor shall submit color construction photographs to Owner and Owner's Lenders with each month's Application For Progress Payment during the Work. Each month, such photographs shall consist of at least four (4) views of the building from ground-view points as directed by Owner and any interior views requested by Owner or Owner's Lenders.

**7.23 Statement of Unpaid Claims.** Whenever requested by Owner or Owner's Lenders, Contractor shall certify to Owner in writing (in a form satisfactory to Owner) the amounts then claimed by and/or due and owing from Contractor to any person(s) for labor and services performed and materials and supplies furnished relating to the Work, setting forth the names of the persons whose charges or claims for materials, supplies, labor, or services have been paid and whose charges or claims are unpaid or in dispute, and the amount due to or claimed by each respectively.

**7.24 Protection of Work.** Contractor shall design, furnish, erect and maintain in a safe manner to cause to be designed, furnished and erected, such barricades, fences, and railings; give such warnings; display such lights, signals and signs; exercise such precautions against fire; adopt and enforce the rules, regulations or requirements of governmental authorities, and take such precautions as may be necessary. Contractor shall immediately report in writing to Owner all accidents howsoever arising out of or in connection with the performance of the Contract Documents, whether on or adjacent to the Site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage is caused, the accident shall be reported by telecopy to Owner and the insurance carrier or its representative providing insurance for the Project. If any claim is made by any third party against Contractor, any Subcontractor or Vendor, on account of any accident or similar event, Contractor shall immediately report the fact in writing to Owner, giving details of the claim and Contractor's explanations as to the same.

**7.25 Information to Authorities.** Contractor acknowledges that (a) Owner and its affiliates are subject to stringent and comprehensive Laws in Macau and in the United States of America (including those issued by the gaming authorities thereof); and (b) Contractor (as well as Subcontractors and Vendors at any tier) may, at the request of Owner or the appropriate governmental authority, be required to submit from time to time such information regarding its operations, businesses or ownership to Owner or the appropriate governmental authority, as the case may be. Contractor shall provide to Owner English translations of all non-English documents (a) filed with applicable governmental authorities in connection with the construction of the Work or (b) delivered to Owner under this Agreement. Contractor shall ensure that all translations submitted to Owner are true and accurate in all material respects.



## **7.26 Hazardous Materials.**

**7.26.1** Title to, ownership of and legal responsibility for all pre-existing hazardous materials at the Site shall remain with Owner. In this Agreement, “pre-existing hazardous materials” shall be limited to all substances that are considered hazardous or toxic under the laws of Macau that (a) existed as of the Original Project Date of Commencement, (b) have not been introduced to the Site by Contractor, and (c) have not been negligently disturbed by Contractor, including asbestos and poly-chlorinated biphenyl (PCB).

**7.26.2** Contractor shall have no responsibility for the handling, removal or disposal of pre-existing hazardous materials at the Site except to the extent addressed or covered in the Contract Documents or otherwise made known to or is known to or, as of the date hereof, is reasonably foreseeable by Contractor.

**7.26.3** In the event Contractor encounters pre-existing hazardous materials or materials reasonably expected to be hazardous to health, Contractor shall, within one (1) day of discovering such materials, notify Owner and stop work in the affected area until an environmental laboratory properly certified by the applicable Authority retained directly by Owner shall have verified that the relevant materials have been removed or rendered harmless. Notwithstanding the foregoing, Contractor shall use its best efforts to minimize any delay to the Original Project Schedule and the Expansion Project Schedule caused by the discovery of pre-existing hazardous materials.

**7.26.4** In the event Contractor shall reasonably determine that the either or both of the Original Project Schedule or the Expansion Project Schedule will be delayed due to the presence of pre-existing hazardous materials, it shall, within ten (10) days of the initial discovery of such pre-existing hazardous materials, submit to Owner a Change Proposal Request for an extension of time and/or an adjustment to the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) in accordance with Article 18 hereof. Contractor’s failure to submit a Change Proposal Request within the time period stated in this Section 7.26.4 shall amount to a waiver of its rights hereunder. Contractor shall not be entitled to an extension of time or an adjustment to the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) for hazardous materials that are not pre-existing hazardous materials.

**7.26.5** All solid and liquid wastes, hazardous substances, and hazardous materials used by Contractor (including all solvents, cleaners, waste oils and trash) shall be handled and disposed of in full compliance with all applicable Laws (including, but not limited to, environmental laws of Macau). Contractor shall be responsible for any environmental contamination that occurs at the Site as the result of the acts or omissions of Contractor or its Subcontractors, Vendors or invitees.

**7.26.6** Contractor and its Subcontractors and Vendors shall have no responsibility for the discovery, presence, handling, removal or disposal of pre-existing hazardous materials discovered on the Site, including asbestos, asbestos products, poly-chlorinated biphenyl (PCB) or other substances classified as hazardous by the Environmental Protection Agency of the U.S. Government or any other federal, state or local government agency of the United States, except to the extent addressed or covered in the Contract Documents or otherwise made known to or reasonably foreseeable by Contractor. If Contractor discovers the presence of any hazardous materials at the Site not otherwise called out in the Contract Documents or otherwise made known to or reasonably foreseeable by Contractor, Contractor shall promptly report the presence and precise location of any such materials to Owner and immediately stop Work in the affected area unless requested otherwise by Owner.

**7.27 Taxes, Customs and Import Duties.**

**7.27.1** Contractor shall be responsible for the payment of all Taxes imposed on or as a consequence of the importation of any machinery, hardware and software, articles, equipment, apparatus, materials, supplies, appliances, parts, instruments or other things of all kinds which are required to construct the Work (collectively, the "Plant") into Macau and delivery to and erection on the Site for the purposes of this Agreement. Contractor shall indemnify Owner from and against all liability, cost, damages, loss and expense:

(a) arising from the Contractor's failure to pay the whole or any part of any such Taxes; or

(b) resulting from the Contractor's failure to co-operate with, or follow instructions from the Owner or the Owner's Representative, to maintain such exemptions from or reductions of such Reimbursable Taxes as may be granted by any governmental authority to the Owner.

**7.27.2** In addition to the foregoing, Contractor shall:

(a) timely obtain all exemptions from or reductions of all Reimbursable Taxes which are reasonably capable of being obtained, having regard to all applicable Laws at the date of importation;

(b) not make changes to the type or country of origin of any Plant or in the method of packaging, shipment or importation which would result in any increase in the Reimbursable Taxes payable (unless the overall cost of such Plant would be reduced); and

(c) not knowingly provide information on, or exclude information from, any Project import list or packing list, which would attract Tax at a rate higher than the applicable concessionary rate.

**ARTICLE VIII.**  
**ARCHITECT/ENGINEER; DESIGN DOCUMENTS**

**8.1 Architect's/Engineer's Administration of the Contract**

**8.1.1** The term Architect/Engineer includes the Architect/Engineer and the Architect's/Engineer's authorized representatives. Architect/Engineer shall act in its professional capacity as a Subcontractor during the course of the Work. Contractor shall have direct responsibility of all work performed by the Architect/Engineer, whether occurring prior or subsequent to the date the Architect/Engineer Agreement is transferred to Contractor. The Guaranteed Maximum Price includes all fees and expenses due to the Architect/Engineer.

**8.1.2** The Architect/Engineer shall at all times have access to the Work wherever it is in preparation or being performed.

**8.1.3** The Architect/Engineer shall have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed, by giving reasonable advance notice in writing to both Owner and Contractor. However, only Owner shall have authority to reject any Work which does not conform to the Contract Documents.

**8.1.4** The Architect/Engineer shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the limited purposes of checking for conformance with the Specifications and related design intent expressed in the Contract Documents. The Architect/Engineer shall provide its response to all such submittals in a timely manner to avoid delays in the Work.

**8.1.5** Contractor acknowledges that Owner's Design is an integral part of the design process and understands and accepts the responsibility of coordinating the Owner's Design with the Architect/Engineer's design.

**8.2 Design Information, Drawings and Manuals.**

**8.2.1 Draft Design Information.** Not less than sixty (60) days prior to the commencement of each construction activity as shown on the then current Original Project Schedule or Expansion Project Schedule (as applicable), Contractor shall submit to Owner's Representative Drawings, Specifications and related design information (collectively, "Design Information") in relation thereto in a form and to a level of detail acceptable to the Owner's Representative. The Design Information shall describe the size, quality and character of the applicable portion of the Work as it relates to the Project (including the interrelation of the Original Project and Expansion Project, if applicable); its architectural, structural, mechanical, electrical, plumbing and fire safety systems; and the materials and other elements of the applicable portion of the Work necessary for construction to be

completed in compliance with the requirements of the Contract Documents and all applicable Laws. In the event that Contractor submits any Design Information that does not comply with or is inconsistent with the Original Project Guaranteed Maximum Price Premises and Assumptions and/or Expansion Project Guaranteed Maximum Price Premises and Assumptions, or prior Design Information, it shall clearly identify and give particulars of such non-compliance or inconsistency.

**8.2.2 Approval of Design Information.** If Contractor shall request Owner's approval of particular Design Information, then within thirty (30) days of receipt of such Design Information, the Owner's Representative shall either (a) if it considers the same to comply with the Original Project Guaranteed Maximum Price Premises and Assumptions or Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable) and the prior Design Information, approve the same in writing or (b) raise objections thereto in writing, in which case the same shall be modified by Contractor as often and to the extent necessary to comply, in the opinion of the Owner's Representative, with the Original Project Guaranteed Maximum Price Premises and Assumptions or Expanded Project Guaranteed Maximum Price Premises and Assumptions (as applicable) and the prior Design Information, whereupon approval will be given. Failure by Owner to raise objections in writing within said thirty (30) day period shall be deemed an approval by Owner under clause (a); provided that Contractor shall have provided Owner with an additional notice not less than five (5) nor more than eight (8) days prior to the expiration of such thirty (30) day period stating that Owner's failure to respond shall constitute a deemed approval of the particular Design Information. On each re-submission of the Design Information objected to by the Owner's Representative, the Owner's Representative shall give his consent or raise further objections to the re-submitted Design Information within fourteen (14) days of its receipt by the Owner's Representative. Notwithstanding the foregoing, the Owner's Representative's approval shall be required on all Design Information relating to aesthetics (colors, finishes, etc.) or major building systems or equipment having long-term maintenance requirements (such as elevators). In addition, Owner shall have the right to raise objections to any other Design Information regardless of whether Contractor requested Owner's approval thereof, provided that any such objections are made within thirty (30) days after Owner first has knowledge of the particular Design Information.

**8.2.3 Further Information.** For the purpose of exercising his power hereunder, the Owner's Representative may call for such further or other Design Information as may be reasonably necessary.

**8.2.4 No Relief from Liability.** Contractor acknowledges that neither:

(a) the examination of or the giving or withholding of approval to any Design Information under this Article 8, or the making of objections, representations, comments or suggestions, or any failure to make the same in relation to the Design Information or any other aspect of the Work; nor

(b) any other act or omission of Owner, the Owner's Representative, the Owner's Lenders or of any other person acting or purporting to act on their behalf in relation to any aspect of the Work;

shall relieve Contractor from its responsibility for the acts and omissions of its employees, architects, engineers and consultants (including, but not limited to, Architect/Engineer) in the preparation of the Design Information or relieve Contractor in whole or in part of any duty, obligation or liability undertaken by Contractor in relation to the Work (including, but not limited to, Contractor's obligation to complete the Work in accordance with the Original Project Guaranteed Maximum Price Premises and Assumptions and Expansion Project Guaranteed Maximum Price Premises and Assumptions), whether under this Agreement or otherwise, or diminish or vary any such duty, obligation or liability, whether by way of contribution or otherwise; provided that nothing in this Section 8.2.4 shall exclude or otherwise affect any right of the Contractor to be discharged from its obligations under the Contract. The Drawings and Specifications shall be adequately prepared by or on behalf of Contractor such as to be approved for use by all authorities having jurisdiction over the Original Project or Expansion Project construction without undue delay to the Original Project or Expansion Project (as applicable).

**8.2.5 No Variation.** If any Design Information does not comply with or is inconsistent with the Original Project Guaranteed Maximum Price Premises and Assumptions or Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable), there will be no increase in either the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price or adjustment to the Contract Time awarded in respect of the time taken for, or other circumstances whatsoever surrounding, approval being given or withheld by the Owner's Representative in relation to such Design Information, or the subsequent carrying out of the works of construction the subject thereof.

**8.2.6 Work to Comply with Design Information.** Contractor shall execute the Work strictly in accordance with the Original Project Guaranteed Maximum Price Premises and Assumptions or Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable) and the prior Design Information, using new and high grade materials and workmanship of first class and sound quality. Work carried out by the Contractor other than as aforesaid shall be removed at the request of the Owner's Representative.

**8.2.7 Erection Information.** Without limiting the generality of the foregoing obligations, Contractor shall provide, within the times stated in this Agreement, drawings showing how the Work is to be constructed, assembled or affixed and any other information required for:

(a) preparing suitable foundations or other means of support; and

(b) providing suitable access on the Site for the Work and any necessary equipment to the place where the Work is to be erected.

**8.2.8 Ownership of Documents.** (a) Contractor hereby represents and warrants that it is the owner of, or it will obtain upon the payment by Owner of the applicable monthly progress payment corresponding thereto, all right, title and interest (to the fullest extent possible under applicable Laws) in and to all plans, drawings, specifications and other documents prepared by or on behalf of Contractor hereunder for the Project (excluding, for the purpose of clarity, the Owner's Design), as such plans, drawings, specifications and other documents may be added to or modified from time to time (collectively, the "Design Documents"), whether created by the Contractor, Architect/Engineer or their respective consultants or engineers as instruments of service, and that the Design Documents do not infringe any copyright held by third parties. Contractor hereby transfers to Owner or Owner's assigns, to the fullest extent possible under applicable Laws and upon the payment by Owner of the applicable monthly progress payment corresponding thereto, all of Contractor's right, title and interest (including, but not limited to, the copyright thereto and all other intellectual property therein and all rights and privileges pertaining thereto) in and to the Design Documents. Owner shall have the right to use all of the Design Documents for any purpose whatsoever, including, but not limited to, completion of the Project (or any portion thereof) by others or use on other projects, upon termination of this Contract, without notice to or further compensation to Contractor, Architect/Engineer or any other party. Contractor shall not use, and shall ensure that Architect/Engineer shall not use, the Design Documents on other projects or disclose the contents of the Design Documents to other parties without the prior written consent of Owner in each instance. Contractor shall deliver the Design Documents to Owner in a timely manner. Subject to Section 8.2.12, Contractor, Architect/Engineer and their respective consultants and engineers shall be permitted to retain copies of the Design Documents as necessary to perform their respective services in connection with the Project.

(b) Contractor hereby further represents and warrants that it has received or will receive all necessary licenses and consents in respect of any copyright, design rights and other proprietary rights that are required from any other person or entity (except Owner's Consultants) in connection with the construction, operation, maintenance, adjustment or repair of the Work; that all such licenses, consents and rights are or will be in full force and effect; and that such licenses, consents and rights permit the Owner to operate and maintain the Work in perpetuity free of charge and without interference from any third party, and the Contractor shall indemnify Owner from any and all losses, claims, costs and liabilities sustained or incurred by Owner to any such person in respect thereof.

(c) Contractor covenants that the Design Information does not, and its use will not, infringe the rights of any third party.

(d) Contractor shall be liable for all errors and omissions in, and copyright infringement by, the Design Documents and shall cause Architect/Engineer to

perform, at Architect/Engineer's sole cost and expense, such architectural and engineering services as may be required to correct or remedy such errors or omissions. The foregoing shall be in addition to, and not in limitation of, any other rights that Owner may have hereunder or at law or in equity.

(e) Contractor shall indemnify Owner against any penalties and liability of every kind for Contractor's breach of the covenants contained in this Section 8.2.8 whether such penalty or liability shall arise before or after Original Project Final Completion or Expansion Project Final Completion (as applicable). The provisions of this Section 8.2.8 shall survive termination of this Agreement.

**8.2.9 Provision of Owner Drawings.** All drawings, specifications, documents and designs provided by Owner to Contractor shall remain the sole property of Owner.

**8.2.10 Further Drawings.** Contractor shall provide the Owner's Representative and the Owner's Lenders with any additional copies of Design Information, as reasonably requested by the Owner's Representative.

**8.2.11 Design Responsibility for Drawings.** Where any part of the Work has been designed by or on behalf of Owner, including, but not limited to, the Drawings and Specifications prepared by Owner's Consultants, and that design has been included in the Original Project Guaranteed Maximum Price Premises and Assumptions or Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable), Contractor shall check the design and confirm in a timely manner that it conforms to the Original Project Guaranteed Maximum Price Premises and Assumptions or Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable).

**8.2.12 Return of Design Information and Other Documents.** At the completion of this Contract or, at Owner's election, the portion of this Contract relating to the Original Project or Expansion Project (as applicable), Contractor shall hand over to Owner all Design Information in its or its Subcontractors' or Vendors' possession (or related only to the Original Project or Expansion Project if requested by Owner) and return to Owner all documents, drawings, specifications and designs provided by Owner under this Contract (or related only to the Original Project or Expansion Project if requested by Owner).

**8.2.13 Drawings from Subcontractors.** Contractor shall include in each Subcontract a requirement that the Subcontractor, at its own cost and expense, must furnish all Design Information within the scope of such Subcontract. The Owner Representative's review of such Design Information delivered by the Subcontractor shall not relieve Contractor or the Subcontractor from responsibility for deviations from the Contract Documents, Specifications and/or Drawings, nor shall it relieve Contractor from

responsibility for errors and/or omissions. Contractor shall make, and shall cause Subcontractor to make, any changes required by the Owner's Representative.

**ARTICLE IX.  
SUBCONTRACTORS AND VENDORS**

**9.1 Subcontractors and Vendors.** Except as otherwise provided in this Agreement, Contractor shall be responsible for the performance of Subcontractors and Vendors of every tier to the same extent as if performed by Contractor on a direct basis, including coordination of those portions of the Work performed by Subcontractors and Vendors.

**9.2 Consent To Use Proposed Subcontractors and Vendors.**

**9.2.1** To the extent practicable, Contractor shall propose a minimum of three (3) qualified lump sum or cost of the work plus a fee bidders for each element of the Work to be performed by Subcontractors and Vendors (including those who are to furnish materials or equipment fabricated to a special design). Owner shall, within five (5) calendar days after receipt thereof, reply to Contractor stating whether or not Owner has a reasonable objection to any such proposed person or entity. Owner's failure to reply in writing to Contractor's proposed list within ten (10) calendar days after the receipt thereof shall constitute Owner's acceptance of such list. Owner's consent with respect to any Subcontractor or Vendor pursuant to this Article 9 shall not in any way relieve the Contractor from its obligations to fully manage, administer and assure that the Subcontractor complies with the requirements of the Contract Documents, including all dates identified in the Original Project Schedule or Expansion Project Schedule (as applicable).

**9.2.2** Contractor shall analyze all of the bids for each element of the Work and shall make a recommendation to the Owner as to which bid should be selected. Owner shall then make the selection with assistance from the Contractor within fifteen (15) days following receipt of Contractor's recommendation (and if Owner fails to respond within said fifteen (15) day period, then the bid recommended by Contractor shall be deemed approved by Owner). In the event the Subcontractor chosen by Owner is different from the Subcontractor recommended by Contractor, and the bid amount from the Subcontractor chosen by Owner exceeds by the lesser of 5% or US\$25,000 the bid amount from the Subcontractor recommended by Contractor, such bid difference in excess of the lesser of said 5% or US\$25,000 shall be cause for an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) (or Owner may choose to apply amounts from the Original Project Owner Contingency or Expansion Project Owner Contingency (as applicable) without an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price, respectively) provided that the bid recommended by Contractor was substantially in compliance with the requirements of the Contract Documents.



**9.3 Award of Subcontracts and Purchase Orders.** Contractor shall furnish Owner and Owner's Lenders with a copy of Contractor's proposed forms for use as subcontracts and purchase orders (which includes professional services agreements) for Owner's review and approval prior to Contractor's use thereof, and Contractor shall only enter into those subcontracts approved by Owner in writing, without material modification; provided, however, subcontracts and purchase orders which do not have a contract value in excess of HK\$2,000,000 individually, and otherwise are in accordance with the Contract Documents, shall not require Owner's prior written approval. Failure by Owner to disapprove in writing a subcontract or purchase order submitted by Contractor within fifteen (15) days after Owner's receipt thereof shall be deemed to constitute Owner's approval of such subcontract or purchase order. Contractor shall furnish to Owner a copy of each subcontract and purchase order it enters into in connection with the Work within ten (10) calendar days after execution of such subcontract or purchase order. All subcontracts and purchase orders shall require all Subcontractors and Vendors to assume toward Contractor the same legal obligations and responsibilities which Contractor assumes toward Owner in this Contract, including requiring the indemnitees provided in Article 14 hereof, except as specifically provided otherwise in the Contract Documents or approved by Owner in writing. Owner recognizes that under certain circumstances it will not be possible to obtain all such flow-down provisions (including the indemnitees) in a particular subcontract or purchase order. Owner agrees to review in good faith a request by Contractor for a waiver of the requirement that a particular subcontract or purchase order must include any such flow-down provision that Contractor is unable, using its best efforts, to so obtain. All subcontracts and purchase orders shall (a) require that the subcontract may not be assigned by the Subcontractor or Vendor but shall permit the assignment of the subcontract or purchase order by Contractor to Owner or a third party designated by Owner, including Owner's Lenders, as provided in Section 9.8 and Article 21 of this Agreement, (b) require that the Subcontractors and Vendors shall not have the right to assign the whole or any part of the benefit of the subcontracts or purchase orders or to sublet or further subcontract the whole or any part of the Work to be performed under the subcontract or purchase order without the prior written consent of Owner and Contractor, (c) provide that any warranties contained or referenced therein shall run to the benefit of and be enforceable by Owner and Owner's Lenders, (d) provide for the applicable retentions specified in Section 5.6.3. Contractor shall establish and implement a system to monitor Subcontractors and Vendors to ensure that they comply with the requirements of this Section 9.3. Contractor shall not waive or fail to exercise any material or significant right or remedy under any subcontract or waive any material or significant default under any subcontract or purchase order with a contract value in excess of HK\$500,000 without Owner's prior written approval. Contractor, the Subcontractors and the Vendors shall be subject to audit by the Owner's Representative to ensure compliance with the requirements of this Agreement. If any Subcontractor or Vendor is found to be assigning, subletting or subcontracting all or any part of the Work under its subcontract or purchase order without the prior approval of Owner, Contractor shall immediately notify Owner thereof and shall, if the circumstances are such that the Work has been or is likely to be affected, as determined by Owner in its sole discretion, either remedy such situation (i.e., put an end to such assignment, subletting or

subcontracting) or remove the offending Subcontractor or Vendor from the Project (and if Contractor fails to effect such remedy or removal, Owner shall have the right to remove the offending Subcontractor or Vendor from the Project), unless Owner shall agree otherwise in writing. In such case, Contractor shall be fully responsible for finding a suitable replacement, and the costs involved in making such replacement shall not be the basis for a Change Order, increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) or extension of the Contract Time.

**9.4 Subcontractors and Vendors Designated By Owner.** Contractor shall not be required to contract with a Subcontractor or Vendor to whom Contractor has a reasonable objection, provided that the reason for such objection is identified to Owner in writing within five (5) calendar days of Owner's designation thereof.

**9.5 Payments to Subcontractors from the Contractor.** Contractor agrees to pay each Subcontractor and Vendor within five (5) calendar days of receipt of each progress payment from Owner an amount equal to the amount received by the Contractor from Owner for the purpose of paying the related Subcontractor or Vendor, as set forth in the applicable Application for Progress Payment. Contractor further agrees to require each Subcontractor to make similar payments to its Subcontractors and Vendors. The obligation of Contractor to pay Subcontractors and Vendors (and their obligation to pay their Subcontractors and Vendors) is an independent obligation from the obligation of Owner to make payment to Contractor. Owner shall have no obligation to pay or to see to the payment of any monies to any Subcontractor or Vendor.

**9.6 Subcontractor and Vendor Replacements.** Contractor shall not replace any Subcontractor or Vendor who has been approved by Owner, unless Owner gives prior written approval to the replacement, which approval shall not be unreasonably withheld or delayed.

**9.7 Communications With Subcontractors and Vendors.** In cooperation with, and upon notice to Contractor, Owner and Owner's Lenders shall have the right at any time and from time to time to contact Contractor's Subcontractors and Vendors to discuss the progress of their portion of the Work. Contractor shall have the right to be present at the time of any such direct communications, excepting only if Contractor is in default under the Contract or unreasonably refuses to attend meetings after Owner has given Contractor reasonable advance notice and opportunity to be present. Notwithstanding such rights of direct communication, Contractor shall be responsible and liable to Owner for all acts or omissions of Subcontractors and Vendors and their respective agents and employees and any other person performing any of the Work under an agreement with Contractor or any Subcontractor or Vendor.

**9.8 Assignment.** Contractor hereby assigns to Owner all its interest in all subcontract agreements and purchase orders now existing or hereafter entered into by Contractor for performance of any part of the Work, which assignment will be effective only

upon (a) the termination by Owner of this Agreement or the portion of the Work to which the applicable subcontracts or purchase orders relate or (b) the occurrence of any event described in Section 17.1.2.1, and acceptance by Owner in writing of such assignment, and only as to those subcontract agreements and purchase orders that Owner designates in said writing. Such assignment may not be withdrawn by Contractor prior to expiration of the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable), and Owner may accept said assignment at any time after the termination of this Agreement prior to expiration of the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable). Upon such acceptance by Owner: (i) Contractor shall promptly furnish to Owner the originals or copies of the designated subcontract agreements and purchase orders, and (ii) Owner shall only be required to compensate the designated Subcontractor(s) or Vendor(s) for compensation accruing to same for Work done or materials delivered from and after the date as of which Owner accepts assignment of the subcontract agreement(s) or purchase order(s) in writing (and Contractor shall not be responsible and Owner shall indemnify and hold Contractor harmless for such Work done or materials delivered from and after such date or for compensating such Subcontractor(s) or Vendor(s) therefor). All sums due and owing by Contractor to the designated Subcontractor(s) or Vendor(s) for Work performed or material supplied prior to the date as of which Owner accepts in writing the subcontract agreement(s) or purchase order(s), and all other obligations of Contractor accruing prior to Owner's written acceptance of such assignment, shall constitute a debt and an obligation solely between such Subcontractor(s) or Vendor(s) and Contractor, and Owner shall have no liability with respect such sums or any other obligations of Contractor. It is further agreed that all subcontract agreements and purchase orders shall provide that they are freely assignable by Contractor to Owner and Owner's assigns (including Owner's Lenders) under the terms and conditions stated in this Section 9.8 and that all such Subcontractors and Vendors shall continue to perform their Work for Owner (or Owner's Lenders as the case may be) pursuant to the terms of the respective subcontract or purchase order. Owner agrees not to accept such assignment solely for the purpose of intentionally causing Contractor harm and in bad faith.

**ARTICLE X.  
WARRANTY OBLIGATIONS**

**10.1 Contractor's Warranty.** Contractor represents and warrants to Owner that (a) the Work, whether performed by Contractor's own personnel or by any Subcontractors or Vendors, shall be first class in quality, free from all defects whatsoever (including, without limitation, patent, latent or developed defects or inherent vice), commensurate with construction practices and quality applicable to first class projects associated with luxury resorts, and in strict conformance with the Contract Documents (including, but not limited to, the Original Project Guaranteed Maximum Price Premises and Assumptions or Expansion Project Guaranteed Maximum Price Premises and Assumptions (as applicable)), and (b) all materials, appliances, mechanical devices, equipment and supplies incorporated into the Work shall be new and of such quality to strictly meet or exceed the Specifications and requirements of the Contract Documents. If requested by Owner at any time and from

time to time, Contractor will furnish satisfactory evidence to Owner as to the kind and quality of materials, appliances, mechanical devices, equipment and supplies. All Work not conforming to the requirements of this Section (including, but not limited to, substitutions or deviations not properly approved and authorized by Owner in writing) shall be considered defective.

**10.2 Contractor's Defects Liability Period and Other Warranty Periods.** The "Original Project Defects Liability Period" shall commence upon the issuance of the Original Project Certificate of Substantial Completion for the Original Project Work taken as a whole in accordance with this Agreement and shall extend for a period of one (1) year from the date of issuance of such Certificate. The "Expansion Project Defects Liability Period" shall commence upon the issuance of the Expansion Project Certificate of Substantial Completion for the Expansion Project Work taken as a whole in accordance with this Agreement and shall extend for a period of one (1) year from the date of issuance of such Certificate. A separate warranty shall exist for ten (10) years in the case of watertightness and leakage, as provided in Section 10.4, and other warranties shall apply for such periods as are set forth in the applicable manufacturer's warranties or as may be required by applicable Laws. If any major repair or replacement is made or other major corrective work or service is performed pursuant to any warranty obligation under this Contract during the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable), the applicable warranty for the related repair, replacement or corrective work shall be automatically extended by one (1) year from the date of completion of such repair, replacement or corrective work, but in no event shall the total of all extensions with respect to such particular warranty exceed two (2) years. Nothing contained in this Article 10 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents or under applicable Law, in equity or otherwise, or reduce the period of any other similar warranty or guaranty that may apply at law, in equity or otherwise to the Work. Contractor shall ensure that all warranties from Subcontractors and Vendors in respect of subcontracted work or the supply of any materials forming a part of the Work that extend beyond the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable) are capable of being assigned by Contractor to Owner, and Contractor shall, within fourteen (14) days after the earlier to occur of the termination of this Agreement or the expiration of the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable), assign the benefit of all such warranties to Owner. Contractor shall remain liable and obligated to enforce such warranties on behalf of Owner until the end of the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable), even if such warranties extend beyond the end of the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable).

**10.3 Compliance With Contract Documents.** Upon receipt of Owner's written notice at any time during the course of the Work, during the Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable) or during any other warranty period, and during any longer period of time as may be prescribed by any

applicable Laws or other applicable terms, Contractor shall promptly perform all corrective services (including, but not limited to, furnishing all labor, materials, equipment and other services at the Site and elsewhere) to Owner's satisfaction as may be necessary to remedy any defective workmanship or omissions in the Contractor's Work, including, but not limited to, promptly correct or replace any Work rejected by Owner in accordance with the Contract Documents or which is incomplete, defective or fails to conform to the Contract Documents, whether observed before or after Original Project Final Completion or Expansion Project Final Company of the applicable portion of the Work and whether or not fabricated, installed, or completed. When any defects, omissions, corrective services, Original Project Punch List Items or Expansion Project Punch List Items (as applicable) or other faults which Owner may have required Contractor to make good shall have been satisfactorily completed, Owner shall, upon request, issue a written statement to that effect, which shall not be unreasonably withheld or delayed, and completion of making good such defects, omissions, corrective services, Original Project Punch List Items or Expansion Project Punch List Items (as applicable) or other faults shall be deemed for all purposes under this Agreement to have taken place on the date of such written statement. Contractor's compliance with its obligations as stated in this Article 10, and Owner's acceptance of such corrective services, shall at all times be determined by ascertaining whether Contractor has achieved strict compliance to Owner's reasonable satisfaction with both the written and reasonably inferable requirements contained in the Contract Documents.

**10.4 Warranty Costs.** All costs incurred by Contractor in fulfilling Contractor's remedial defects liability obligations and/or warranty obligations as set forth on this Article 10 shall be at Contractor's sole cost and expense. Contractor shall also, as part of Contractor's warranty and guarantee, repair or replace any other damaged components, material, finishes, furnishings and other Work or portions of the Project or other property damaged, affected or otherwise made necessary by or resulting from such defective, non-conforming or incomplete Work, to return the same to their original condition. In addition, and notwithstanding anything to the contrary in this Agreement, if within ten (10) years after Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) any portion of the respective Original Project Work or Expansion Project Work (including, but not limited to, any roof and any walls) is not watertight and leakproof at every point and in every area (except where leaks can be attributed to damage to such Work proximately caused by extraordinary, external forces beyond Contractor's control and which Contractor could not reasonably have anticipated), Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at Contractor's own expense, do any work necessary to make such Work watertight.

**10.5 Timeliness of Corrective Services.** Contractor shall use all reasonable efforts to fully perform all warranty and corrective services to Owner's satisfaction within five (5) calendar days of the receipt of Owner's written notice of defective workmanship. If the corrective services require more than five (5) calendar days for completion, Contractor shall submit, within five (5) calendar days of receipt of Owner's written notice, a comprehensive written proposal itemizing all corrective actions necessary which Contractor

is prepared to and shall immediately undertake and diligently pursue to enable the Work to achieve strict compliance with the Contract Documents, including the latest Drawings and Specifications. In performing such corrective Work, Contractor shall perform its Work so as to cause the least inconvenience and disruption to Owner's business which may require performance of Work at hours when Owner's business is least active. Additionally, the provisions of Section 7.6 and 7.7 of this Agreement relating to cooperation with Owner, access, avoidance of disruption and related matters as set forth therein shall also apply to the performance of any warranty related work.

**10.6 Warranty Survival.** Contractor's Original Project Defects Liability Period and Expansion Project Defects Liability Period obligations and other warranty obligations set forth in this Article 10 shall apply to Work done by Subcontractors or Vendors, as well as to Work done by direct employees of Contractor, and such provisions shall survive acceptance of the Work and survive any termination of the Contract and Contractor shall be responsible to fully indemnify and hold Owner harmless from any and all liens, claims, lawsuits, costs and expenses which may arise out of the failure of the Contractor to fulfill its warranty obligations pursuant to this Contract.

**10.7 Owner's Right To Correct.** In the event Contractor fails to timely correct incomplete, nonconforming or defective Work following Owner's written notice described in Section 10.5 above, Owner shall have the right to correct or arrange for the correction of any defects or omissions in the Work. The Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price shall be reduced by the amount of all costs incurred by Owner in correcting such defective Original Project Work or Expansion Project Work respectively, including, but not limited to, additional costs for redesigns by the Architect/Engineer and other design consultants, replacement contractors, materials, equipment and all services provided by Owner's personnel; provided that if the unspent balance of the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) is insufficient to cover such amount, then, at Owner's election, Contractor shall on demand pay the difference to Owner, or Owner shall withhold and offset all costs incurred during any such corrective work against any funds which are otherwise due or which may become payable to the Contractor. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall on demand pay the difference to Owner.

**10.8 Owner's Right to Supplement Work of Contractor.** If the Contractor violates or breaches any of the terms, conditions or covenants of the Contract, then Owner may, without prejudice to any other remedy it may have and following the expiration of any applicable cure periods, provide such reasonable labor and materials as are reasonably necessary to remedy such deficiency including the right to hire another contractor to supplement the Work of the Contractor and deduct all costs thereof from any money due or thereafter becoming due to the Contractor and reduce the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) by all such amounts. If the unspent balance of the Original Project Guaranteed Maximum Price or

Expansion Project Guaranteed Maximum Price (as applicable) is insufficient to cover such amount, Contractor shall on demand pay the difference to Owner.

**10.9 Acceptance of Non-Conforming Work.** Owner may, in its sole discretion, elect to accept a part of the Work which is not in accordance with the requirements of the Contract Documents. In such case, the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) shall be reduced as appropriate and equitable. Owner's acceptance of any non-conforming Work shall not waive or otherwise affect Owner's right to demand that Contractor correct any other defects or areas of non-conforming Work.

**10.10 Warranty Exclusions.** Contractor's warranty obligations shall not apply to defects caused by ordinary wear and tear, insufficient maintenance or improper operation or use by Owner.

**10.11 Written Guaranty.** At Owner's request, Contractor shall require Subcontractors and Vendors to enter into a warranty agreement directly with Owner in a form reasonably acceptable to Owner. Such guarantees and warranties to be provided by Subcontractors or Vendors shall be in writing on the letterhead of the respective Subcontractor or Vendor, shall be in form and substance reasonably satisfactory to Owner, and shall be signed jointly by Contractor and such Subcontractor or Vendor. The ten (10) year Contractor warranties specified in Section 10.2 as to watertightness and leakage shall be in form and substance reasonably satisfactory to Owner and shall also be in writing on Contractor's letterhead and signed by Contractor (the parties acknowledging that the warranty of Contractor with respect to the Original Project Defects Liability Period and Expansion Project Defects Liability Period (as applicable) shall be governed by the provisions of this Agreement without a separate written warranty). Copies of all Subcontractor and Vendor guarantees and warranties, as well as the original Contractor's watertightness and leakage warranty, shall be furnished to Owner upon Substantial Completion. Prior to the expiration of the Original Project Defects Liability Period or Expansion Projects Defects Liability Period (as applicable) and as a condition to the Original Project Final Payment or Expansion Project Final Payment, respectively, Contractor shall assign to Owner all applicable Subcontractor and Vendor guarantees and warranties and deliver to Owner the originals thereof. Owner shall, in addition to the guarantees and warranties provided in this Article 10, also have the benefit of, and Contractor shall assign to Owner in form and substance satisfactory to Owner, all warranties, service life policies, indemnities and guarantees with respect to any and all materials, appliances, mechanical devices, supplies and equipment incorporated into the Original Project Work or Expansion Project Work (as applicable) and given by the manufacturer, retailer, or other supplier, which shall be supplied and assigned to Owner promptly after such is received by or becomes available to Contractor and as a condition to Original Project Final Payment or Expansion Project Final Payment, respectively. Further, at Owner's request, after the expiration of the Defects Liability Period, Contractor shall assist Owner in enforcing all such warranties, guarantees, policies and indemnities.

**ARTICLE XI.  
SCHEDULING, DELAYS AND ACCELERATION**

**11.1 Owner's Right to Modify.** Notwithstanding the Original Project Schedule or Expansion Project Schedule, Owner has the right, upon notice to Contractor, to modify or otherwise change the sequence of the Work and Contractor shall comply therewith and adjust schedules accordingly. If Contractor believes such modification or change causes a delay or acceleration in the completion of the Work, Contractor shall provide written notice to Owner in accordance with Section 11.6 below. Any such modifications or changes in sequence applies only to scheduling and shall not be construed to mean a change in the method or means employed by Contractor for the execution of the Work.

**11.2 Project Schedule.** Within five (5) days after receipt of the Original Project Notice to Proceed or Expansion Project Date of Commencement (as applicable), Contractor shall furnish a detailed update of the Original Project Schedule attached hereto as Attachment 2 of Exhibit B or Expansion Project Schedule attached hereto as Attachment 5 of Exhibit B describing the activities to be accomplished and their dependency relationships, for approval by Owner. The Original Project Schedule shall include an agreed upon design schedule setting forth time periods for Contractor to require Architect/Engineer to produce Drawings for the Original Project Work, time periods when Owner's Consultants and Owner's Contractors on the Original Project must provide their respective documents and services, and an agreed upon construction schedule setting forth the Original Project Interim Milestone Dates. The Expansion Project Schedule shall include an agreed upon design schedule setting forth time periods for Contractor to require Architect/Engineer to produce Drawings for the Expansion Project Work, time periods when Owner's Consultants and Owner's Contractors on the Expansion Project must provide their respective documents and services, and an agreed upon construction schedule setting forth the Expansion Project Interim Milestone Dates. Contractor's performance will be measured against the Original Project Schedule or Expansion Project Schedule (as applicable). The Original Project Schedule and Expansion Project Schedule (and any revisions thereto) shall be updated and revised at appropriate intervals as reasonably required by Owner or the current and projected conditions of the Original Project Work or Expansion Project Work (as applicable) and Original Project or Expansion Project (as applicable), shall designate those items on the critical path of the Original Project Work or Expansion Project Work (as applicable), shall be related to the entire Original Project or Expansion Project (as applicable) to the extent required by the Contract Documents, shall indicate dates necessary to vacate various work areas, and shall provide for expeditious and practicable execution of the Work.

**11.3 Schedule Updates.** Contractor shall submit a "Schedule Update" along with each monthly Application For Progress Payment for comparison to the Original Project Schedule or Expansion Project Schedule (as applicable). The first Schedule Update shall be dated and identified as "Schedule Update No. 1" and shall identify the then current status of all major Original Work or Expansion Work activities (as applicable) identified in the Original Project Schedule or Expansion Project Schedule (as applicable). All Schedule



Updates shall include a comprehensive narrative setting forth (i) actual activity completion dates, (ii) the effect on the Original Project Schedule or Expansion Project Schedule (as applicable) of any delays in any activities in progress and/or the impact of known or suspected delays which are expected to effect future Work, (iii) the effect of Changes on the Original Project Schedule or Expansion Project Schedule (as applicable), (iv) all actual and potential variances between latest Schedule Update and probable actual completion dates (including completion dates related to the Contract Time and/or relevant Original Project Interim Milestone Dates or Expansion Project Interim Milestone Dates); (v) all Work activities not started or completed in accordance with the Original Project Schedule or Expansion Project Schedule (as applicable), and (vi) recommendations of specific Recovery Plans to Owner which may be necessary to achieve the Contract Time and/or relevant Original Project Interim Milestone Dates or Expansion Project Interim Milestone Dates. All subsequent Schedule Updates shall be dated and numbered sequentially. In addition, each Schedule Update shall be clearly labeled to state the effective date of the current status information contained therein.

**11.4 Events of Force Majeure.** “Force Majeure” means fires, explosions, strikes being conducted on an industry-wide basis and that are not limited to the Project, unusually adverse weather conditions, war (whether war be declared or not), hostilities, invasion, riot, civil insurrection, civil war, terrorist acts, ionising radiation, contamination by radioactivity on the Site from any nuclear fuel, radioactive toxic explosive or nuclear explosive, epidemics, quarantine, plague, and any other event beyond the reasonable control of Contractor (other than bad weather generally or insufficiency of funds, except to the extent such insufficiency is due to the failure of Owner to pay Costs of the Work pursuant to an approved Application for Progress Payment). “Force Majeure Delay” means a delay due to Force Majeure that, in each case, (a) materially adversely affects the performance by Contractor of its obligations hereunder, (b) based on Contractor’s extensive experience in constructing projects of similar scope and complexity in similar types of locations and Contractor’s representations contained in the Contract Documents, is not reasonably foreseeable and is beyond Contractor’s reasonable control, (c) despite the exercise of reasonable diligence, cannot be prevented, avoided or removed by Contractor and is not attributable to the negligence, willful misconduct or bad faith of Contractor, and (d) is not the result of the failure of Contractor to perform any of its obligations under any of the Contract Documents. Notwithstanding the foregoing, a Force Majeure Delay shall not be deemed to have occurred unless Contractor has notified Owner of such occurrence of Force Majeure within three (3) days after such occurrence and has provided Owner with the details of such event and the length of the anticipated delay within an additional five (5) days thereafter. During the occurrence and continuance of a Force Majeure Delay, the affected party shall be excused from performance of its obligations under this Agreement to the extent the Force Majeure prevents such party from performing such obligations, except for Owner’s obligation to make timely payment of amounts properly due and payable to Contractor.

**11.5 Owner Delay.** As used in this Agreement, the term “**Owner Delay**” means any actual delay in the critical path of Contractor’s Work that is caused by Owner, Owner’s Lenders or any of Owner’s Consultants or Owner’s Contractors as a result of their acts or omissions, but only to the extent not the fault of Contractor or any Subcontractor or Vendor or any party for which any of them is responsible or liable at law or under the Contract). Owner and Contractor agree to use best efforts to provide all information and documentation reasonably required by Owner’s Lenders in order for Owner’s Lenders to render approvals under this Agreement. In addition to and without derogation of Contractor’s rights with respect to extensions of the Contract Time set forth in Section 11.6, Owner may, in its sole and absolute discretion, at any time and from time to time, whether before or after Original Project Final Completion or Expansion Project Final Completion, prospectively or retrospectively, and for any reason, whether for Owner’s sole benefit or otherwise (including, without limitation, in connection with a delay caused solely by Owner), grant to Contractor an extension of the time specified in this Agreement for the performance by Contractor of any of its covenants or obligations under this Agreement or any of the other Contract Documents (including, without limitation, the Original Project Guaranteed Date of Substantial Completion or Expansion Project Guaranteed Date of Substantial Completion (as applicable) and the Original Project Interim Milestone Dates or Expansion Project Interim Milestone Dates (as applicable)).

**11.6 Extensions of Time and Guaranteed Maximum Price Increases for Delay.**

**11.6.1** To the extent the Contractor is delayed at any time in the progress of the Work by a Permissible Delay, then the Contract Time shall be reasonably extended and the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) increased (or a portion of the Owner Contingency applied if available), if at all, in accordance with the procedures described in this Section 11.6 and in Article 18 below. Such extension and/or increase shall be pursuant to a Change Order if the delay is a Permissible Delay or where otherwise agreed by Owner and Contractor. In all other cases, the extension and/or increase shall be pursuant to a Construction Change Directive.

**11.6.2** Notwithstanding any other provision of the Contract Documents, any item that cannot be demonstrated as being on or affecting the critical path of the Work shall not result in an extension of time to perform the Work or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) in the event such item is delayed. Further, to the extent any Permissible Delay could have been prevented or reduced if Contractor had, consistent with the terms of the Contract Documents, performed its duties and responsibilities under the Contract Documents, such delay will not entitle Contractor to an extension of the Contract Time and/or increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) (except for that portion, if any, of such Permissible Delay which could not have been mitigated or reduced consistent with the

foregoing and subject to the other requirements of the Contract Documents, including this [Section 11.6](#)).

**11.6.3** Extensions of the Contract Time for the Work and/or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) will be authorized by Owner only if (a) Contractor has been actually and necessarily delayed in meeting the Original Project Guaranteed Date of Substantial Completion or Expansion Project Guaranteed Date of Substantial Completion (as applicable) by a cause which constitutes a Permissible Delay, or a Change to the Work initiated by the Owner; (b) the completion of the Work by the applicable Original Project Interim Milestone Date or Expansion Project Interim Milestone Date (as applicable) or the total Original Project Work or Expansion Project Work by the Original Project Guaranteed Date of Substantial Completion or Expansion Project Guaranteed Date of Substantial Completion, respectively, is actually and necessarily delayed by such cause; and (c) Contractor has met any notice requirements set forth in the Contract Documents for it to be entitled to any extension of time or increased costs. All extensions of time and/or increases in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) to which Contractor is entitled hereunder will be confirmed by Change Order.

**11.6.4** The period of any extension of time for the delay shall be only that which is necessary to make up the time actually lost for a Work item or items identifiable on the Original Project Schedule or Expansion Project Schedule as being on or affecting the critical path at the time in which the delay occurs.

**11.6.5** The amount of increase, if any, in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) due to a delay shall be equal to the additional cost actually, reasonably and necessarily incurred by Contractor in Cost of the Work items (a) as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at Owner's request during such delay and (b) other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the delayed Work caused solely by such delay, but (as to both of the foregoing (a) and (b)), only if and to the extent such delay exceeds a period of thirty (30) days in the aggregate following commencement of the Work, and to the extent such actions are necessary, if at all, to be performed by Contractor to maintain the extended Contract Time and Original Project Schedule or Expansion Project Schedule (as applicable) after taking into account any extension of time as provided for in this [Section 11.6](#).

**11.6.6** Contractor shall not be entitled to receive a separate extension of time and/or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) for each of several causes of delay operating concurrently but only for the actual period of delay in completion of the Work irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of Contractor or

Subcontractor or for which Contractor or Subcontractor is responsible, and would of itself, irrespective of the concurrent causes, have delayed the Work, no extension of time and/or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) will be allowed to the extent of the period of delay resulting from such act, fault or omission. Further all such extensions and increases shall be netted out with any reductions in Contract Time and/or Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable), before implementing any such extension or increase.

**11.6.7** As a condition precedent to the granting of an extension of time or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable), Contractor shall use best efforts to give Owner immediate written notice (but in any event shall give such written notice to Owner within thirty (30) calendar days) after the time when Contractor knows of any cause which might result in delay, for which it may claim an extension of time and/or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable), including those causes of which Owner has knowledge, specifically stating in such notice that an extension and/or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) is or may be claimed, and identifying such cause and describing, as fully as practicable, at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the notice.

**11.6.8** Since the possible necessity for an extension of time and/or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) may materially alter the scheduling plans, and other actions of Owner and since, with sufficient notice, Owner may, if it should so elect, attempt to mitigate the effect of a delay for which an extension of time and/or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) might be claimed, the giving of written notice as required above is of the essence of Contractor's obligations hereunder and failure of Contractor to give written notice as required above shall be a conclusive waiver of an extension of time and/or an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) for the cause of delay in question.

**11.6.9** It shall in all cases be presumed that no extension, or further extension, of time and no increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) is due unless Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of Owner. Contractor shall maintain adequate records supporting any claim for an extension of time and/or increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable).

**11.6.10** Notwithstanding the provisions of this Section 11.6, if pursuant to this Section 11.6 Contractor is entitled to an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable), Owner shall have the right, in lieu of any increase, to apply a portion of the Original Project Owner Contingency or Expansion Project Owner Contingency (as applicable and to the extent funds remain therein) to cover such increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) due to such delay covered by this Section 11.6.

**11.7 Limitations.** Contractor agrees for itself and, to the fullest extent allowed by applicable Laws, for its Subcontractors, and will use its best efforts to require each Subcontractor to agree, that it will make no claim or claims against the Site, Project, Owner (or any party affiliated or associated with Owner or any assets of Owner), or Owner's Lenders for damages or losses incurred as a result of or arising out of delays in the Work, including but not limited to any Permissible Delay, except as provided in Section 11.6. Contractor acknowledges that (a) an extension of the Contract Time, and/or (b) an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable), strictly in accordance with Section 11.6 above, shall be the sole and exclusive remedy for Contractor and all Subcontractors and Vendors for all delays. Contractor agrees to accept such extensions at no additional cost to Owner (except as provided in this Section 11.7), and waives and relinquishes any right to separate claims of any kind for any delays. Further, the limitations in Section 17.4 hereof shall also apply to any delay.

**11.8 Recovery Plans.** The Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) is based on Contractor working as many hours as necessary to properly perform the Work and achieve the Original Project Schedule and Expansion Project Schedule requirements. "Recovery Plan" means a detailed narrative explanation clearly stating the scope and extent of any and all resource loading, activity re-sequencing and other acceleration activities required for all affected elements of the Work to enable Contractor to either: (a) complete the respective Original Project Interim Milestones or Expansion Project Interim Milestones by the respective Original Project Interim Milestone Dates or Expansion Project Interim Milestone Dates; or (b) obtain Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) within the applicable Contract Time.

**11.8.1** If Owner determines at any time based on reasonable evidence that Contractor is behind schedule or is otherwise in jeopardy of failing to complete any Original Project Interim Milestones or Expansion Project Interim Milestones by the applicable respective Original Project Interim Milestone Dates or Expansion Project Interim Milestone Dates or the Work within the Contract Time, Owner shall issue a written notice to Contractor identifying areas of concern and requiring that Contractor provide a Recovery Plan to Owner.

**11.8.2** Upon receipt of Owner's notice, Contractor shall immediately undertake all reasonably available steps to overcome or mitigate against the adverse effects of all delays identified by Owner. Contractor's failure to undertake all reasonably available steps to mitigate the effects of such delays shall constitute a waiver of Contractor's right to claim relief for any schedule extensions and/or additional compensation to the extent that Contractor's failure to act timely contributed to such delays.

**11.8.3** Contractor shall, within seven (7) calendar days after receipt of Owner's notice, provide its Recovery Plan to Owner notwithstanding whether or not Contractor disputes responsibility for the cause(s) of such delays.

**11.8.4** Within seven (7) calendar days after submission of the Recovery Plan by Contractor, Owner shall advise Contractor in writing whether or not to proceed with the Recovery Plan as submitted, or in accordance with reasonable revisions thereto established by Owner.

(a) If the delay addressed by the Recovery Plan is a Permissible Delay, such notice to proceed shall be by an agreed Change Order in accordance with Section 11.6 and Article 18 (and Contractor shall be entitled to request an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) in accordance therewith). As part of such notice, Owner shall have the right to require Contractor to work its own construction crews and Subcontractors and other personnel overtime, and to direct Contractor to take all other necessary reasonable action, including, but not limited to, increasing the number of personnel and implementing double shifts (provided the same does not result in the Contractor breaching any applicable labor laws or regulations in Macau). Such overtime work and other actions shall continue until such time as the Work has progressed so that it complies with the stage of completion required by the then most recently Owner approved Original Project Schedule or Expansion Project Schedule (as applicable).

(b) If the delay addressed by the Recovery Plan is the result of any cause other than a Permissible Delay, such notice to proceed shall be by a Construction Change Directive in accordance with Section 11.6 and Article 18. As part of such notice, Owner shall have the right to require Contractor to work its own construction crews and Subcontractors and other personnel overtime, and to direct Contractor to take all other necessary action, including, but not limited to, increasing the number of personnel and implementing double shifts (provided the same does not result in the Contractor breaching any applicable labor laws or regulations in Macau), all at no increase to the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable). Such overtime work and other actions shall continue until such time as the Work

has progressed so that it complies with the stage of completion required by the then most recently Owner approved Project Schedule. Additional costs incurred due to such overtime work and other actions shall not result in any adjustment in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable).

**11.8.5 Intentionally Omitted.**

**11.8.6** Contractor acknowledges that Owner, Owner's Consultants and Owner's Contractors must perform certain work and other tasks in connection with the Project (including, without limitation, the installation of certain FF&E and the training of Owner's personnel) (collectively, "Owner's Pre-Opening Work"), and that the Owner's Pre-Opening Work is to be completed concurrently with the Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable), so that the Casino, Hotel and other portions of the Project intended to be open to the general public, may be opened to the general public concurrently with the Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable). Contractor further acknowledges that the ability of Owner, Owner's Consultants and Owner's Contractors to complete the applicable Owner's Pre-Opening Work concurrently with the Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) is dependent in part on Contractor's achievement of certain Original Project Interim Milestones or Expansion Project Interim Milestones (as applicable) by a date that is prior to the scheduled date of the Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) by a number of days that is not less than (i) in the case of the Original Project, the number of days between the applicable Original Project Interim Milestone Dates and the Original Project Guaranteed Date of Substantial Completion specified in the Original Project Schedule and (ii) in the case of the Expansion Project, the number of days between the applicable Expansion Project Interim Milestone Dates and the Expansion Project Guaranteed Date of Substantial Completion specified in the Expansion Project Schedule. If Contractor fails to achieve any Original Project Interim Milestone or Expansion Project Interim Milestone by the applicable Original Project Interim Milestone Date or Expansion Project Interim Milestone Date, respectively, and, as a result, Owner determines based on reasonable evidence that Owner's Pre-Opening Work will not be completed concurrently with the then-scheduled date of Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) (as mutually agreed upon by Owner and Contractor), Owner shall have the right, but not the obligation, to formulate its own recovery plan (an "Owner Recovery Plan") stating the scope and extent of any and all resource loading, activity re-sequencing and other acceleration activities with respect to Owner's Pre-Opening Work necessitated by any such delay. Owner and Contractor agree to meet to consult with each other regarding the scope and implementation of any such Owner Recovery Plan. If the delay addressed by an Owner Recovery Plan is the result of any cause other than a Permissible Delay, Contractor shall be liable to Owner for all costs and expenses incurred by Owner, Owner's Consultants and Owner's Contractors in preparing and implementing such Owner Recovery Plan.

## **11.9 Accelerations for Owner's Convenience**

**11.9.1** In the event Owner desires to accelerate the Project Schedule for reasons other than delays caused by or attributable to the Contractor, Owner shall so notify Contractor in writing.

**11.9.2** Upon receipt of such written instruction, Contractor shall require its personnel and its Subcontractors and Vendors to work such overtime hours and/or to increase their respective work forces as are reasonably necessary to meet Owner's acceleration goals.

**11.9.3** In the event such an acceleration is ordered by Owner, Contractor shall be entitled to an adjustment in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) determined in accordance with Article 18 of this Agreement.

## **11.10 Schedule Coordination**

**11.10.1** Contractor shall schedule and coordinate the performance of the Work by Contractor's personnel, Subcontractors and Vendors of any tier, and the performance of the Project-related work by Owner's Consultants and Owner's Contractors, in a manner that will enable Contractor to achieve Original Project Interim Milestones or Expansion Project Interim Milestones by the respective Original Project Interim Milestone Dates or Expansion Project Interim Milestone Dates and completion within the Contract Time. Contractor acknowledges that at least a portion of the Work will be performed under joint occupancy conditions at the Site.

**11.10.2** Contractor shall cooperate with Owner, Owner's Consultants and Owner's Contractors so that both the Contractor's Work and the work of others will progress smoothly with a minimum of disruptions and interference to any party.

**11.10.3** Contractor shall schedule its Work and delivery of materials to comply with all reasonable requests and suggestions of Owner in order to maintain the Original Project Schedule or Expansion Project Schedule (as applicable) within the limitations of all existing Site conditions and business operations of Owner.

**11.10.4** Contractor shall use all best efforts to not utilize any labor, materials or means whose employment or utilization during the course of this Contract may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of Work or similar trouble by workman employed by its Subcontractors, or by any of the trades working in or about the Project and Site where Work is being performed under this Contract, or by other contractors or their subcontractors pursuant to other contracts, or on any other project and project site or premises owned or operated by Owner. Any violation by Contractor of this requirement may be considered as proper and sufficient cause for declaring Contractor to be



in default, and for Owner to take action against Contractor as set forth in the Contract Documents.

**11.10.5** In case of disagreements or disputes regarding the schedule of Work by Owner's Consultants and Owner's Contractors or unnecessary interference to the Work caused by lack of cooperation between Owner's Consultants or Owner's Contractors and Contractor, Contractor shall fully cooperate to resolve any such disputes. In case of disagreements or disputes between two or more contractors, Owner shall be consulted and Owner's decisions as to proper methods for coordinating the Work shall be final, subject to any rights or remedies of Contractor under this Agreement or applicable Law.

**11.11 Flow-Down Provisions**

**11.11.1** Contractor shall include the requirements of Sections 11.1, 11.6 and 11.7, Sections 11.9 through 11.13, Article 14, Section 17.4, Article 19, Sections 23.2, 24.2 and 24.16, and any other provisions of this Agreement required by Owner, in all of its subcontracts and purchase orders. As to sub-tier subcontracts and sub-tier purchase orders, Contractor shall use reasonable efforts to require Subcontractors and Vendors with agreements totaling in excess of HK\$2,000,000 to include the requirements of the Sections enumerated above in all sub-tier subcontracts and sub-tier purchase orders.

**11.11.2** Contractor shall be responsible to fully indemnify and hold Owner harmless from any and all liens, claims, lawsuits, costs and expenses, including attorneys' fees, which may arise out of either the failure of the Contractor to fulfill its obligations pursuant to this Article 11 and/or the Contractor's failure to enforce the flow-down provisions as stated above.

**11.12 Partial Occupancy Or Use.** Owner may occupy or use any completed or partially completed portion(s) of the Work at any stage, provided that such occupancy and use shall not impede Contractor from completing other portions of the Work. Notwithstanding any other provision of the Contract, any such partial occupancy or use shall not: (a) constitute final acceptance of any Work or be deemed Original Project Substantial Completion or Expansion Project Substantial Completion of such Work, or (b) relieve Contractor of responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, or from any other unfulfilled obligations or responsibilities under the Contract Documents; provided, however, Contractor shall not be liable for damage caused by Owner or Owner's Contractors or from vandalism or for ordinary wear and tear resulting from such partial occupancy and use. Contractor shall cooperate fully with Owner, as Owner may reasonably request, in all aspects of Owner's partial use and occupancy of the Work and Project, including, but not limited to, scheduling, allocation of utilities, access and storage, and all other arrangements.

**11.13 Timely Completion.** Contractor agrees to prosecute the Work and to require all trade contractors to prosecute the Work in a timely and proper method and

manner so as to meet the dates reflected on the Original Project Schedule or Expansion Project Schedule (as applicable), including the Original Project Guaranteed Date of Substantial Completion or Expansion Project Guaranteed Date of Substantial Completion.

**ARTICLE XII.  
SUBSTANTIAL AND FINAL COMPLETION**

**12.1 Substantial Completion Procedures and Requirements**

**12.1.1 Notice of Substantial Completion.** (A) “Original Project Substantial Completion” means the stage in the progress of the Original Project Work when (a) the Original Project is sufficiently complete in accordance with the Contract Documents and all applicable Laws to enable Owner to fully occupy and utilize the same for all of its intended purposes and can be open to the general public; (b) all Original Project systems included in the Original Project Work for such portion of the Original Project (including, but not limited to, all life safety systems) are operational and functioning as designed and scheduled; (c) all instruction of Owner’s personnel in the operation of the Original Project systems included in such Original Project Work has been completed; (d) all final finishes within the Contract applicable to such Original Project Work are in place; and (e) such Original Project Work is otherwise satisfactory to Owner in accordance with the Contract Documents. (B) “Expansion Project Substantial Completion” means the stage in the progress of the Expansion Project Work when (a) the Expansion Project is sufficiently complete in accordance with the Contract Documents and all applicable Laws to enable Owner to fully occupy and utilize the same for all of its intended purposes and can be open to the general public; (b) all Expansion Project systems included in the Expansion Project Work for such portion of the Expansion Project (including, but not limited to, all life safety systems) are operational and functioning as designed and scheduled; (c) all instruction of Owner’s personnel in the operation of the Expansion Project systems included in such Expansion Project Work has been completed; (d) all final finishes within the Contract applicable to such Expansion Project Work are in place; and (e) such Expansion Project Work is otherwise satisfactory to Owner in accordance with the Contract Documents. In general, the only remaining Work relating to such portion of the Original Project or Expansion Project (as applicable) shall be minor in nature, so that Owner could occupy the building(s) comprising such portion of the Original Project or Expansion Project (as applicable) and fully utilize such building(s) on that date, and all elements are fully functional and operable as provided in the Contract, and the Original Project Final Completion or Expansion Project Final Completion (as applicable) of such Work by Contractor would not materially interfere with, disrupt or hamper Owner’s use, occupancy or enjoyment of the Original Project or Expansion Project (as applicable) to the extent completed, including the intended normal business operations of such portions of the Original Project or Expansion Project (as applicable), or detract from the aesthetic appearance of such portions of the Original Project or Expansion Project (as applicable). Notwithstanding the foregoing, neither the Original Project Substantial Completion nor the Expansion Project Substantial Completion shall unreasonably prevent or delay the

performance of Owner's Pre-Opening Work. Contractor shall request an inspection for purposes of the Original Project Substantial Completion and Expansion Project Substantial Completion in writing when the Contractor considers that such portion of the Original Project or Expansion Project (as applicable) is substantially complete in accordance with all requirements in the Contract Documents.

**12.1.2 Procedures For Substantial Completion.** Procedures to be utilized to determine Original Project Substantial Completion and Expansion Project Substantial Completion shall be as follows:

**12.1.2.1** Either party may initiate procedures for Original Project Substantial Completion or Expansion Project Substantial Completion, but Owner shall not be required to make a determination and accept partial Original Project Substantial Completion or Expansion Project Substantial Completion unless Owner accepts physical possession of such portion of the Original Project or Expansion Project (as applicable) for purposes of opening for business to the public (and upon such opening for business to the public, the Original Project Work or Expansion Project Work with respect to such portion of the Project shall be deemed to have achieved Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) unless Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) was determined to have occurred earlier pursuant to the provisions of this Section 12.1.2). The use or occupancy of a portion of the Project by Owner, Owner's Consultants, Owner's Contractors or Owner's other engineers or inspectors to inspect and/or correct defective workmanship pursuant to Article 10 of this Agreement or install FF&E or other work shall not be considered as use or occupancy for purposes of opening for business to the public.

**12.1.2.2** Unless waived by Owner in writing, neither Original Project Substantial Completion nor Expansion Project Substantial Completion of any Work shall occur earlier than the date of all designated or required governmental certificates of occupancy and other permits, inspections and certifications related to the occupancy or safety (as distinguished from gaming and other licenses required for the operation of the business to be conducted therein, which shall remain the sole responsibility of Owner to obtain) of the portion of the Project relating to such Original Project Work or Expansion Project Work have been achieved and issued to Owner by the relevant governmental authority, and posted for the portion of the Original Project or Expansion Project (as applicable) relating to such Work, by the relevant governmental authority (provided that a temporary certificate of occupancy ("TCO") rather than a permanent certificate of occupancy may have been achieved and issued to Owner, and posted, so long as the obtaining of a temporary, rather than a permanent, certificate of occupancy does not prevent any aspect of the portion of the Original Project or Expansion Project relating to such Work from being open to the general public).

**12.1.2.3** If Owner or Owner's Lenders disagree that either Original Project Substantial Completion or Expansion Project Substantial Completion has been

achieved, Owner shall provide the Contractor with an advisory opinion of the items which should be completed or corrected for purposes of Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable). Owner's failure to advise Contractor of any items specified in the Contract Documents shall not alter the Contractor's responsibility to complete all Work necessary for Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) in accordance with the Contract Documents.

**12.1.2.4** Upon receipt of Owner's advisory opinion, Contractor shall complete and/or correct all listed items. Contractor shall then submit its request to Owner for another inspection to determine Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable). Such subsequent inspection or re-inspections to determine if the Work is acceptable for purposes of Original Project Substantial Completion or Expansion Project Substantial Completion (as applicable) shall be made jointly by Owner and Contractor.

**12.1.2.5** By no later than three (3) business days after the respective issuance of an Original Project Certificate of Substantial Completion and an Expansion Project Certificate of Substantial Completion by Owner, the parties shall develop a final punch list which must be completed prior to the Original Project Final Completion and Expansion Project Final Completion (as applicable). Such final punch list shall identify any incomplete or missing items (including, but not limited to, the clean up items described in Section 7.15.2) which Owner elected in its discretion to waive for purposes of Original Project Substantial Completion or Expansion Project Substantial Completion (the items on such list with respect to the Original Project being, collectively, the "Original Project Punch List Items" and with respect to the Expansion Project being, collectively, the "Expansion Project Punch List Items").

**12.1.2.6** Immediately prior to the issuance of an Original Project Certificate of Substantial Completion or an Expansion Project Certificate of Substantial Completion (as applicable), Owner and Contractor shall jointly inspect and document the condition of the Original Project Work or Expansion Project Work, respectively, at the time of Owner's initial possession to determine and record its condition. Such inspection and acceptance by Owner shall not, however, alter the Contractor's responsibility to complete all Work necessary for Original Project Final Completion and Expansion Project Final Completion in accordance with the Contract Documents, including items discovered by Owner after Original Project Substantial Completion or Expansion Project Substantial Completion.

**12.1.2.7** Owner shall have the final decision as to whether or not Contractor has achieved Original Project Substantial Completion or Expansion Project Substantial Completion of any portion of the Original Project Work or Expansion Project Work, respectively. When Owner determines that Original Project Substantial Completion has been achieved and a TCO has been obtained therefor, Owner shall prepare and issue an

“Original Project Certificate of Substantial Completion,” which shall certify the date of the Original Project Substantial Completion. When Owner determines that Expansion Project Substantial Completion has been achieved and a TCO has been obtained therefor, Owner shall prepare and issue a “Expansion Project Certificate of Substantial Completion,” which shall certify the date of the Expansion Project Substantial Completion. Upon the issuance of such Original Project Certificate of Substantial Completion or Expansion Project Certificate of Substantial Completion (as applicable) or the opening to the general public of any portion of the Project, the care of and the risk of loss with respect to the portion of the Work for which Original Project Substantial Completion or Expansion Project Substantial Completion has been certified or which has been opened to the general public shall pass to Owner.

**12.1.3 Limitations.** Notwithstanding any provisions in the Contract Documents which may indicate otherwise, Owner’s acceptance of partial Original Project Substantial Completion or partial Expansion Project Substantial Completion and the possession, use and occupancy of any portion of the Project prior to Original Project Substantial Completion or Expansion Project Substantial Completion of the Original Project Work or Expansion Project Work in their respective entirety, shall not in any manner constitute a waiver by Owner of any of the provisions or requirements of the Contract Documents, including, but not limited to, Contractor’s warranty obligations set forth in Article 10 of this Agreement and Contractor’s obligations to achieve the Contract Time set forth in Article 4 of this Agreement; provided, however, that Original Project Substantial Completion or Expansion Project Substantial Completion shall be deemed to have occurred with respect to the portion of the Work that is the subject of an Original Project Certificate of Substantial Completion or Expansion Project Certificate of Substantial Completion issued by Owner.

## **12.2 Final Completion Procedures and Requirements**

**12.2.1 Contractor’s Notice of Final Completion.** “Original Project Final Completion” means that stage in the progress of the Original Project Work when Owner and Owner’s Lenders determine that the Original Project Work has been properly completed and equipped by Contractor in accordance with the Contract Documents, including (a) completion of all Original Project Punch List Items), (b) the submittal to Owner of all documentation as described in the Contract Documents, (c) completion in compliance with all applicable Laws, and (d) all obligations of Contractor under the Contract Documents (except for those obligations which are intended to be satisfied after Original Project Final Completion) are fully satisfied, and the Original Project Work is otherwise satisfactory to Owner and Owner’s Lenders. “Expansion Project Final Completion” means that stage in the progress of the Expansion Project Work when Owner and Owner’s Lenders determine that the Expansion Project Work has been properly completed and equipped by Contractor in accordance with the Contract Documents, including (a) completion of all Expansion Project Punch List Items), (b) the submittal to Owner of all documentation as described in the Contract Documents, (c) completion in compliance with all applicable Laws, and (d) all obligations of Contractor under the Contract Documents (except for those obligations which

are intended to be satisfied after Expansion Project Final Completion) are fully satisfied, and the Expansion Project Work is otherwise satisfactory to Owner and Owner's Lenders. When Contractor considers that the Original Project Work or Expansion Project Work is finally complete, Contractor shall so notify Owner in writing requesting an Original Project Certificate of Final Completion or Expansion Project Certificate of Final Completion, respectively. Such notice shall be accompanied by, and it shall be a condition to Original Project Final Completion or Expansion Project Certificate of Final Completion (as applicable) that Contractor deliver to Owner, the following:

**12.2.1.1** All final occupancy certificates obtained from any government or statutory authority and all other required approvals and acceptances as necessary or required for the full use and occupancy of all aspects of the Original Project or Expansion Project (as applicable) and not previously provided to Owner (except for gaming and other business licenses required for the operation of the business to be conducted in the Project, which remain the sole responsibility of Owner);

**12.2.1.2** All written guarantees and warranties under the Contract for Contractor and Subcontractors and Vendors, all required operation and maintenance manuals for major equipment required under the Contract all in form and substance satisfactory to Owner; and assignment documentation assigning to Owner in form and substance satisfactory to Owner any remaining warranties and guarantees pertaining to the Original Project Work or Expansion Project Work and not previously provided and assigned to Owner, and Contractor agrees to assist Owner in the prosecution and enforcement of all such assigned warranties and guarantees as provided in Article 10.

**12.2.1.3** A certificate that Contractor shall maintain insurance in the amounts and for the time periods required by this Agreement and a certificate of the insurer evidencing that insurance required by the Contract Documents to remain in force after Original Project Final Payment or Expansion Project Final Payment (as applicable) is currently in effect and will not be cancelled or allowed to expire until at least 60 days' prior written notice has been given to Owner.

**12.2.1.4** All operating, maintenance, servicing and cleaning manuals and instructions, spare parts, maintenance stocks and spare materials provided by Subcontractors and Vendors required by the Contract Documents for beneficial use of the Original Project Work or Expansion Project Work (as applicable) for its intended purpose, and if requested by Owner adequate verbal instructions in the operation of mechanical, electrical, plumbing and other systems.

**12.2.1.5** A complete and accurate set of as-built Drawings pursuant to Section 7.14 of this Agreement, which clearly delineate any changes made to the latest approved Drawings and Specifications.

**12.2.1.6** Such documents and other items so that Owner will receive and Owner does receive a release and complete refund without deduction or offset of any security, bonds and/or cash amounts provided by or on behalf of Owner and held by or for the benefit of any administrative or governmental agency in connection with the construction of the Original Project or Expansion Project (as applicable).

**12.2.1.7** An updated survey of the Site showing the Work “as built.”

**12.2.1.8** Master, submaster and special keys with keying schedule.

**12.2.2 Owner’s Inspection For Final Completion.** Upon receipt of Contractor’s request for an Original Project Certificate of Final Completion or Expansion Project Certificate of Final Completion (as applicable) and all submittals that comply with Section 12.2.1 above, Owner shall promptly make appropriate evaluations and inspections as follows:

**12.2.2.1** If Owner considers that the Original Project Work or Expansion Project Work (as applicable) is fully completed in accordance with the Contract Documents, Owner shall promptly so advise Contractor.

**12.2.2.2** In the event that Owner or Owner’s Lenders does not agree that Original Project Final Completion or Expansion Project Final Completion (as applicable) has been achieved, Owner shall promptly so advise the Contractor in writing of the remaining items to be completed for purposes of Original Project Final Completion or Expansion Project Final Completion (as applicable).

**12.2.2.3** After Contractor satisfies all remaining items necessary for Original Project Final Completion or Expansion Project Final Completion (as applicable), Contractor may submit a further written notice to Owner stating that the Original Project Work or Expansion Project Work (as applicable) is ready for re-inspection. All re-inspections to determine if the Original Project Work or Expansion Project Work (as applicable) is acceptable for purposes of Original Project Final Completion or Expansion Project Final Completion (as applicable) shall be jointly made by Owner and Contractor.

**12.2.2.4** Owner shall have the final decision as to whether or not Contractor has achieved Original Project Final Completion or Expansion Project Final Completion (as applicable) of the Original Project Work or Expansion Project Work, respectively. When Owner agrees that the Original Project Work or Expansion Project Work (as applicable) is finally complete, which agreement Owner agrees not to unreasonably withhold or delay, Owner shall prepare and issue (i) in the case of the Original Project, an “Original Project Certificate of Final Completion,” which shall set forth the date of Original Project Final Completion or (ii) in the case of the Expansion Project, an “Expansion Project Certificate of Final Completion,” which shall set forth the date of Expansion Project Final Completion.

**ARTICLE XIII.  
CONCEALED CONDITIONS AND UNCOVERING OF WORK**

**13.1 Concealed Conditions**

**13.1.1** Owner represents that it has no actual knowledge of any concealed conditions at, upon or within the Site which are of an unusual nature, differ materially from those ordinarily encountered and generally recognized as inherent in the Work, and which would cause a material delay in the critical path portion of the Work

**13.1.2** Contractor acknowledges and agrees that it shall not be entitled to an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) or extension of the Contract Time due to any concealed conditions at, upon or within the Site regardless of their origin, cause or nature, including whether or not such conditions are identified in the Contract Documents or could not have been discovered by Contractor prior to the Effective Date through the exercise of due diligence.

**13.1.3** Owner agrees that the limitation set forth in Section 13.1.2 shall apply only to concealed conditions at, upon or within the Site. If, in the course of executing any portion of the Work required pursuant to this Agreement to be performed immediately adjacent to the Site, Contractor encounters any concealed condition in the ground immediately adjacent to the Site which is not identified in the Contract Documents or could not have been discovered by Contractor prior to the Effective Date through the exercise of due diligence, then such concealed condition shall be eligible for consideration as a Change for purposes of Article 18, and Contractor shall be entitled to submit a Change Proposal to Owner in connection therewith.

**13.2 Covering of Work**

**13.2.1** Contractor shall enable Owner to inspect all portions of the Work before they are covered.

**13.2.2** If a portion of the Work is covered without providing Owner with adequate advance notice, or contrary to the request or direction of Owner or the provisions of the Contract Documents, Contractor shall, if required in writing by Owner, uncover the Work for observation. Such Work shall be replaced at Contractor's expense without change in the Contract Time.

**13.2.3** If a portion of the Work has been properly covered in accordance with the Contract Documents and after sufficient advance notice to Owner, Owner may subsequently request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Original Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) shall be increased by appropriate Construction Change Directive for the costs of uncovering and replacement. If



such Work is not in accordance with the Contract Documents, Contractor shall be responsible therefor and shall not be entitled to an increase in the Original Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable).

#### **ARTICLE XIV. INDEMNIFICATION**

**14.1 Indemnity.** To the fullest extent permitted by law, Contractor hereby indemnifies and agrees to protect, defend, and hold each of Owner; Wynn Resorts (Macau), Ltd.; Wynn Resorts (Macau) Holdings, Ltd.; Wynn Resorts International, Ltd.; Wynn Group Asia, Inc.; Wynn Resorts, Limited; Wong Chi Seng; S.H.W. & Co.; SKKG Limited; L'ARC de Triomphe Limited; Classic Wave Limited; Kwan Yan Chi; Li Tai Foon; Kwan Yan Ming; Wynn Design and Development LLC; Owner's Lenders; and the respective subsidiaries, affiliates, parent companies and the respective members, officers, directors, managers, employees, agents, shareholders, successors and assigns, heirs, administrators, and personal representatives of each of the foregoing (collectively, "Owner Indemnitees") harmless from and against any and all claims, liabilities, obligations, losses, suits, actions, legal proceedings, damages, costs, expenses, awards, or judgments, including, without limitation, reasonable attorneys' fees and costs (whether or not suit is filed) (collectively "Actions"), any Owner Indemnitees(s) may suffer or incur or be threatened with and whether based upon statutory, contractual, tort or other theory, that: (i) are imposed by Law; or (ii) arise by reason of or relating directly or indirectly to (a) the death of or bodily injury to any person or persons, including, without limitation, employees of Contractor, (b) injury to property (including loss of use and the Work itself and including all costs for repair or replacement of work, materials, supplies or equipment (whether on or off Site or in transit), including whether lost, stolen, damaged or destroyed), equipment or material, including, without limitation, any of the same resulting or arising out of the performance of the Work performed by Contractor or any Subcontractor or Vendor, (c) violation of or failure to comply with or abide by any Laws, or variations from the Contract Documents in the actual construction of the Work, (d) any infringement of the rights of any third party, including, without limitation, copyright and patent rights (in connection with which Contractor shall pay all royalties and license fees), (e) any stop notices, mechanic's liens or similar claims relating to any labor, services, materials, goods or equipment whether provided by Contractor, Subcontractor or any Vendor and relating to the Work, or (f) any breach or alleged breach of Contractor's warranties, representations, obligations, covenants or agreements set forth in the Contract; and (iii) relate to or arise out of or result from, directly or indirectly, (x) the performance of the Work, or (y) from any act or omission of Contractor, any Subcontractor or Vendor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them are liable or responsible at law or under the Contract Documents. Contractor shall be obligated to indemnify the Owner Indemnitees against the Actions as described in the preceding sentence, regardless of whether or not any such Action is caused by an Owner Indemnitees (subject to Section 14.4 below). Owner shall notify Contractor promptly upon receiving notice of any Actions. Owner and Contractor acknowledge and agree that, notwithstanding anything to the contrary contained

in this Section 14.1, the liability of Contractor for Recovery Plan liabilities, as provided in Section 4.2, and Liquidated Damages, as provided in Section 4.4, shall be the Owner's sole remedy for any delay in the execution of the Work; it being further agreed, however, that other than with respect to Owner's right to claim damages for any delay in the execution of the Work, the foregoing statement shall not in any way limit any liability of Contractor pursuant to this Section 14.1 for any other act or omission, or for any other breach or default of Contractor, Subcontractor or any Vendor under any of the Contract Documents.

**14.2 Defense Costs.** Subject to the limitations set forth in Section 14.3 immediately below, the indemnification provisions of Section 14.1 above, including defense costs, shall include all attorneys' fees, investigation costs, expert witnesses, court costs, and other costs and expenses incurred by the Owner Indemnitees to the extent their interests appear.

**14.3 Hazardous Materials.** Contractor and its Subcontractors and Vendors shall have no responsibility for the discovery, presence, handling, removal or disposal of pre-existing hazardous materials discovered on the Site, including asbestos, asbestos products, poly-chlorinated biphenyl (PCB) or other substances classified as hazardous by the Environmental Protection Agency of the U.S. Government or any other federal, state or local government agency and also Macau laws, except to the extent addressed or covered in the Contract Documents or otherwise made known to or reasonably foreseeable by Contractor. If Contractor discovers the presence of any hazardous materials at the Site not otherwise called out in the Contract Documents or otherwise made known to or reasonably foreseeable by Contractor, Contractor shall promptly report the presence and precise location of any such materials to Owner and immediately stop Work in the affected area unless requested otherwise by Owner.

**14.4 Other Limitations.** Subject to the provisions of this Section 14.4, the obligations in Section 14.1 above shall apply to and include those Actions arising from the negligent, tortious, intentional or other acts of any Owner Indemnitees, and such indemnification obligations are primary to any insurance in the names of the Owner Indemnitees. In the event of contributory negligence or tortious or intentional act of any Owner Indemnitees, the Contractor shall only be liable for payment of such Actions in direct proportion to the indemnifying party's percentage of fault, if any, as determined by a court of competent jurisdiction, or as may be mutually agreed upon by Owner and Contractor. The indemnification obligations in this Article 14 shall not be construed to negate, abridge, or reduce other rights or obligations of Contractor or Owner, including, but not limited to, any obligation of indemnity which would otherwise exist at law or otherwise in favor of an Owner Indemnitees. If any Action occurs or is threatened, the Contractor shall defend the Owner Indemnitees with counsel reasonably acceptable to such Owner Indemnitees, at the Contractor's expense, unless an Owner Indemnitees elects to defend itself, in which case the Contractor shall pay for such Owner' Indemnitees reasonable defense costs, including, but not limited to, all attorneys' fees, investigation costs, expert witnesses, court costs, and other costs and expenses incurred by such Owner Indemnitees. Contractor shall not have the right

to settle any Action without Owner's prior written consent in each instance. The indemnification obligation of Contractor (or any Subcontractor) under this Article 14 or otherwise under the Contract Documents, shall not be limited in any way by any limitation on the amount or type of insurance coverages carried whether pursuant to the Contract Documents or otherwise, the amount of insurance proceeds available or paid (except the Contractor shall be entitled to an offset against its indemnity obligation to the extent of any insurance proceeds actually received by the Owner Indemnitee, without condition or reservation, relating to any Action for which the Owner Indemnitee seeks to be indemnified pursuant to an indemnity in this Agreement), or any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor or Owner or other person or entity under workmen's compensation acts, disability benefit acts or other employee benefit acts. Provided, however, any other limitations on the liability of Contractor specifically set forth in this Agreement shall apply to and limit Contractor's indemnity obligations in this Article 14 as and to the extent provided therein.

**14.5 Survival of Indemnification Provisions.** The Contractor's indemnity obligations set forth in this Article 14 shall apply irrespective of whether or not any Subcontractors or Vendors obtain or fail to obtain insurance coverages as required herein, shall apply during the performance of any Work, and shall survive any termination of this Contract or the Original Project Final Completion or Expansion Project Final Completion of the Original Project Work or Expansion Project Work, respectively.

**14.6 Risk.** Except to the extent expressly provided for in the Contract Documents, all Work (i) covered by the Contract Documents, (ii) done at the Site, (iii) in preparing or delivering materials or equipment, or (iv) in providing services for the Project, or any or all of them, shall be at the sole risk of Contractor.

**14.7 Limit on Consequential Damages.** Other than Contractor's liability for (a) Recovery Plan Liabilities (as provided in Sections 4.2, 11.8 and 11.8.6), and (b) Liquidated Damages (as provided in Section 4.4.1), Contractor shall have no liability to Owner under this Contract for consequential, indirect or special damages, including, but not limited to, loss of profit, loss of revenues, loss of any contract or loss of use of all or any portion of the Work (collectively, "Consequential Damages"). For the avoidance of doubt, Owner and Contractor agree that for purposes of the limitation expressed in this Section 14.7, any liabilities of Contractor pursuant to any of its indemnity obligations set forth in Sections 7.2, 7.27.1, 8.2.8, 10.6, 11.11.2, 16.2, 14.1, 24.7, 26.1.2(g) and 27.1.6 are not, and in no event shall be deemed to be, Consequential Damages. Nothing in this Section 14.7 shall limit the types or amounts of any damages other than Consequential Damages that may be available to Owner under this Agreement or at law or in equity.

**ARTICLE XV.  
INSURANCE**

**15.1 Types of Insurance.**

**15.1.1** Contractor, at its sole cost and expense, shall maintain at all times during the term of this Agreement, Employees Compensation, Constructional Plant and Equipment Insurance for Contractor owned items, Motor Vehicle Liability Insurance, Marine Cargo Insurance and any other insurances as required by applicable Laws.

**15.1.2** Contractor, at its sole cost and expense, shall maintain at all times during the term of this Agreement and for a minimum of six (6) years following the later of Original Project Final Completion of the entire Original Project Work or Expansion Project Final Completion of the entire Expansion Project Work, a Professional Indemnity Insurance policy with a limit of indemnity of not less than Twenty Million Unites States Dollars (US\$20,000,000) per occurrence and in the aggregate. The limit of indemnity shall be dedicated to liabilities arising from the Contract alone and shall not be available for claims arising from work undertaken by Contractor other than pursuant to the Contract.

**15.1.3** All policies maintained by Contractor pursuant to this Article 15 shall name Owner and the Owner Indemnitees as joint insureds.

**15.1.4** The Contractor shall ensure that the Subcontractors on the Project who are employed by the Contractor (or by any of the parties constituting the Contractor hereunder) also shall carry the insurance specified in Section 15.1.1 above. Such policies shall contain a waiver of recourse against the Owner Indemnitees.

**15.1.5** Owner shall maintain a Builder's Risk Insurance policy until the later of Original Project Substantial Completion of the Original Project or Expansion Project Substantial Completion of the Expansion Project, followed by 12 months' Original Project Defects Liability Period or Expansion Project Defects Liability Period (as applicable) coverage. Any uninsured losses shall be paid for by the responsible Contractor or Subcontractor. The Builder's Risk Insurance provided by Owner shall not cover loss of, or damage to, any tools, implements, equipment, formwork, machinery, cranes, consumables, office trailers, tool sheds, temporary structures other than temporary works or anything else which is not intended to become a permanent part of the finished Project. In the event of delays by the Contractor or its Subcontractors and Vendors causing delays to the Original Project Substantial Completion of the Original Project or the Expansion Project Substantial Completion of the Expansion Project, any additional premium incurred by the Owner for extending the Builder's Risks policy shall be recoverable from the Contractor.

**15.1.6** Owner, at its cost and expense, shall maintain until the later of the termination of the Original Project Defects Liability Period or the Expansion Project Defects Liability Period, Third Party Liability ("TPL") Insurance. TPL coverage shall include, but not be limited to, personal injury, broad form property damage, and explosion, collapse and underground coverage. Coverage under the TPL insurance policy described in this Section 15.1.6 shall be provided with a combined single limit of not less than US\$10,000,000 for bodily injury or death to any number of persons and property damage, in any one occurrence. The TPL insurance policy shall name the Owner Indemnitees, Contractor and

all Subcontractors and Vendors as joint insureds. Such insurance shall be primary to any other insurance available to the joint insureds and it shall apply separately to each insured against whom a claim is made or a suit is brought subject to the single limit. In the event of delays by the Contractor or its Subcontractors and Vendors causing delays to the Original Project Final Completion of the Original Project or the Expansion Project Final Completion of the Expansion Project, any additional premium incurred by the Owner for extending the TPL policy shall be recoverable from the Contractor.

**15.1.7** The Builder's Risk and TPL Insurance shall be on terms to be approved solely by Owner. Owner shall provide to Contractor a certificate of insurance reflecting such coverage, and Contractor shall be deemed to have satisfied itself and shall cause the Subcontractors to satisfy themselves with regard to the extent of coverage provided.

**15.1.8** The Contractor and/or Subcontractor shall promptly furnish to Owner and Owner's Lenders (and in any case prior to the Original Project Date of Commencement) policies of insurance (and any updates or amendments, as applicable, to such policies) described in this Article 15, issued by the carriers, which shall provide that such policies may not be cancelled except for non-payment of premiums in which event the issuing company shall give at least thirty (30) days prior written notice or intent of cancellation. In respect of renewal insurance policies, the Contractor and/or Subcontractor shall deliver to the Owner and the Owner's Lenders, certificates of insurance (or duplicate originals of the policies) as evidence of the renewal of such insurances at least thirty (30) days before the expiration of any such policy. If certificates of insurance are provided the Contractor will ensure that policies of insurance are provided to Owner and Owner's Lenders within 30 days of inception of the insurance.

**15.1.9** In the event of any failure of the Contractor or a Subcontractor to comply with any of the insurance requirements set forth in this [Section 15.1](#), or in the event of any failure by Owner to comply with any of the insurance requirements set forth in this [Section 15.1](#) relating to TPL or Builder's Risk insurance, the other party shall have the right to immediately purchase and maintain the required insurance at the non-complying party's expense (and in the case of any insurance that was required to have been procured and paid for by Owner, the Original Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price, as designated by Owner shall be increased accordingly) for and in the name of such non-complying party, and the non-complying party furnish all necessary information to the other party to enable the other party to purchase and maintain such insurance. Compliance by the Contractor or by the Owner on behalf of the Contractor with the insurance requirements of this Agreement shall not relieve the Contractor from any liability under any provision of this Agreement, including, but not limited to, under the indemnification contained in [Article 14](#). Said rights shall be cumulative and shall be in addition to any and all other rights and remedies herein or otherwise provided to the Owner by applicable Laws.

**15.1.10** Set forth on Exhibit O attached hereto is a summary of the insurance policies to be obtained by the Owner pursuant to this Section 15.1, the minimum coverages and maximum deductibles required with respect thereto.

## **15.2 Evidence of Coverage**

**15.2.1 Carriers Acceptable To Owner.** All policies required of Contractor and Subcontractors pursuant to this Contract shall be maintained with insurance carriers that are acceptable to Owner and licensed to do business in Macau and rated A- or above by Standard and Poor's Corporation or rated A or above by AM Best; provided, however, that notwithstanding the foregoing (i) the Professional Indemnity Insurance policy shall be maintained with an insurance carrier rated BBB+ or above by Standard and Poor's Corporation or rated B or above by AM Best and (ii) the Employees Compensation insurance policy shall be maintained with an insurance carrier rated BBB or above by Standard and Poor's Corporation or rated B- or above by AM Best.

**15.2.2 Failure to Comply.** Neither the Contractor nor any of its Subcontractors shall be entitled to receive payment for any Work performed, or to commence operations or Work on the Site or elsewhere until such time as they provide acceptable evidence of compliance with the requirements of this Article 15. Any additional costs or delays caused by or arising out of any failures to comply with this Article 15, including the failure to furnish acceptable policies of insurance (and any updates or amendments, as applicable, to such policies) prior to date of the Original Project Date of Commencement, shall be solely the responsibility of Contractor and its Subcontractors.

**15.3 Deductibles.** The payment of all deductibles, self-insured retention or similar self-insurance mechanisms as set forth on Exhibit O attached hereto shall be the responsibility of the party responsible for the occurrence of the loss or damage. If such party is Contractor, the payment of such amount by Contractor shall be considered a Cost of the Work except to the extent that payment in a given instance would be considered a Non-Allowable Cost of the Work under any of the provisions of Section 3.3; and if such party is a Subcontractor or Vendor, such Subcontractor or Vendor shall bear such cost and the same shall not be a Cost of the Work.

**15.4 Cooperation by the Parties.** Owner and Contractor shall fully cooperate with each other in connection with the collection of any insurance monies that are due in the event of a loss. Owner and Contractor shall promptly execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining recovery of any such insurance monies.

**15.5 Duration.** All Employees Compensation, Employer's Liability, Construction Plant and Equipment, Professional Indemnity and Motor Vehicle Liability insurances required by this Contract shall be kept in force without interruption until the later of the Original Project Final Completion of the Original Project Work or the Expansion Project Final Completion of the Expansion Project Work in accordance with Section 12.2 above.

**ARTICLE XVI.  
SAFETY AND COMPLIANCE**

**16.1 Contractor's Site Safety Responsibilities.** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, and without limiting the foregoing, shall take all reasonable precautions for the safety of, and shall provide for all reasonable protections against loss of production time and prevent injury to, any of its employees, Subcontractors, Vendors, or their respective employees or any other persons who may be affected thereby, and all other persons at the Site or adjacent or nearby to the Site. Contractor shall prepare a site safety plan and submit such plan to Owner for review and comment prior to the commencement of Work. Such plan shall identify the location of the fire safety system, alarm system, fire-fighting apparatus and exit routes. Safety gear shall be provided for representatives of Owner, Owner's Lenders and Owner's Consultants and all others while on Site. Contractor shall designate a person responsible for job safety. This person shall possess a "CITA green card" or the equivalent, shall be thoroughly familiar with Contractor's safety manual and shall require compliance of all applicable provisions of such manual. Contractor shall keep a copy of such manual on the Site. Contractor shall familiarize all Subcontractors and Vendors on safety measures.

**16.1.1** Contractor shall, and shall require Subcontractors and Vendors to, take all precautionary measures as required by applicable Laws to prevent and correct fire causing conditions, and shall conduct all operations with due regard for the avoidance of fire hazards. Contractor shall exercise the greatest care to prevent fires. The following minimum precautions shall be taken by Contractor and Contractor shall require each Subcontractor and Vendor to take the following actions with regard to the Work:

**16.1.1.1** Flammable liquids shall be stored in closed, approved, covered metal containers, and as approved by the fire wardens. All paint and oily rags shall be stored in approved containers and removed daily.

**16.1.1.2** Each gasoline or diesel powered vehicle shall carry a fire extinguisher of adequate size and type to extinguish a fire emanating from either the vehicle or its load.

**16.1.1.3** Contractor shall maintain a system of prompt detection and correction of unsafe practices and conditions, and shall furnish and maintain all necessary first aid equipment in a special location on the Site. Contractor shall investigate all accidents promptly to determine cause and to take necessary corrective action, and shall file required reports.

**16.1.1.4** No exit, corridor, or stairwell shall be used for storage of materials of any type.

**16.1.1.5** All exits, corridors and stairwells must be accessible and free of materials of any type except as necessary for the Work. Minimum exit widths as required by Laws shall be maintained at all times.

**16.1.1.6** Hard hat and construction areas shall be identified and posted. All workmen and personnel in these areas shall wear a hard hat.

**16.1.1.7** All electrical equipment and tools shall be of an adequate size to accomplish the task at hand and shall be properly grounded.

**16.1.1.8** Face, eye and respiratory protection shall be available and used when the situation requires.

**16.1.1.9** The Contractor shall provide and maintain suitable protections and enclosures around shafts, stairs and other openings in floors.

The foregoing requirements are not intended to be exclusive or exhaustive, and Owner shall not have any liability in any way relating to any of the foregoing or the absence of other requirements from the foregoing. Contractor shall be solely responsible to Owner for providing the Site a safe place to work for all persons. Contractor shall allow Site access and provide all reasonably requested assistance to any loss control or risk engineering surveyor engaged by Owner or Owner's insurers. Contractor shall also put into effect all reasonable survey recommendations made for the prevention of loss, damage or personal injury.

**16.2 Compliance.** In addition to the requirements of Section 16.1 above, Contractor shall give all notices, file all reports and obtain all permits which are applicable to the Contractor's operations or performance of the Work. Upon request, Contractor shall furnish Owner and Owner's Lenders with copies of all such notices, statements, reports, certificates or permits evidencing compliance. Contractor shall also keep Owner informed of any changes in Laws which may affect Contractor's performance of the Work or Owner's use thereof. Contractor shall indemnify, defend and save harmless Owner and the other Owner Indemnitees from and against any and all claims, losses, liabilities, fines or penalties in any manner arising out of Contractor's failure to comply with this Article 16.

## **ARTICLE XVII.**

### **TERMINATION OR SUSPENSION OF THE CONTRACT**

**17.1 Material Default By Contractor.** Owner may, provided such default is not corrected within the applicable period described in Section 17.1.1 below, and without prejudice to any other rights or remedies of Owner, terminate this Contract in its entirety, or may elect to terminate any portion of the Contractor's Work (including either the Original



Project Work or Expansion Project Work or any portions thereof), for default if the Contractor fails to perform or breaches any of its material obligations under the Contract Documents, including, but not limited to, a failure to perform the Work in a diligent, expeditious, workmanlike and careful manner strictly in accordance with the Contract. Upon any such termination, Owner may take possession of the applicable portion of the Site and of all materials, tools, equipment and machinery of Contractor thereon that Owner has paid or will pay for, and may finish the applicable portion of the Work terminated by whatever method Owner may in good faith deem desirable and/or expedient, including, but not limited to, by retaining one or more other contractors to complete the Work (or Owner may elect not to finish the applicable portion of the Work).

**17.1.1 Notice Of Default.** The Contractor shall promptly correct any default to Owner's satisfaction within seven (7) calendar days following receipt of written notice of default from Owner. If correction within said seven (7) days is not possible, Contractor shall commence and diligently continue effective action to correct such default to Owner's satisfaction, but not later than thirty (30) days following receipt of Owner's notice (except for such longer period as may otherwise be reasonably approved in writing by Owner and Owner's Lenders). In the event that the Contractor fails to take and diligently pursue effective corrective actions, Owner may hold in abeyance further payments to Contractor to the extent provided in this Agreement and/or terminate the Contract by written notice specifying the date of termination and without prejudice to any other remedy Owner may have.

**17.1.2 Non-Curable Defaults.** Notwithstanding the other provisions of Section 17.1, Owner may also elect to declare Contractor in material default and may terminate Contractor immediately upon written notice (unless a longer period is otherwise expressly provided in this Agreement with regard to the matters in Sections 17.1.2.1 through 17.1.2.4 below, it being agreed that the cure periods in Section 17.1.1 above do not apply to Sections 17.1.2.1 through 17.1.2.4) and/or take such other action as Owner may be allowed, in the event of any of the following:

**17.1.2.1** The commencement of an action or petition by or against Leighton, China/Macau, China/HK or any Guarantor under applicable bankruptcy laws; or any general assignment by Leighton, China/Macau, China/HK or any Guarantor for the benefit of its creditors; or the appointment of a receiver, trustee or manager to take charge of the assets of Leighton, China/Macau, China/HK or any Guarantor; or any of Leighton, China/Macau, China/HK or any Guarantor becomes insolvent, goes into liquidation, has a receiving or administrative order made against it or compounds with its creditors; or if any act is done or event occurs which (under any applicable Law) has a similar effect to any of the acts or events outlined herein;

**17.1.2.2** The exercising of any mechanics' or materialmen's lien rights on Owner's property, the Site, the Project and/or the Work by a Subcontractor, Vendor, laborer, materialman, or supplier or any other party providing services or material

engaged by, on behalf of, or acting under the direction of Contractor or any Subcontractor or Vendor in connection with the Work, unless that Owner's property, the Site, the Project and/or the Work, as applicable, is released from such lien(s) or, at Owner's option, satisfied by bond or other security, in an amount and with a bonding company reasonably satisfactory to Owner and Owner's Lenders within the time periods set forth in and pursuant to Section 7.19.2 hereof;

**17.1.2.3** Failure of Contractor for five successive days or an aggregate of seven days in any thirty (30) day period (other than Sundays or national holidays), to have an adequate number of laborers or Subcontractors at the Site who are actively and productively working on the Project, unless a Permissible Delay exists for such absence, unless within five (5) days after written notice from Owner Contractor has and thereafter maintains an adequate number of laborers and Subcontractors on Site actively and productively working on the Project; or

**17.1.2.4** Failure of Contractor after five (5) days following request from Owner's Lenders to provide Owner and Owner's Lenders with the evidence required under Section 3.1.5 of this Agreement.

**17.1.3 Stop Work Orders.** In the event of any material breach or default of this Contract by Contractor, and in lieu of declaring termination for default, Owner may elect to stop, delay, reduce or interrupt any operations of Contractor or any affected Subcontractors or Vendors until such default or failure is remedied to Owner's satisfaction. No part of the time lost due to stop work orders or delay, reduction or interruption by Owner arising out of such material breaches shall be made the subject of a claim for extension of time or for increased costs or damages by Contractor. No increase or upward adjustment shall be made in either the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price, or the Original Project Contractor's Fee or Expansion Project Contractor's Fee for, and in no event shall Owner be liable for, or Contractor or any Subcontractor or any other party performing any Work on the Site be entitled to, any lost opportunity, lost profit or consequential damages claimed or alleged by Contractor, any Subcontractor or any other party performing any Work on the Site and relating to any such stoppage, reduction, suspension, delay or interruption. The issuance of a stop work order or delay, reduction or interruption by Owner shall not prejudice Owner's right to subsequently terminate for default.

**17.1.4 Owner's Rights Upon Termination For Default.** If all or a portion of the Contractor's Work is terminated pursuant to this Section 17.1, Contractor shall not be entitled to receive any payment until after the later of the Original Project Final Completion or Expansion Project Final Completion by others (except for that portion of the Work not terminated in the case of termination of only a portion of Contractor's Work) and after Owner has assessed its additional costs and damages arising out of such termination, including, but not limited to, Owner's additional costs for completing all or the relevant

portion of the Work. Upon such termination, Contractor shall immediately undertake all necessary steps to mitigate against Owner's damages, and shall:

**17.1.4.1** Cease operations and vacate the Site to the extent specified in the notice of default;

**17.1.4.2** Place no further orders and enter into no further subcontracts or purchase orders for materials, labor, services or facilities that relate to the terminated Work;

**17.1.4.3** Upon Owner's request, terminate all subcontracts and purchase orders which relate to the terminated Work;

**17.1.4.4** Upon request and as directed by Owner, assign (and/or Owner may accept the assignments made in this Agreement, as the case may be) all of Contractor's right, title and interest to all subcontracts, purchase orders, rental agreements, materials, supplies and equipment relating to the portion of the Work terminated using forms satisfactory to Owner, and otherwise assist Owner in the orderly and expeditious transfer of such rights;

**17.1.4.5** Turn over to Owner the originals of the Original Project Schedule and Expansion Project Schedule and all Schedule Updates including all computer data bases in electronic format; all Drawings, Specifications and other construction documents; all as-built drawings, calculations and such other Work-related documents relating to the portion of the Work terminated (provided that Contractor may retain copies of the foregoing as necessary to permit Contractor to complete any portion of the Work not terminated) and all items and things for whose cost Contractor requests or has requested reimbursement or payment;

**17.1.4.6** Proceed to complete the performance of all Work not terminated;

**17.1.4.7** Take such actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work;

**17.1.4.8** Advise Owner of all outstanding subcontracts, rental agreements and purchase orders which Contractor has with others pertaining to the terminated Work and furnish Owner copies thereof;

**17.1.4.9** Remove all of its property from the portion of the Site and Owner's premises relating to the terminated Work. Any property not so removed may be removed by Owner at Contractor's expense; and

**17.1.4.10** Allow Owner (a) to take possession of all materials of any kind that have been or will be paid for, that are to be incorporated into the portion of the

Work terminated, or to which Owner has any ownership rights or interest, and (b) to finish the portion of the Work terminated and provide the materials therefor or contract with others to do so by whatever method Owner deems expedient, and execute and do all such assurances, acts and things as Owner may consider expedient to facilitate Owner's taking of possession of the Site relating to the portion of the Work terminated and materials, equipment, machinery and tools thereon, and give all notices, orders and directions which Owner may think expedient for the purposes hereof.

#### **17.1.5 Payment to Contractor**

**17.1.5.1** If Owner terminates the Contract for Contractor's breach or default, Contractor shall thereafter only be entitled to reimbursement (subject to Section 17.1.5.3 hereof) only of such amount (if any), by which:

(a) the (i) Cost of the Work actually and properly completed by Contractor in accordance with the Contract Documents up to the date of such termination (and not cancelable or refundable), plus (ii) the pro rata portion of the Original Project Contractor's Fee or Expansion Project Contractor's Fee thereon (subject to satisfaction of the conditions applicable to progress and the Original Project Final Payment or Expansion Project Final Payment contained in the Contract Documents as the case may be), but the foregoing amounts shall not exceed the portion of the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (including the Original Project Contractor's Fee or Expansion Project Contractor's Fee , respectively) fairly allocable to the Work so completed, exceeds

(b) the total of (i) all payments theretofore made to Contractor under the Contract Documents, and (ii) all damages and other costs and expenses incurred by Owner directly or indirectly, arising out of or as a result of, Contractor's breach or default, including, but not limited to, the cost of any additional consultants' services, or managerial and administrative services required thereby, any additional costs incurred in retaining another contractor or other subcontractors, any additional financing, interest or fees and other costs that Owner must pay by reason of a delay in completion of the Work, Owner's termination of Contractor and the finishing of the Work by another method after such termination, attorneys' fees and expenses, and any other damages, costs, and expenses Owner may incur in completing the Work as a result of Contractor's breach or default including if Owner elects to complete the Project after such termination, the amount by which the actual cost of completing the Project (including components of the Project that are not part of the Work) is greater than what such actual cost (including the actual cost of components of the Project that are not part of the Work) would have been if Contractor had fulfilled its obligations under the Contract Documents, and if Owner elects to not complete the Project after such termination (Contractor

hereby acknowledging that Owner has the right to so elect without Owner waiving Contractor's liability for damages arising out of the breach by Contractor that led to its termination), all damages suffered by Owner arising out of Contractor's breach of this Agreement; provided that the amount specified in this clause (b) shall be reduced by any amounts received by Owner under the On-Demand Bond referred to in Section 7.18.

**17.1.5.2** If the amount referred to in Section 17.1.5.1.(b) hereinabove exceeds the amount referred to in Section 17.1.5.1.(a) hereinabove, Contractor shall pay the difference to Owner immediately upon Owner's request, subject to the provisions of Section 14.7.

**17.1.5.3** Any reimbursements or payments made to Contractor under this Section 17.1.5 are conditioned on (a) Contractor previously having delivered to Owner possession and unfettered access to the Work and Site and all materials, equipment, tools and the like (undamaged and in good condition) which Owner has paid or will pay for, (b) all the applicable items listed in, and performance of all the applicable obligations described in Section 12.2.1 of this Agreement have been satisfied, and (c) Contractor complies with such other obligations under the Contract Documents accruing prior to termination or that by their nature survive the termination of this Agreement as Owner or Owner's Lenders reasonably requires.

**17.2 Termination For Convenience.** The parties' rights and remedies in the event of termination of the Contract by Owner for convenience shall be as follows:

**17.2.1 Notice of Termination For Convenience.** Owner may cancel this Contract in its entirety (and not in part) and take possession of the Site and all materials, tools, equipment and machinery thereon in which Owner has an ownership interest or other vested interest, and finish or not finish the Work by whatever method Owner may desire, at any time upon written notice to Contractor solely for Owner's convenience and without regard to any fault or failure to perform by Contractor or any other party. Upon receipt of such notice of termination, Contractor shall immediately and in accordance with instructions from Owner proceed as follows:

**17.2.1.1** Cease operations and vacate the Site;

**17.2.1.2** Advise Owner of all outstanding subcontracts, rental agreements and purchase orders which Contractor has with others pertaining to the Work and furnish Owner copies thereof;

**17.2.1.3** Place no further orders and enter into no further subcontracts or purchase orders for materials, labor, services or facilities that relate to the Work;

**17.2.1.4** Upon Owner's request, terminate all subcontracts and orders that relate to the Work;

**17.2.1.5** Upon request and as directed by Owner, assign (and/or Owner may accept the assignments made in this Agreement, as the case may be) all of Contractor's right, title and interest to all subcontracts, purchase orders, rental agreements, materials, supplies and equipment relating to the Work using forms satisfactory to Owner, and otherwise assist Owner in the orderly and expeditious transfer of such rights;

**17.2.1.6** Turn over to Owner the originals of the Original Project Schedule and Expansion Project Schedule and all Schedule Updates including all computer data bases in electronic format; all Drawings, Specifications and other construction documents; all as-built drawings, calculations and such other Work-related documents and all items and things for whose cost Contractor requests or has requested reimbursement or payment;

**17.2.1.7** Take such actions that may be necessary, or that Owner may reasonably direct, for the protection and preservation of the Work;

**17.2.1.8** Remove all of its property from the Site and Owner's premises. Any property not so removed may be removed by Owner at Contractor's expense; and

**17.2.1.9** Allow Owner (a) to take possession of all materials, equipment, machinery and tools of any kind that have been or will be paid for, that are to be incorporated into the Work, or to which Owner has any ownership rights or interest, and (b) to finish the Work and provide the materials therefor or contract with others to do so by whatever method Owner deems expedient, and execute and do all such assurances, acts and things as Owner may consider expedient to facilitate Owner's taking of possession of the Site and materials, equipment, machinery and tools thereon, and give all notices, orders and directions which Owner may think expedient for the purposes hereof.

**17.2.2 Payment Upon Termination For Convenience.** In the event of termination for convenience, Contractor shall be paid as follows: Owner's sole obligation and liability to Contractor shall be (i) to reimburse Contractor (and Contractor's exclusive remedy shall be to receive reimbursement) for (A) the Cost of the Work properly incurred (and not cancelable or refundable) by Contractor up to the date of termination, including, but not limited to, the cost of tools, equipment, machinery or materials ordered for the Work which have been delivered to Contractor, or for which Contractor is liable to accept delivery (it being agreed that such tools, equipment, machinery and materials shall become the property and the responsibility of Owner when paid for by Owner), and Contractor shall place the same at Owner's disposal, and including further, and (B) Contractor's reasonable demobilization costs, (ii) to pay to Contractor that pro-rata portion of the Original Project Contractor's Fee or Expansion Project Contractor's Fee applicable to such completed Work (and subject to satisfaction of the conditions applicable to payments to Contractor set forth in the Contract Documents, including for progress payments, and Original Project Final Payment or Expansion Project Final Payment as applicable), but not in excess of the portion

of the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price equitably allocable to such Work based on the percentage such properly performed and completed Work by Contractor bears to the total Original Project Work or Expansion Project Work included within the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price, respectively, less all payments previously made to Contractor under the Contract and any amounts owed by Contractor to Owner under the Contract. Contractor shall not be entitled to receive payment hereunder for any so-called lost profit or opportunity costs.

### **17.3 Suspensions By Owner**

**17.3.1 Owner's Right To Suspend For Convenience.** Owner may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as Owner elects by giving Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until Owner terminates such suspension, delay or interruption by written notice to Contractor; provided that if a suspension, delay or interruption of the entire Project (or such a substantial portion thereof that the suspension, delay or interruption with respect thereto would have a material adverse effect on the ability of Contractor to meet either the Original Project Guaranteed Date of Substantial Completion or the Expansion Project Guaranteed Date of Substantial Completion) shall continue for ninety (90) consecutive days or one hundred eighty (180) days in the aggregate, Contractor shall have the right to terminate this Contract upon giving Owner fourteen (14) business days' written notice thereof and such termination shall be treated as a termination with cause for purposes of Section 17.6.2. No such suspension, delay, interruption or reduction by Owner shall constitute a breach or default by Owner under the Contract Documents. Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

**17.3.2 Payment Upon Suspension For Convenience.** In the event of suspension, delay, reduction or interruption for convenience by Owner, Owner shall pay Contractor and the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

**17.3.2.1** Additional Costs of the Work, if any, which are properly, necessarily and reasonably incurred by Contractor, Subcontractors and Vendors as a direct result of such suspension, delay or interruption, including, but not limited to, for the purpose of safeguarding all material, equipment, supplies and Contractor's Work in progress, but the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) days in the aggregate if the entire Project is

suspended (or if a substantial portion of the Project is suspended such that it causes a delay in the opening date of the Original Project Casino, Expansion Project Casino, the Hotel, Theatre and Entry Feature) following commencement of the Work; and

**17.3.2.2** By any increase in Contractor's Fee determined in accordance with Section 18.5.2.

**17.3.2.3** Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which Contractor is responsible.

**17.4 Limitations.** Except to the extent provided in Section 17.2.2 or 17.3.2 hereof, as applicable, in the event of any termination of the Contract or suspension, delay, reduction or interruption of the Work by Owner pursuant to Section 17.1, 17.2 or 17.3, Owner shall have no liability to Contractor or any Subcontractor or Vendor, and neither Contractor nor any Subcontractor or Vendor will make and they hereby waive any claim for (a) compensation, expenses, additional fees or anticipated profits for unperformed Work, (b) delays, acceleration or disruption, (c) lost business or other opportunities, (d) special, indirect or consequential damages or losses or loss of use, (e) impaired bonding capacity, (f) unabsorbed, unrealized or other overheads, or (g) general conditions costs. In no event shall there be any increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (except as expressly provided in Section 17.3.2 above), or Original Project Contractor's Fee or Expansion Project Contractor's Fee, as a result of any of the foregoing Owner elections under Sections 17.1, 17.2 or 17.3 above or due to any other delays. All amounts payable by Owner shall be subject to Owner's right of audit and offset.

**17.5 Other Rights and Remedies.** Other rights and remedies available to Owner in the event of a default or material breach by Contractor which is not timely cured in accordance with Section 17.1.1 hereof, shall include, but not be limited to, the following, and all such rights and remedies of Owner in this Article 17 shall be non-exclusive, and shall be in addition to all other rights and remedies available to Owner under the Contract, at law or otherwise:

**17.5.1** A waiver by Owner of a default by Contractor shall not be considered to be a waiver of any subsequent default by Contractor, nor be deemed to amend or modify the terms of this Contract.

**17.5.2** In the event of termination for cause, disputes as to whether a material breach of contract occurred within the provisions of the Contract Documents shall be subject to resolution pursuant to Article 22 of this Agreement. If Owner terminates this Contract in whole or in part for default and a court of competent jurisdiction later determines that such termination was improper or wrongful, then that portion of the improper or wrongful termination shall automatically convert into a termination for Owner's convenience pursuant to Section 17.2 of this Agreement.



**17.5.3** Owner shall have the right and is authorized to cure such defaults and offset against and deduct from amounts otherwise payable to Contractor any such costs, damages, reasonable attorneys' fees and any other expenses suffered by Owner and arising out of such default including any cure or attempted cure by Owner, and all consultants and professionals additional services.

**17.5.4** Any termination pursuant to this Article 17 shall be without prejudice to any other right or remedy of Owner pursuant to the terms of the Contract Documents or at law or in equity.

#### **17.6 Contractor's Remedies**

**17.6.1** If payment from Owner for an Application for Progress Payment (exclusive of amounts properly retained or withheld under the Contract), approved by Owner and Owner's Lenders in accordance with Sections 5.2 and 5.3 of this Agreement, has not been received by Contractor within thirty (30) days of the date payment is due pursuant to Section 5.3 of this Agreement, interest shall thereafter commence to accrue (from the original due date of payment pursuant to Section 5.3 hereof) on such delinquent amounts at then existing prime rate of Bank of China (Hong Kong) plus one percent (1%), until paid, and Contractor may upon written notice to Owner cease Work until such payment has been received, in which case the Original Project Guaranteed Date of Substantial Completion or Expansion Project Guaranteed Date of Substantial Completion (as applicable) will be extended in accordance with Section 11.6 hereof. If payment of undisputed amounts to which Contractor is otherwise then entitled pursuant to the terms of this Agreement are not paid by Owner to Contractor within fourteen (14) days after the expiration of the thirty (30) day period hereinabove (or the next draw cycle under Owner's financing for the Project) and written notice by Contractor that the same are past due, Contractor may terminate this Agreement upon an additional five (5) business days' written notice to Owner.

**17.6.2** If Contractor terminates this Agreement with cause in accordance with this Agreement and such termination is accepted by Owner or challenged by Owner but upheld by an arbitral tribunal, Contractor shall be entitled, as its exclusive remedy (but in addition to Contractor's rights under Section 22.3 hereof), to the recovery of (a) the amounts (if any) to which Contractor would have been entitled had Owner, pursuant to Section 17.2 of this Agreement, terminated this Agreement for convenience effective as of the date this Agreement is so terminated by Contractor. Contractor, notwithstanding any provision of this Agreement or otherwise, shall in no event be entitled to or seek recovery of any other amounts (including, without limitation, consequential damages, lost profits, overhead, or similar amounts) in the event of any termination, including but not limited to under this Section 17.6.

**ARTICLE XVIII.  
CHANGE IN THE WORK**

**18.1 Change.** A “Change” in the Work means an increase, decrease, variation, modification or change in the scope of Contractor’s Work from that indicated in the Contract Documents, or modification to the Original Project Schedule or Expansion Project Schedule. Suspension and termination for convenience shall be governed by Article 17 of this Agreement and shall not be considered a Change except to the extent provided therein. A Change can only be implemented by a Change Order or by Construction Change Directive. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price or extension of the Contract Time. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

**18.2 Change Order.** A “Change Order” is a written instrument prepared by Contractor and signed by Owner and Contractor, stating their agreement upon all of the following:

- (a) a Change in the Work including a full description of such Change;
- (b) the amount of the adjustment, if any, in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable); and/or
- (c) the extent of the adjustment, if any, in the Contract Time.

Methods used in determining adjustments to the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price, or Original Project Contractor’s Fee or Expansion Project Contractor’s Fee, may include those listed in Section 18.4.3 hereof.

**18.3 Change Proposal Request.** At any time and from time to time prior to Original Project Final Completion of the Original Project Work or Expansion Project Final Completion of the Expansion Project Work, Owner may request Contractor to make Changes in the Work. If Owner desires a Change in the Work Owner may, in its sole and absolute discretion and in writing, request a Change Proposal from Contractor (“Change Proposal Request”). A Change Proposal Request shall set out, in reasonable detail, the Changes in the Work requested by Owner. Contractor shall issue a Change Proposal within ten (10) days (or sooner, if possible) following its receipt of a Change Proposal Request or such longer period as is reasonably necessary if such ten (10) day period cannot be reasonably complied with. Contractor shall also issue a Change Proposal: (i) when Contractor reasonably believes that a Change in the Work is necessary or desirable; or (ii) when a Change in the Work is made necessary by Laws. If Contractor refuses or fails to

timely provide a Change Proposal, or modifies or alters a Change Proposal Request, or if Owner and Contractor are unable to agree in writing upon the terms of the Change Proposal, including but not limited to: (i) the amount of increase or decrease in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable), or (ii) the length of extension or advancement, if any, of the Contract Time, Owner: (a) may issue a Construction Change Directive pursuant to Section 18.4 hereof, (b) may require Contractor to obtain when possible at least three bids from qualified subcontractors to perform such Change in the Work, and Owner may select the subcontractor from said bidders to perform such Change in the Work, or (c) may engage other contractors, subcontractors and/or laborers to perform such Change in the Work, and Contractor shall cooperate fully with any such persons, and any such hiring by Owner shall not affect this Agreement in any manner (other than to provide for a reduction in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable), equal to the value of such Work (but not less than the amount budgeted therefor in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price) not being performed by Contractor, and in the Original Project Contractor's Fee or Expansion Project Contractor's Fee applicable thereto, subject to Section 18.5.2) and shall not be deemed to be a constructive termination.

**18.3.1** "Change Proposal" means a written proposal prepared and signed by Contractor setting forth (i) the Changes in the Work requested by Owner or proposed by Contractor, (ii) the amount of adjustment, if any, in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (including pursuant to Section 18.4.3 below) due to such Change, and (iii) the extent of adjustment, if any, in the Contract Time due to such Change. A Change Proposal is only a proposal unless and until signed and accepted by Owner as a Change Order.

#### **18.4 Construction Change Directive**

**18.4.1** "Construction Change Directive" means a written order initiated, prepared and signed by Owner and given to Contractor directing a Change in the Work or an allocation of the Original Project Owner Contingency or Expansion Project Owner Contingency (as applicable) and stating a proposed basis for adjustments, if any, in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) or Contract Time, or any of them or any combination of them.

**18.4.2** Owner may, by Construction Change Directive, without invalidating or breaching the Contract, order a Change in the Work or apply a portion of the Original Project Owner Contingency or Expansion Project Owner Contingency (as applicable). Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the Change in the Work involved (including implementing any reductions or accelerations in the Work) and, within ten (10) days of receipt of the related Construction Change Directive, advise Owner of the Contractor's agreement (in which case Contractor shall sign and return the Construction Change Directive) or disagreement with the method, if any, provided in the

Construction Change Directive for determining the proper adjustment, if any, in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price or Contract Time. Contractor agrees to immediately, when directed in writing by Owner, perform the Change in Work diligently and without delay.

**18.4.3** If the Construction Change Directive provides for an adjustment to either the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price, the adjustment may be based on one of the following methods:

(a) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

(b) unit prices stated in the Contract Documents or subsequently agreed upon; or

(c) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, which cost shall be based upon a proposal by the appropriate party. Any proposals from Subcontractors shall not include any amounts for overhead and profit in excess of an aggregate of ten percent (10%) of the cost of such Subcontractor's Work, unless approved by Owner.

**18.4.4** A Construction Change Directive signed and unmodified by Contractor indicates the agreement of Contractor therewith, including the method, if any, provided in the Construction Change Directive for determining the adjustment, if any, in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price or Contract Time. Upon Contractor's written acceptance and delivery thereof to Owner of the unmodified Construction Change Directive, that Construction Change Directive shall become a Change Order. If Contractor fails to advise Owner of its agreement or disagreement with the proposed adjustment in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) or Contract Time within ten (10) days after the receipt of the Construction Change Directive to Contractor, then the Construction Change Directive shall be deemed approved and shall become a Change Order, and Contractor shall have no right to any adjustment to the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price or Contract Time in excess of the adjustments, if any, provided in the Construction Change Directive.

**18.4.5** If Contractor disagrees with the method or adjustment in the Guaranteed Maximum Price or the Contract Time within the ten (10) calendar day time period provided in Section 18.4.4 above, and the parties are unable within a reasonable period of time to reach an agreement, the matter shall be resolved under Article 22 of this Agreement.

## 18.5 Determination of Increases or Decreases in Guaranteed Maximum Price

**18.5.1** Any change in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price (as applicable) as a result of net Changes in the Work (including a Construction Change Directive), shall be calculated based upon estimates of: (a) the aggregate additional amounts (if any) to be paid (or which would have been paid if the subject Work had not been eliminated) by Contractor to its Subcontractors and Vendors for the applicable Change in the Work, without mark-up or other add-on by Contractor, and (b) the increase or decrease (if any) in the Cost of the Work to be incurred (or which would have been incurred if the subject Work had not been eliminated) by Contractor with respect to the applicable Change in the Work to the extent (if any) such Change were to be performed (or which would have been performed if the subject Work had not been eliminated) by Contractor directly. Any and all amounts or items excluded from the determination of the Cost of the Work, including all Non-Allowable Costs of the Work, shall also be excluded from the determination of the cost of any Change in the Work.

**18.5.2** Whether or not Contractor is entitled to an increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price or modification of the Contract Time pursuant to the Contract as a result of any Changes in the Work, in no event shall Contractor be entitled to, and Contractor hereby waives any claim to, an increase in the Original Project Contractor's Fee or Expansion Project Contractor's Fee, due to any and all such Changes.

(a) Notwithstanding the first paragraph of Section 18.5.2, (a) if the aggregate net amount of all Changes (as reflected by Change Orders) and other adjustments in the Original Agreement Guaranteed Maximum Price pursuant to this Agreement increases the Original Agreement Guaranteed Maximum Price by more than US\$12,755,000 (which is five percent (5%) of the Original Agreement Guaranteed Maximum Price of US\$255,500,000), then, subject to the terms of the Contract Documents, Contractor's Fee shall be increased by an amount equal to five percent (5%) of the amount by which (x) the aggregate net amount of all such Changes and other adjustments in the Original Agreement Guaranteed Maximum Price pursuant to this Agreement exceeds (y) US\$12,755,000; and (b) if the aggregate net amount of all Changes (as reflected by Change Orders) and other adjustments in the Original Agreement Guaranteed Maximum Price pursuant to this Agreement reduces the Original Agreement Guaranteed Maximum Price by more than US\$12,755,000, then, subject to the terms of the Contract Documents, Contractor's Fee shall be equitably adjusted, taking into account the circumstances underlying such Changes. Contractor has fully considered the impact of the foregoing limitation and acknowledgement, and accepts all consequences relating thereto.

(b) Notwithstanding the first paragraph of Section 18.5.2, (a) if the aggregate net amount of all Changes (as reflected by Change Orders) and other adjustments in the Expansion Project Guaranteed Maximum Price

pursuant to this Agreement increases the Expansion Project Guaranteed Maximum Price by more than Seven Million Eight Hundred Thirty-Seven Thousand Nine Hundred Sixty-Six United States Dollars (US\$7,837,966) (which is five percent (5%) (rounded) of the initial Expansion Project Guaranteed Maximum Price of US\$156,759,326 set forth in Section 3.1 of the Original Agreement), then, subject to the terms of the Contract Documents, Contractor's Fee shall be increased by an amount equal to five percent (5%) of the amount by which (x) the aggregate net amount of all such Changes and other adjustments in the Expansion Project Guaranteed Maximum Price pursuant to this Agreement exceeds (y) Seven Million Eight Hundred Thirty-Seven Thousand Nine Hundred Sixty-Six United States Dollars (US\$7,837,966); (b) if the aggregate net amount of all Changes (as reflected by Change Orders) and other adjustments in the Expansion Project Guaranteed Maximum Price pursuant to this Agreement reduces the Guaranteed Maximum Price by more than Seven Million Eight Hundred Thirty-Seven Thousand Nine Hundred Sixty-Six United States Dollars (US\$7,837,966), then, subject to the terms of the Contract Documents, Contractor's Fee shall be equitably adjusted, taking into account the circumstances underlying such Changes. Contractor has fully considered the impact of the foregoing limitation and acknowledgement, and accepts all consequences relating thereto.

**18.6 Simultaneous Submittal Requirements.** In the event that Contractor considers that any Change Proposal Request or Construction Change Directive may involve Changes to the Original Project Guaranteed Maximum Price, Expansion Project Guaranteed Maximum Price and/or the Contract Time, it shall be the Contractor's fundamental duty and an essential requirement of this Contract to make simultaneous submittals of all documents necessary to establish both such Changes in accordance with this Article 18, and to contemporaneously prove entitlement to both such Changes, and without any reservation of rights for future consideration. Without limitation of Contractor's rights under Article 22, if Contractor is unable to or does not so prove both such entitlements pursuant to and contemporaneously with such submittals, then Contractor shall be deemed to have waived any further right to make a claim for the portion of the adjustment not provable at such time.

**18.7 Continued Performance.** Notwithstanding the status of any proposed, pending or disputed Change (including any Construction Change Directive) pursuant to this Article 18 or any Claim pursuant to Article 20 below, or any dispute, and so long as Owner continues to timely make payment to Contractor of amounts properly due to Contractor under and subject to the terms of the Contract Documents and not in dispute, Contractor shall not be entitled to and will not suspend any services under the Contract Documents, but will continue to be bound by the terms and conditions of the Contract Documents and will continue to perform all services thereunder and proceed diligently with the performance of its Work in accordance with the terms hereof, including completing any Work described in any Construction Change Directive, unless Owner directs in writing otherwise.

## 18.8 Effect of Change Orders

**18.8.1** Execution of a formal Change Order shall be the sole procedure for settlement of any and all issues concerning the Original Project Guaranteed Maximum Price, Expansion Project Guaranteed Maximum Price and/or Contract Time, including any settlement based on a Claim pursuant to Article 20 hereof or pursuant to Article 22 hereof; provided that a decision by the arbitrators in a proceeding instituted under Article 22 shall be deemed a Change Order for purposes of this Section 18.8.1.

**18.8.2** No Change shall be deemed as settled unless and until the parties sign a formal Change Order which fully and finally settles all pending issues pertaining to increases or decreases in the Original Project Guaranteed Maximum Price, Expansion Project Guaranteed Maximum Price and/or the Contract Time and without any reservation of rights for future consideration. In that regard, the parties hereby agree that a signed Change Order shall be inclusive of any and all direct, indirect, consequential costs, damages or losses based upon any theory of recovery, including, but not limited to: actual damages; all time-related costs; total costs; modified total costs; Eichleay formula or other equitable adjustment theories; full compensation for general conditions; extended site supervision and administration; all field, site, branch and/or home office overheads; all general and administrative costs; and any other similar direct, indirect and/or time-related costs howsoever derived or formulated.

**18.8.3** Any statement added by the Contractor to the face of an otherwise valid Change Order, or contained in any transmittal or separate correspondence wherein the Contractor attempts to reserve rights to seek any further increases in the Contractor's Fee, Original Project Guaranteed Maximum Price, Expansion Project Guaranteed Maximum Price and/or Contract Time shall be null and void.

**18.8.4** Any increase in the Original Project Guaranteed Maximum Price or Expansion Project Guaranteed Maximum Price, or extension in the Contract Time, shall be reduced and offset by any and all reductions or Changes in the Work which would result in reduced Costs of the Work and/or advancement of the Contract Time, as the case may be (*i.e.*, changes in the Work shall be netted out).

**18.9 Verbal Instructions and Minor Changes in the Work.** Contractor shall not be entitled to rely upon, and shall not implement any Change based only on, Owner's verbal instruction, except in emergency situations and when necessary to prevent the imminent threat of personal injuries or damage to the Work or Owner's existing property, or for minor Changes within Contractor's scope of Work which are not material and do not involve an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time ("Minor Changes"). Such Minor Changes may be effected by written or verbal order at Owner's election at any time. If the Contractor does not agree that such order constitutes a Minor Change, Contractor shall submit a Change Proposal pursuant to Section 18.3 above;

provided, however, Contractor shall still promptly perform the Work specified in the instruction or order from Owner.

**18.10 Waiver and Release of Contractor's Rights.** Contractor hereby confirms its willingness and ability to comply with the requirements of this Article 18. Contractor's failure to first comply with the requirements of this Article 18, including the timely notice requirements, shall constitute a waiver and release by Contractor of any and all rights to pursue a Claim.

**ARTICLE XIX.  
RECORD KEEPING AND AUDIT RIGHTS**

**19.1 Required Accounting Records.** To facilitate audits by Owner or Owner's Lenders, including, but not limited to, for any purpose related to Change Orders, Changes or Change Proposals, Contractor shall at all times implement and maintain (and require all Subcontractors providing labor and/or materials on a cost-plus basis pursuant to a subcontract having a contract price of HK\$1,500,000 or more, as well as all Subcontractors as may otherwise be specified by Owner (collectively, the "Auditable Subcontractors") to implement and maintain) such cost control systems and daily record keeping procedures as may be necessary to attain proper fiscal management and detailed financial records for all costs related to the Work and as are otherwise reasonably satisfactory to Owner and Owner's Lenders. All cost and pricing data shall include, without limitation, the identification of any markups, vendor quotations and pricing methodologies. Records to be maintained by the Contractor and Auditable Subcontractors for purposes of the Contract, including for purposes of all audits conducted pursuant to this Article 19 shall include, but not be limited to the following: (a) payroll records and payroll burden costs on actual wages and salaries (payroll taxes, insurance, benefits, etc.); (b) all correspondence, minutes of meetings, daily logs including schedule status reports, memoranda and other similar data; (c) items such as bids, proposals, estimating work sheets, quotes, cost recaps, tabulations, receipts, submittals, tax returns (except solely income tax returns), general ledger entries, canceled checks and computer data relating to the Work and this Contract, and (d) all other data relating to or arising out of the Work and any other similar supporting documentation reasonably required by Owner or Owner's Lenders. It is further agreed that records subject to audit include Project-related records maintained by parent companies, affiliates, subsidiaries or other related parties. Contractor's failure to cooperate or to provide access as described in this Article 19 shall be a breach of this Contract.

**19.2 Purpose and Extent of Record Access.** Owner and Owner's Lenders, and their respective authorized representatives, shall have the right to fully and completely audit, copy, investigate and review, and shall be afforded useful access to all of the records described in Section 19.1 above at all reasonable times (both during performance of the Work and after Original Project Final Completion and Expansion Project Final Completion)



for purposes of inspection, audit, review and copying to the full extent as Owner or Owner's Lenders may require relating to the Work or the Contract. All such Contractor's records and records of all Auditable Subcontractors shall also be made available to Owner for purposes related to compliance with Owner's business ethics policies. Upon request, Contractor shall also fully cooperate in arranging interviews with Contractor's employees and shall require all Auditable Subcontractors to likewise fully cooperate pursuant to this [Article 19](#).

**19.3 Record Keeping Formats.** Contractor may elect to maintain part of the records described in [Section 19.1](#) above in an electronic format. Contractor agrees that, if any Project-related information is maintained in an electronic format, such information will be made available to Owner and Owner's Lenders in a readily useable format within three (3) business days after a written request by Owner.

**19.4 Certifications.** Upon request, Contractor shall be required to certify that, to the best of its knowledge and belief, all data subject to audit pursuant to this [Article 19](#) is accurate, complete and current. Such certifications shall be made by Contractor to Owner and Owner's Lenders in the case of this Contract, and by Auditable Subcontractors to Contractor in the case of subcontracts and purchase orders.

**19.5 Flow-Down Provisions.** Contractor shall require all Auditable Subcontractors to comply with the provisions of this [Article 19](#), by insertion of this "Right to Audit" clause ([Sections 19.1](#) through [19.7](#) inclusive) into each respective related subcontract and purchase order of all tiers relating to the Work. Owner shall have the right (but not obligation) to act as Contractor's authorized representative for the purpose of conducting audits in accordance with this [Article 19](#) of all accounting and Project-related records in the possession of all Auditable Subcontractors. It is specifically understood, however, that Owner has no contractual relationship with any Subcontractor or Vendor of any tier. Likewise, it shall remain the Contractor's financial and contractual responsibility to resolve all such issues with its Subcontractors or Vendors. No such audit or activity by Owner or Owner's Lenders shall release Contractor or any Subcontractor from, or waive, any of Contractor's or any Subcontractor's obligations under the Contract Documents. Notwithstanding the provisions of this [Article 19](#), Owner's and Owner's Lenders' right to audit as to Subcontractors with subcontracts on a lump sum basis shall be limited solely to those instances where there is an allegation of fraud or similar misconduct involving such Subcontractor.

**19.6 Remedies.** Certification of information pursuant to [Section 19.4](#) above, and subsequent approval by Owner of invoices, billings and Change Orders, shall not preclude a post-approval adjustment, including based upon a later Contract compliance or pricing audit. Specifically, Owner shall have the right to reduce any payments to Contractor or any Auditable Subcontractor by any amounts attributable to incorrect or otherwise defective cost data. Contractor's submission shall be considered defective when the cost or pricing data, as certified in accordance with provisions of [Section 19.4](#), above, is not accurate, complete or current. If an audit inspection or examination, conducted in accordance with this [Article 19](#),

discloses overcharges by Contractor (or any Auditable Subcontractor) of any nature in excess of US\$50,000 (including interest as provided in [Section 17.6.1](#)) hereof, Contractor shall reimburse or cause such Auditable Subcontractor to reimburse, Owner for the total actual cost of Owner's audit associated with such overcharge, including but not limited to the actual costs of outside auditors and/or the use of Owner's internal auditor at internal billing rates.

**19.7 Record Retention.** Contractor shall preserve and make available to Owner and Owner's Lenders at Contractor's principal office in Hong Kong, all such records and other data covered by this [Article 19](#), for a minimum period of three (3) years after the later of Original Project Final Payment and Expansion Project Final Payment is made or for such longer period as may be required by any Laws.

## ARTICLE XX.

### CLAIMS

**20.1 Definition.** A "[Claim](#)" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**20.2 Notice.** Claims not made by Contractor within fourteen (14) days after occurrence of the event giving rise to such Claim shall be barred. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless (a) based upon different facts from those giving rise to the initial Claim, and (b) submitted in a timely manner.

**20.3 Pending Resolution.** Notwithstanding any other provision of this Contract or the other Contract Documents to the contrary, while any dispute, action or proceeding exists between Contractor and Owner, so long as Owner continues to pay all undisputed amounts hereunder (or is otherwise excused from making payment of undisputed amounts pursuant to the terms of this Agreement), Contractor shall continue to perform the Work diligently and observe its other obligations in accordance with this Contract so as to complete the Work on or before the Original Project Guaranteed Date of Substantial Completion or Expansion Project Guaranteed Date of Substantial Completion (as applicable), which agreement of Contractor shall be specifically enforceable. Notwithstanding any provision to the contrary herein or in the other Contract Documents, Contractor shall not be relieved of any of its obligations hereunder unless pursuant to (but only to the extent of) a final judgment resolving any such dispute, action or proceeding. Contractor recognizes and acknowledges that the provisions of this [Section 20.3](#) and the completion of the Work on a timely basis notwithstanding any dispute, action or proceeding are fundamental to the contractual relationship established pursuant to this Contract, shall be

specifically enforceable, and that Owner would not have entered into this Contract but for Contractor's agreement set forth herein. Contractor acknowledges that it understands and has duly considered and consulted with counsel concerning the significance of this provision.

**20.4 Final Settlement of Claims.** No Claim involving resolution of issues pertaining to the Original Project Guaranteed Maximum Price, Expansion Original Project Guaranteed Maximum Price and/or Contract Time shall be deemed final until both parties sign a final and unconditional Change Order, or an arbitral tribunal duly convened hereunder makes a binding determination as described in Section 20.5 and Article 22 below. With respect to non-judicial settlements, final and unconditional Change Orders signed by both parties shall be a condition precedent to Owner's duty to make payments or adjust the Original Project Guaranteed Maximum Price, Expansion Original Project Guaranteed Maximum Price or Contract Time.

**20.5 Unresolved Claims.** Any Claims or disputes arising out of this Contract which are not resolved by the parties within sixty (60) days, may be pursued in accordance with Article 22 hereof. Contractor shall identify in Contractor's Applications for Progress Payment and Application For Final Payment any such Claims which remain unresolved.

## **ARTICLE XXI. OWNER'S LENDERS**

**21.1 Owner's Lenders.** Contractor acknowledges and agrees that Owner has provided notice to Contractor, and Contractor shall before entering into any subcontract or purchase contract provide notice to every Subcontractor and Vendor, that Owner's funds for construction of the Project, including payment of the Original Project Guaranteed Maximum Price and Expansion Original Project Guaranteed Maximum Price, shall be borrowed and or derived substantially from one or more lenders providing financing for the Project from time to time ("Owner's Lenders"), and Owner's ability to obtain such funds shall be subject to one or more loan documents and conditions precedent to advances thereunder. The term "Owner's Lenders" shall also mean and include any and all trustees, intercreditor agents, disbursement agents, administrative agents, consultants, architects, inspectors, construction managers, auditors and engineers appointed or retained directly or indirectly by or on behalf of any of Owner's Lenders.

**21.2 Assignment and Default.** Owner shall have the right to assign the Contract to any one or more of Owner's Lenders. If an event of default by Owner has occurred under any loan documents relating to Owner's Lenders, Contractor agrees that Owner's Lenders may at anytime thereafter upon written notice to Contractor ("Lender's Notification"), require Contractor to continue to perform Work under the Contract, and in such Lender's Notification, Owner's Lenders may elect either to (a) not assume any of Owner's rights or obligations under the Contract, or (b) assume Owner's rights and obligations arising under the Contract from and after the date of Lender's Notification. Upon receipt of Lender's

Notification, and notwithstanding any event of default by Owner under any such loan documents and whether Owner's Lenders elect clause (a) or (b), Contractor shall thereafter continue to properly perform the Work and its obligations under the Contract in accordance with the terms of the Contract, so long as (i) Contractor continues to be paid, by either Owner or Owner's Lenders in accordance with the terms of this Agreement, for all Work not in dispute and properly performed in accordance with the terms of the Contract from and after the date of Lender's Notification, and (ii) the other obligations of Owner under the Contract Documents which are necessary to be performed in order for Contractor to be able to continue to properly perform the Work continue to be performed and satisfied by Owner, Owner's Lenders or otherwise.

**21.3 Owner's Lenders Election.** Notwithstanding any provision of the Contract which may give Contractor the right to terminate the Contract or suspend or discontinue performance thereunder, Contractor agrees not to terminate the Contract or suspend or discontinue performance thereunder without first providing Owner and Owner's Lenders with thirty (30) days prior written notice, and during such thirty (30) days Owner's Lenders may elect whether to (a) allow Contractor to terminate the Contract, not cure any defaults of Owner and not assume any of Owner's obligations under the Contract, or (b) assume Owner's obligations arising under the Contract from and after the date of Owner's Lenders' election, and require Contractor to continue Contractor's performance under the Contract. If Owner's Lenders shall timely elect to proceed under clause (b) herein, Contractor agrees not to terminate the Contract or suspend or discontinue its performance thereunder, and to continue to properly perform all Work and obligations under the Contract in accordance with the terms of the Contract and accept payment and/or performance from Owner or Owner's Lenders, so long as Contractor continues to be paid in accordance with the terms of this Agreement for all amounts due in accordance with the terms of the Contract after Owner's Lenders' election as specified above. The thirty (30) day period provided above shall run concurrently with the thirty (30) day period provided under Section 17.6.1 if Contractor shall give such thirty (30) day notices under this Section 21.3 and under Section 17.6.1 concurrently. Promptly upon request by either Owner or Owner's Lenders, Contractor shall enter into an agreement with Owner and Owner's Lenders incorporating the terms of this Section 21.3 and Section 21.2, along with such other matters reasonably requested by Owner's Lenders.

**21.4 Payment and Work Continuation.** Notwithstanding any other provision of the Contract or otherwise, including anything in this Article 21, and unless Owner's Lenders elect to assume the Contract, Owner's Lenders shall have no obligation to reimburse or pay Contractor for (a) any Work which has been the subject of a prior advance of loan funds by Owner's Lenders to Owner and paid to Contractor, and/or (b) any Work which is the subject of a dispute by Owner's Lenders as to its proper quality, scope or compliance with the Contract. Owner's Lenders shall have the benefit of all claims, defenses to payment and setoffs available to Owner under the Contract as to amounts that Contractor contends are due for Work under the Contract. Notwithstanding any terms of the Contract to the contrary, Contractor will diligently continue to perform the Work and its obligations under

the Contract notwithstanding any dispute arising with Owner, Owner's Lenders or any other person or entity, so long as (i) Contractor continues to be paid in accordance with the terms of this Agreement for amounts due in accordance with the terms of the Contract, and (ii) the other obligations of Owner under the Contract Documents which are necessary to be performed in order for Contractor to be able to continue to properly perform the Work continue to be performed and satisfied by Owner, Owner's Lenders or otherwise. Except to the extent expressly provided in Section 21.3 hereof, nothing in this Contract, or otherwise, shall cause or impose any obligation on Owner's Lenders to fund any amounts, including any loan advance, to Contractor. Owner's Lenders may enforce the obligations of the Contract with the same force and effect as if enforced by Owner, and may (but need not) perform the obligations of Owner (unless Owner's Lenders elect to perform such obligations pursuant to this Article 21), and Contractor will accept any such performance in lieu of performance by Owner in satisfaction of Owner's obligations hereunder. Subject to the foregoing limitations on assignment and delegations, all of the terms and provisions of the Contract shall be binding upon and shall inure to the benefit of the parties to this Agreement, and their respective permitted transferees, successors, assigns and legal representatives.

**21.5 Payments.** Owner's Lenders shall have the right at any time and from time to time to make payment directly to Contractor and/or by joint payee check to Contractor and any Subcontractor or Vendor, for Work performed under the Contract.

**21.6 Audit Rights.** Owner's Lenders shall have and be entitled to all of the same audit and inspection rights, as Owner has under Article 19 of this Agreement.

**21.7 Access.** Owner's Lenders shall have and be entitled to all of the same rights to access and inspect the Site and Work, wherever located, as Owner has under the Contract documents, at reasonable times and upon reasonable notice and subject to reasonable safety precautions.

**21.8 Material Changes.** Contractor and Owner acknowledge and agree that certain Changes, including increases in the Original Project Guaranteed Maximum Price and Expansion Original Project Guaranteed Maximum Price and extensions of the Contract Time, and allocation of the Owner Contingency, may be subject to the approval of Owner's Lenders and agrees that no such Changes shall become effective without such approval.

**21.9 General Cooperation.** Contractor agrees to cooperate fully with all such Owner's Lenders and Contractor agrees to (a) provide written notice to Owner's Lenders of any Change in the Work, material Change in the manner or amounts paid to Contractor, extension or acceleration of Contract Time, or material Change in the Drawings or Specifications, (b) authorize Subcontractors and Vendors to communicate directly with Owner's Lenders regarding the progress of the Work, (c) provide Owner's Lenders with reasonable working space and access to telephone, copying and telecopying equipment, (d) communicate with Owner's Lenders and, on request to execute, provide and/or deliver as the case may be, such documents, certificates, consents, invoices and instruments, and other

information, as Owner's Lenders may reasonably request with respect to the Work, the Project and/or payment of the cost thereof, (e) enter into such amendments to the Contract Documents as Owner's Lenders may reasonably request so long as such amendments do not materially or substantially alter Contractor's rights, duties or obligations under the Contract Documents, (f) enter into a consent to assignment in favor of Owner's Lenders consenting to the collateral assignment of the Contract to Owner's Lenders and such other matters as are customary in financings of major projects such as the Project and as Owner's Lenders may reasonably request, (g) provide subcontract related documents to Owner or Owner's Lenders upon request and (g) otherwise facilitate Owner's Lenders review of the construction of the Project.

**21.9.1** Without limiting the provisions of Section 21.9, each Contractor shall deliver (1) a certificate to the Owner and the Owner's Lenders attaching true and complete copies of (x) written resolutions approving the execution, delivery and performance of this Agreement and the terms and conditions thereof and authorizing a named person or persons to execute the Agreement and any other documents to be delivered pursuant to this Agreement and (y) such Contractor's governing/constitutive documents (including, but not limited to its articles, bylaws and shareholders agreements, as applicable) and (2) an opinion reasonably satisfactory to Owner's Lenders with respect to this Agreement. Each of the documents referenced in (1) and (2) above shall be delivered by the applicable party within 10 days of execution of this Agreement.

**21.9.2** Contractor shall cause Guarantors to deliver (1) a certificate to the Owner and the Owner's Lenders attaching true and complete copies of (x) written resolutions approving the execution, delivery and performance of the Guarantee and the terms and conditions thereof and authorizing a named person or persons to execute the Guarantee and any other documents to be delivered pursuant to its terms and (y) such Guarantor's governing/constitutive documents (including, but not limited to its articles, bylaws and shareholders agreements, as applicable) and (2) an opinion reasonably satisfactory to Owner's Lenders with respect to the Guarantee. Each of the documents referenced in (1) and (2) above shall be delivered by the applicable party concurrently no later than the consummation of Owner's refinancing of the Project (currently scheduled to be on or about August 15, 2005).

## **ARTICLE XXII. DISPUTE RESOLUTION AND GOVERNING LAW**

**22.1 Arbitration.** Any dispute, controversy or claim arising out of or relating to the Contract, or the breach, termination or validity thereof (including any tortious or statutory claim) (any of the foregoing being a "Dispute") shall, upon the written request ("Request") of either party hereto, be resolved through good faith negotiation between upper-level management of the parties. Notwithstanding the foregoing, if the parties are unable to resolve a Dispute through negotiation within thirty (30) days after receipt by the receiving party of the Request (the expiration of such thirty-day period being the "Dispute

Date”), then the Dispute shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (“ICC”) then in effect (the “ICC Rules”), except as modified herein. The place of arbitration shall be, and the award shall be rendered in, Hong Kong, and the language of the arbitration proceedings and of the award shall be English. There shall be three (3) arbitrators. Each arbitrator shall (a) have a good background in common law practice, (b) be experienced in a construction project of the size and nature of the Project, and (c) in no event be (i) involved in any way with any other casino or gaming project in Macau, (ii) related or involved in any way with any of the parties to this Agreement, (iii) an owner’s representative or contractor, or (iv) a national of the country where Contractor’s parent or Owner’s parent were formed or maintain their respective principal place of business. Leighton, China/HK and China/Macau shall jointly nominate one arbitrator and Owner shall nominate one arbitrator, in each case in accordance with the relevant provisions of the ICC Rules. The two arbitrators so nominated shall (following their confirmation by the ICC Court) nominate the third arbitrator, who shall serve as chair of the tribunal, within 30 days of the confirmation of nomination of the second arbitrator. If either Owner or Contractor fails to timely nominate an arbitrator, then at the request of the other party, or if the two arbitrators appointed by the parties fail to appoint the third arbitrator, then at the request of either party, any arbitrator not so nominated shall be appointed by the ICC Court of Arbitration in accordance with the ICC Rules. The arbitration hearing shall be held as soon as practicable after the appointment of the arbitrators but in any case within six (6) months after signing, or finalization of, the Terms of Reference (as defined in the ICC Rules). Consistent with the expedited nature of arbitration, each party will provide the other with copies of documents upon which it intends to rely in support of or in opposition to any claim or defense. The parties shall be entitled to the production of all documents relevant to the dispute; and on the request of any party, the arbitrators shall order a party to produce all such relevant documents. Any arbitral award shall be final and binding upon the parties, and shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accountings presented to the arbitral tribunal. To the fullest extent allowed by law, each party hereby waives any right to appeal such award. Judgment upon any award may be entered in any court having jurisdiction. By agreeing to arbitration, the parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings and the enforcement of any award. Nevertheless, without prejudice to such interim or provisional remedies as may be available under the jurisdiction of a national court, the arbitral tribunal shall itself have full authority to grant interim or provisional remedies, including authority to order the parties to request that a court modify or vacate any interim or provisional remedy issued by a such court, and to award damages for the failure of any party to respect the arbitral tribunal’s orders to that effect. The arbitral tribunal shall not, under any circumstances, assume the powers of an *amiable compositeur* or decide *ex aequo et bono*, but shall reach its decision in accordance with the terms of the Contract and applicable Laws. This agreement to arbitrate shall be binding upon the successors, assigns and any trustee or receiver of each party. The existence of any claim, dispute or legal proceeding shall not relieve Contractor from its obligation to properly perform its Work as set forth in the Contract Documents.

**22.2 Consolidation of Disputes.** In order to facilitate the comprehensive resolution of related disputes, all disputes between Owner and Contractor that arise under or in connection with the Contract or any other agreements entered into by these parties (including all Disputes, as defined in this Agreement) that are being arbitrated under this [Article 22](#) may be brought in a single arbitration under this [Article 22](#). Accordingly, upon the request of any party to an arbitration proceeding constituted under this [Article 22](#), the arbitral tribunal shall consolidate such arbitration proceeding with, or order the hearing of such proceeding together with, any other arbitration proceeding relating to such disputes or Disputes, provided that the arbitral tribunal shall first determine that (i) there are issues of fact or law common to the proceedings so that a consolidated proceeding would be more efficient than separate proceedings, and (ii) no party would be unduly prejudiced as a result of such consolidation through undue delay or otherwise. Where different tribunals have been or are in the process of being appointed in relation to such proceedings, the decision as to whether the proceedings are to be consolidated or heard at the same time shall be made by the arbitral tribunal which was first in time to be fully appointed in respect of those proceedings. If consolidation is so ordered, the parties to each of the proceedings that is the subject of the order will be treated as having consented to the consolidated proceedings and the disputes or Disputes in question being finally decided by the arbitral tribunal which ordered the consolidation. The entities comprising Contractor hereunder shall be treated as one party for all purposes of this [Article 22](#).

**22.3 Legal Fees.** The non-prevailing party (in accordance with the determination of the arbitral tribunal) in any proceeding instituted pursuant to this [Article 22](#) shall promptly pay to the prevailing party all costs, disbursements and reasonable attorneys' fees incurred by the prevailing party in connection with such proceeding; provided that if the arbitral tribunal shall award costs otherwise, the parties shall comply with such decision and allocation.

**22.4 Continued Performance.** In the event of a Dispute under this Agreement or any other Contract Document, the parties shall not be excused from and shall continue to perform their respective obligations thereunder; provided, however, that if a Dispute relates to the payment of an amount by Owner under this Agreement, Owner shall be entitled to withhold the payment of such disputed amount pending resolution of the Dispute. In the event the arbitral tribunal shall have determined that any amounts so withheld by Owner shall have been wrongfully withheld in violation of this Agreement, Contractor shall be entitled to interest at the then existing prime rate of Bank of China (Hong Kong) plus one percent (1%) from the date when such amounts should have been paid by Owner through the date when such amounts are finally received by Contractor.

**22.5 Governing Law.** The Contract Documents shall be governed by, and construed in accordance with, the laws of England (including, without limitation, the laws specifying the nature and scope of the warranties to be provided by Contractor hereunder).



**22.6 Non-Waiver.** In resolving disputes arising out of this Contract, it is expressly agreed that no action or failure to act by Owner, Contractor or any agent, representative, employee or officer of either of them (including Owner's Representative and Contractor's Representative) shall constitute a waiver of any right or duty afforded to either party in the Contract Documents. It is likewise expressly agreed that any action or failure to act by either party shall not constitute approval of or acquiescence in any breach of this Contract, except as are specifically agreed to in writing by the parties' corporate officers.

**ARTICLE XXIII.  
PROPRIETARY INFORMATION AND USE OF OWNER'S NAME**

**23.1 Proprietary Information.** Owner considers all information (regardless of form) pertaining to the Project to be confidential and proprietary, including information which is prepared or developed by or through Contractor, Owner, Owner's Consultants or Owner's Contractors, unless otherwise stated to Contractor in writing. Contractor shall not, and shall not allow, suffer or permit any Subcontractors or Vendors to, disclose any such information without Owner's prior written consent. Contractor shall obtain similar written agreements from each and every Subcontractor and Vendor as Owner may reasonably request.

**23.2 Advertising and Use of Owner's Name.** Contractor shall not issue any news releases or any other advertising pertaining to the Work or the Project, including advertising its participation in the Project, without obtaining Owner's prior written approval. Contractor hereby agrees not to use the name of Owner's premises, or any variation thereof, or any logos used by Owner, in connection with any of Contractor's business promotion activities or operations without Owner's prior written approval. Contractor shall require its Subcontractors and Vendors to comply with the requirements imposed upon Contractor by this Article 23, including obtaining Owner's prior written consent to the form and content of any promotional or advertising publications or materials which depict or refer to their respective roles in providing Work for the Project.

**23.3 Use of Drawings.** All plans, Drawings, Specifications and other documents furnished to Contractor, including, but not limited to, the Contract Documents, are the property of Owner and are for use solely with respect to the Work and are not to be used by Contractor or any Subcontractor on any other projects or for any other purpose.

**ARTICLE XXIV.  
MISCELLANEOUS PROVISIONS**

**24.1 Assignment.** Because of the special experience Contractor has represented it has and unique nature of the services to be rendered by Contractor under the Contract Documents, Contractor shall not assign or transfer its interest in the Contract or delegate its obligations thereunder, or subcontract the entire Work either as a whole or in the aggregate, without the prior written consent of Owner. Any purported assignment or transfer by

Contractor without such consent shall be null and void. Owner may at any time and from time to time, upon notice to but without consent of Contractor, assign or transfer the Contract or delegate its obligations to an affiliate or subsidiary of Owner, or to an entity which acquires all or substantially all of Owner's interest in the Project or all or substantially all of the assets or member interests of Owner, and/or change its name from time to time. So long as Owner's assignee or transferee assumes in writing Owner's obligations and liabilities under the Contract, and Owner represents in writing at the time of assignment or transfer that the assignee or transferee has at least the same financial status as Owner does at the time of the assignment or transfer, Owner shall thereafter be released from its obligations and liabilities under the Contract.

**24.2 Subordination.** Notwithstanding any other provision of the Contract Documents, Contractor agrees for itself and for every Subcontractor and Vendor and every other person performing any services or providing any materials relating to the Work, that any and all liens and lien rights and benefits (including enforcement rights) Contractor and any of the other may have under applicable law shall at all times be subordinate and junior to any and all liens, security interests, mortgages, deeds of trust and other encumbrances of any kind (on the Site and otherwise) in favor of any of Owner's Lenders ("Lender Liens"), notwithstanding that Work may be or is commenced or done on, and materials may be or are furnished to, the Site prior to any Lender Liens being imposed upon or recorded against the Site or any of Owner's assets and before expiration of the time fixed under applicable law for exercising mechanics' and materialmen's lien rights, and hereby renounces, to the fullest extent allowed by law, any preferential rights that Contractor and its Subcontractors and Vendors, and any other person performing any services or providing any materials relating to the Work, would otherwise have with respect to its lien rights or otherwise. Contractor shall, and Contractor shall require every Subcontractor and Vendor at every tier, and any other person performing services or providing materials relating to the Work to, sign and deliver to Owner and Owner's Lenders from time to time upon request by Owner or any of Owner's Lenders, written acknowledgments and restatements of the provisions of this Section 24.2 and the subordination and renunciation described herein.

**24.3 No Third-Party Beneficiaries.** This Contract shall be binding upon and inure solely to the benefit of the parties hereto and their successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity the right to enforce any term of it or any legal or equitable right, benefit or remedy of any nature whatsoever under or by virtue of the Contracts (Rights of Third Parties) Act 1999; provided, however, that (a) each of the Owner's Lenders shall be a third party beneficiary of the rights, benefits or remedies of Owner, and (b) each Owner Indemnitee shall be a third party beneficiary of the rights, benefits or remedies of Owner.

**24.4 Enforceability.** In the event that any provision in the Contract Documents or any portion thereof is determined to be invalid, unenforceable or void, the remainder of the Contract Documents shall be fully binding with the same force and effect as though the invalid, unenforceable or void provision had been omitted.

**24.5 Headings.** Section and other headings are not to be considered part of this Agreement, have been included solely for the convenience of the parties, and are not intended to be full or accurate descriptions of the contents.

**24.6 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**24.7 Subcontractors.** Contractor shall (a) procure the observance, (b) be responsible for enforcing and shall be liable for any non-compliance, and (c) shall indemnify Owner and the Owner Indemnitees against non-compliance, of the provisions of this Agreement by each Subcontractor and Vendor such that Owner has the same benefits and rights specified in this Agreement in respect of any subcontracted Work.

**24.8 Waiver.** No modifications of the Contract shall be binding unless executed in writing by the parties to this Agreement. No waiver of any of the provisions of the Contract shall be binding unless executed in writing by the waiving party, and any such waiver shall not constitute a waiver of any other provision of the Contract, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

**24.9 Sovereign Immunity.** Each of Leighton, China/HK and China/Macau agrees that to the extent that it may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any jurisdiction there may be attributed to itself or its assets or revenues such immunity (whether or not claimed), it will not claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

**24.10 Survival.** The provisions of this Agreement, including Contractor's covenants, representations, guaranties, releases, warranties and indemnitees and the benefit thereof, shall survive as valid and enforceable obligations notwithstanding any termination, cancellation or expiration of the Contract, acceptance of the Work, Original Project Final Completion of the Original Work or Original Project, Expansion Project Final Completion of the Expansion Work or Expansion Project or any combination of them. Establishment of the time periods as described in [Article 10](#) hereof relates only to the specific obligations of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents is sought to be enforced, nor to the time within which proceedings are commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

**24.11 Independent Contractor.** While Contractor is required to perform the Work in strict accordance with the Contract Documents, Contractor shall at all times be an independent contractor and responsible for and have control over all construction means, methods, techniques, sequences and procedures for constructing, coordinating and

scheduling all portions of the Work to achieve the requirements of the Contract Documents. Nothing in the Contract Documents shall be deemed to imply or represent or be construed to (a) make Contractor, its supervisors, employees, its Subcontractors or Vendors of any tier the agents, representatives or employees of Owner, or (b) create any partnership, joint venture, or other association or relationship between Owner and Contractor or any Subcontractor, nor shall anything contained in the Contract Documents be deemed to give any third party any claim or right of action against Owner or Contractor which does not otherwise exist without regard to the Contract Documents. Any approval, review, inspection, supervision direction or instruction by Owner or any party on behalf of Owner, including any of Owner's Lenders, in respect to the Work or services of Contractor shall relate to the results Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status or obligation to perform the Work in accordance with the Contract Documents.

**24.12 Privileged Business.** Contractor acknowledges that Wynn Resorts, Limited and its subsidiaries and other affiliated companies, including, but not limited to, Owner, own and operate businesses that are subject to and exist because of privileged licenses issued by governmental authorities. If requested, Contractor shall, and Contractor shall require Subcontractors and Vendors to obtain any qualification or clearance required by any regulatory authority having jurisdiction over Owner, Wynn Resorts, Limited, or any subsidiary or affiliate thereof, in each case within seven (7) days after Contractor becomes aware of the requirement to obtain such qualification or clearance. If Owner, Wynn Resorts, Limited, or any subsidiary or affiliate thereof is directed by any governmental authority to cease doing business with Contractor or any Subcontractor or Vendor, then such event shall be deemed a breach of the Contract by Contractor and Owner shall have the right to terminate the Contract and/or any subcontract or purchase order, among all other remedies available to Owner. Contractor shall not be entitled to an increase in the Original Project Guaranteed Maximum Price or Expansion Original Project Guaranteed Maximum Price or an extension of the Contract Time in connection with the replacement of a Subcontractor or Vendor on the Project as the result of the termination of its subcontract or purchase order pursuant to this Section 24.12.

**24.13 Entire Agreement.** The Contract Documents set forth the full and complete understanding of the parties as of the Effective Date of this Contract and supersede any and all agreements, understandings and representations made or dated prior thereto. Unless specifically enumerated or incorporated herein, the Contract Documents do not include any other documents, any qualifications to the Original Project Guaranteed Maximum Price or Expansion Original Project Guaranteed Maximum Price or Contract Time contained in Contractor's bid or any correspondence or other proposals by either party dated prior to the Effective Date. No modifications of the Contract shall be binding unless executed in writing by the parties to this Agreement. Each and all of the Exhibits A through and including Q referenced in this Agreement are hereby expressly incorporated herein by this reference.

**24.14 Rights and Remedies.** Unless otherwise provided in this Contract, duties and obligations imposed by the Contract and rights and remedies available thereunder shall be in addition to and not in limitation of duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

**24.15 Further Acts and Assurances.** Each party shall promptly and duly execute and deliver all such documents and assurances and take such further action as may be necessary or appropriate or reasonably requested by the other party in order to carry out more effectively the intent and purpose of this Contract and to establish and protect the rights and remedies created or intended to be created hereunder.

**24.16 Expenses.** Except as otherwise expressly provided herein, each party shall pay its own costs and expenses (including the fees and expenses of its own agents, representatives, advisers, counsel and accountants) necessary for the negotiation, preparation, execution, delivery, performance of and compliance with this Contract.

**24.17 Press Releases.** Contractor shall not, and shall require that the Subcontractors and Vendors do not, issue any press release or make any other public announcement relating to the transactions contemplated hereby or disclose the existence or content of this Contract without the prior written consent of the Owner. Notwithstanding the foregoing, the parties (and each employee, representative, or other agent of the parties) may disclose to any and all persons, without limitation of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transaction, provided, however, that the foregoing provisions of this sentence shall not allow any party (or any employee, representative, or other agent thereof) to disclose any other information that is not relevant to understanding the tax treatment and tax structure of the transaction (including the identity of any party and any information that could lead another to determine the identity of any party), or any other information to the extent that such disclosure could result in a violation of any applicable securities Law.

**24.18 Late Payments by Contractor.** If Contractor shall fail to make any payment to Owner within five (5) days after the due date thereof, interest shall thereafter commence to accrue (from the original due date of payment under the applicable provision in this Agreement or as required pursuant to any proceedings instituted under Article 22) on such delinquent amount at then existing prime rate of Bank of China (Hong Kong) plus one percent (1%), until paid.

**24.19 Construction of Agreement.** Each party hereto acknowledges and agrees that (a) it has been afforded full opportunity to review and negotiate the terms and provisions of this Agreement, (b) it was represented by counsel in connection therewith, and (c) this Agreement shall be construed without the aid of any principle requiring construction against the party drafting or causing this Agreement to be drafted.

**24.20 Business Days.** References in this Agreement to “business days” shall mean days, other than a Saturday or Sunday, on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in Hong Kong.

**ARTICLE XXV.  
NOTICES**

**25.1 Notice Procedures.** All notices, demands, requests, instructions and other communications relating to the Contract Documents (collectively, “Notices”), shall be in English, in writing and effective upon the earlier of actual receipt by the parties at the addresses listed below or three (3) business days after being sent, whether sent by email (followed by hard copy sent by regular mail or by confirmed fax as provided herein), by facsimile transmission (with confirmation of receipt), by registered or certified mail, or by messenger or reputable overnight courier.

**25.2 Notices To Owner.** All Notices to Owner (except requests for information, Shop Drawing submittals, instructions and similar notices) shall be sufficient when sent in accordance with Section 25.1 above and addressed as follows:

Wynn Resorts (Macau) S.A.  
c/o Wynn Resorts, Limited  
Legal Department  
3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
Facsimile No. (702) 770-1520  
Telephone No. (702) 770-2111

Todd Nisbet, Executive Vice President Construction  
Wynn Design and Development LLC  
680 Pilot Road Suite I  
Las Vegas, Nevada 89119  
Facsimile No. (702) 770-5001  
Telephone No. (702) 770-5100

And:

Gary Chin, Director of Construction  
Wynn Design and Development LLC  
180 Alemeda Dr. Carlos d’Assumpção  
5<sup>th</sup> Floor, Tong Nam Ah Commercial Centre  
Macau SAR  
Facsimile No. (853) 757-635  
Telephone No. (853) 795-5000

Contractor shall concurrently with delivery to Owner provide to Owner's Lenders copies of all Notices (except requests for information, Shop Drawing submittals, instructions and similar notices) at an address or addresses to be provided, with copies to:

To be provided.

**25.3 Notices To Contractor.** All Notices to Contractor shall be sufficient when sent as set forth in Section 25.1 above and addressed as follows:

Michael Harvey, Project Director  
Leighton - China State Joint Venture  
39th Floor, Sun Hung Kai Centre  
30 Harbour Road  
Hong Kong  
Facsimile No. (852) 2528-9030  
Telephone No. (852) 2823-1111

**25.4 Change of Address.** Either party may, from time to time, designate in accordance with this Article 25 a different individual and/or address to which Notices are to be delivered.

## **ARTICLE XXVI. REPRESENTATIONS AND WARRANTIES**

**26.1 Contractor's Representations and Warranties.** Each of Leighton, China/HK and China/Macau jointly and severally represents and warrants to Owner that:

(a) it is a company duly organized, validly existing and is current on all payments to maintain such existence under the laws of the jurisdiction of its formation. It has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under the agreements to which it is or is to be a party. It is duly qualified or licensed to do business in Macau and in all jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under the Agreement or would result in a material liability to or would have a material adverse effect on its financial condition, business, operations or prospects;

(b) it has all necessary power and authority to execute, deliver and perform its obligations under the Agreement, and each of the execution, delivery and performance by it of the Agreement has been duly authorized by

all necessary action on its part, does not require any approval, except as has been heretofore obtained, of its governing body or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of it, except for such as have been duly obtained, and does not contravene or constitute a default under its organizational documents or, to the best of its knowledge, any provision of applicable Law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject the Work, the Project or any component part thereof or the Site or any portion thereof to any Lien other than as contemplated or permitted by the Agreement; and it is in compliance with all applicable Laws and approvals (i) which govern its ability to perform its obligations under the Agreement or (ii) the noncompliance with which would have a material adverse effect on its ability to perform its obligations under the Agreement;

(c) neither the execution and delivery by it of the Agreement, nor the consummation by it of any of the transactions contemplated hereby, requires, with respect to it, the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any government authority, except such as are not yet required (as to which it has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefor) or which have been duly obtained and are in full force and effect;

(d) it has duly and validly executed and delivered the Agreement and the Agreement constitutes a legal, valid and binding obligation of it enforceable against it in accordance with its terms;

(e) it has all the required skills and capacity necessary to perform or cause to be performed the Work in a proper, timely and professional manner, utilizing prudent project management and supervisory procedures, all in accordance with the high standards required by the Agreement;

(f) it has knowledge of all of the legal requirements and business practices that must be followed in performing the Work and the Work will be in conformity with such requirements and practices and in compliance with all applicable Laws and applicable government approvals. All engineering services to be provided as part of the Work shall be provided by engineers qualified to perform such services in the location where such services are performed. The Project can be constructed under current building codes, zoning, land use and other applicable Laws and government approvals affecting the development of the Site and the performance of the Work and it can be constructed by Contractor for the Original Project Guaranteed Maximum Price and Expansion Original Project Guaranteed Maximum Price;



(g) it is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete its obligations under the Agreement. It is able to furnish the plant, tools, materials, supplies, equipment, labor and design services needed for the Work, is experienced in and competent to perform the Work, both construction and design, contemplated by this Agreement, and is qualified to do the Work;

(h) it owns or has the right to use all the patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, permits or rights with respect to the foregoing necessary to perform the Work and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others. In addition, it holds, or the Work shall be performed under the general supervision of an individual holding, any and all consents, licenses, permits and other authorizations, both construction and design, permits or special licenses required by law to perform the services under the Agreement; and

(i) there is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending or, to the best of its knowledge, threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under the Agreement or on the validity or enforceability of the Agreement.

**26.1.2 Contractor's Covenants.** Each of Leighton, China/HK and China/Macau jointly and severally represents, warrants and covenants to Owner that:

(a) all equipment and materials incorporated in the Project shall be free and clear of all liens and shall be new;

(b) the design and engineering of the Project shall be performed in accordance with the Contract Documents and the best practices, methods and standards followed by contractors constructing "five-star" first class Las Vegas-style luxury resorts and casinos, i.e., employing the highest standards with respect to the design, construction, operation and maintenance of facilities and equipment of the type to be incorporated into the Work, and which practices, methods and standards shall conform to the recommendations of the equipment suppliers and manufacturers;

(c) the Work will be performed in accordance with the Contract Documents and the best practices, methods and standards followed by contractors constructing "five-star" first class Las Vegas-style luxury resorts and casinos, i.e., employing the highest standards with respect to the design,

construction, operation and maintenance of facilities and equipment of the type to be incorporated into the Work, and in a good and workmanlike manner and it shall be free from defects;

(d) the Project shall be designed and constructed to conform and perform to the specifications, drawings, and other descriptions contained in the Contract Documents, including, but not limited to, the Original Project Guaranteed Maximum Price Premises and Assumptions and Expansion Project Guaranteed Maximum Price Premises and Assumptions;

(e) the Project shall be designed and constructed to comply with all applicable Laws;

(f) installation of any and all material, supplies and equipment shall be in strict accordance with manufacturers' requirements; and

(g) it has not, and shall not in the future, and to the best of the knowledge of Contractor, the Subcontractors and Vendors have not, and Contractor shall procure that each Subcontractor and Vendor will not, take any action, directly or indirectly, in connection with the preparation, negotiation, submission, procurement, execution or performance of any agreement, instrument or other document in any way relating to the Project or the Work that would constitute a violation of any laws of Macau or the United States of America (including the United States Foreign Corrupt Practices Act of 1977, as amended) regarding business practices, bribery or corruption. Contractor shall indemnify, protect, defend and hold Owner and the Owner Indemnitees harmless from and against any and all Actions attributable to any breach of the terms and provisions of this Section 26.1.2(g) by Contractor. The provisions of this Section 26.1.2(g) shall survive the termination of this Agreement for whatever reason.

**26.2 Owner's Representations and Warranties.** Owner represents and warrants to Contractor that:

**26.2.1** Owner is a company duly organized, validly existing and is current on all payments to maintain such existence under the laws of Macau.

Owner has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under the agreements to which it is or is to be a party. Owner is duly qualified or licensed to do business in all jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under the Agreement or would result in a material liability to or would have a material adverse effect on its financial condition, business, operations or prospects;

**26.2.2** Owner has all necessary power and authority to execute, deliver and perform its obligations under the Agreement, and each of the execution, delivery and performance by Owner of the Agreement has been duly authorized by all necessary action on the part of Owner, does not require any approval, except as has been heretofore obtained, of Owner's governing body or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of Owner, except for such as have been duly obtained, and does not contravene or constitute a default under its organizational documents or, to the best knowledge of Owner, any provision of applicable Law or any agreement, judgment, injunction, order, decree or other instrument binding upon Owner, or subject the Work, the Project or any component part thereof or the Site or any portion thereof to any Lien other than as contemplated or permitted by the Agreement; and Owner is in compliance with all applicable Laws and government approvals (i) which govern its ability to perform its obligations under the Agreement or (ii) the noncompliance with which would have a material adverse effect on its ability to perform its obligations under the Agreement;

**26.2.3** Neither the execution and delivery by Owner of the Agreement, nor the consummation by Owner of any of the transactions contemplated hereby, requires, with respect to Owner, the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any government authority, except such as are not yet required (as to which Owner has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore) or which have been duly obtained and are in full force and effect;

**26.2.4** Owner has duly and validly executed and delivered the Agreement and the Agreement constitutes a legal, valid and binding obligation of Owner enforceable against it in accordance with its terms; and

**26.2.5** There is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending or, to the best knowledge of Owner, threatened against or affecting Owner or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on Owner's ability to perform its obligations under the Agreement or on the validity or enforceability of the Agreement.

**ARTICLE XXVII.  
CONTRACTOR'S BUSINESS PRACTICES**

**27.1 Business Practices.** Each of Leighton, China/HK and China/Macau represents, warrants and covenants to Owner as follows:

**27.1.1** it has not taken and shall not take, and its parent companies, subsidiaries and affiliates and each of its and their respective officers, directors, employees, agents, representatives, owners and shareholders (collectively, the "Related Entities") have

not taken, and it shall cause its Related Entities not to take, any action, directly or indirectly, in connection with the preparation, negotiation, submission, procurement, execution or performance of any agreement, instrument or other document in any way relating to the Project or the Work that would constitute a violation of any applicable Laws of Macau or the United States of America (including the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA")) regarding business practices, bribery or corruption;

**27.1.2** it has complied and shall comply with, and its Related Entities have complied and it shall cause its Related Entities to comply with, any law or regulation under the applicable Laws of Macau or the United States that is or may be applicable to it (or any of its Related Entities) in the conduct of its business (or the business of any of its Related Entities) relating to the Project or the Work;

**27.1.3** mindful of the principles of the FCPA, it has not made, authorized or done anything in furtherance of, and shall not make, authorize or do anything in furtherance of, and its Related Entities have not made, authorized or done anything in furtherance of, and it shall cause its Related Entities not to make, authorize or do anything in furtherance of, any payment, loan, gift of money or anything of value, or promise or offer thereof, directly or indirectly, to or for the use or benefit of:

(a) any official or employee of Macau or any other government, or of any political subdivision, agency or instrumentality of any such governments, or to any political party or candidate or official thereof (each an "Official"); or

(b) any other person or entity if it knows or has reason to suspect that any part of such payment, loan, gift or thing of value will be directly or indirectly given or paid by such other person or entity for the purpose of (i) influencing an act or decision of an Official in his official capacity, (ii) inducing an Official to do or omit to do an act in violation of the lawful duty of such Official or (iii) inducing an Official to use his influence with that government to affect or influence any act or decision;

**27.1.4** it has not taken and shall not take, and its Related Entities have not taken and it shall cause its Related Entities not to take, any action in relation to the Project that would subject it (or its Related Entities) to liability or penalty under any and all applicable Laws, and it shall not take, and shall cause its Related Entities not to take, any action that would subject Owner or Contractor (or their respective Related Entities) to liability or penalty under any and all applicable Laws relating to the issuance of privileged business licenses or that would result in the revocation of any privileged business license held by Owner (or its Related Entities);

**27.1.5** it has ensured and shall ensure, and its Related Entities have ensured and it shall cause its Related Entities to ensure, that all invoices, financial settlements,

reports and billings in respect of the Work reflect properly the facts about all activities and transactions the subject thereof; and

27.1.6 it has notified and shall notify Owner promptly upon the discovery of any non-compliance with the foregoing.

Contractor agrees to indemnify Owner from and against all Actions that arise as a result of Contractor's breach of the foregoing provisions.

**ARTICLE XXVIII.  
GENERAL PROPRIETY**

**28.1 Alcoholic Beverages and Drugs.** The Contractor shall not, otherwise than in accordance with applicable Laws then in effect, import, sell, give, barter or otherwise dispose of any alcoholic liquor, or drugs, or permit to suffer any such importation, sale, gift, barter, or disposal by its agents, employees, Subcontractors or Vendors.

**28.2 Arms and Ammunition.** The Contractor shall not import, sell, give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or suffer any such importation, sale, gift, barter, or disposal by its agents, employees, Subcontractors or Vendors.

**28.3 Riotous and Disorderly Conduct.** The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among its employees, Subcontractors and Vendors and for the preservation of peace and protection of persons and property in the neighborhood of the Site.

**28.4 Epidemics.** In the event of any outbreak of illness of a epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government of Macau or the People's Republic of China, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

*[NO FURTHER TEXT ON THIS PAGE]*

**IN WITNESS** whereof this Agreement has been duly executed and delivered as a deed the day and year first above written.

EXECUTED as a Deed on behalf of )  
WYNN RESORTS (MACAU) S.A., a ) */s/ Stephen Wynn*  
company incorporated in the Macau )  
Special Administrative Region, by )  
**Stephen A. Wynn**, being a person who, )  
in accordance with the laws of that )  
territory, is acting under the authority of )  
the company in the presence of: )  
**Kim Sinatra**  
Signature and name of witness

**SIGNED, SEALED and DELIVERED** by Mr Joe  
Dujmovic as attorney for **LEIGHTON**  
**CONTRACTORS (ASIA) LIMITED** under power  
of attorney dated 18 August 2005, in the presence of:  
*/s/ Esther Palmer*

Name of Witness: Esther Palmer  
Occupation of Witness: Legal Assistant  
Address of Witness:  
Mallesons Stephen Jaques  
37<sup>th</sup> Floor, Two International Finance Centre  
8 Finance Street, Central, Hong Kong

) */s/ Joe Dujmovic*  
) By executing this deed the attorney states that the attorney  
) has received no notice of revocation of the power of  
) attorney  
)

**THE COMMON SEAL of CHINA STATE  
CONSTRUCTION ENGINEERING (HONG  
KONG) LIMITED** was hereunto affixed in the  
presence of:

) */s/ Zhao Yong*  
)  
)  
)  
)

Name: Zhou Yong  
Director

)  
)  
)



**EXECUTED** by Mr. Xu, Jianping  
in his capacity as auxiliar of, and with authority to  
bind, **CHINA CONSTRUCTION**  
**ENGINEERING (MACAU) COMPANY**  
**LIMITED**, a limited company incorporated in the  
Macau Special Administrative Region,  
pursuant to a resolution by the General  
Shareholders Meeting dated 6 September 2005

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**/s/ Jianping Xu**  
By executing this deed the attorney  
warrants that the signatory is duly  
authorized to execute this deed on  
behalf of CHINA CONSTRUCTION  
ENGINEERING (MACAU)  
COMPANY LIMITED

in the presence of: **/s/ Wang Hai**

Name of Witness: Wang Hai  
Occupation of Witness: Engineer  
Address of Witness:  
Rua do Campo, No. 78  
Edificio Comercial Zhang Kian  
19 andar  
Macau

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WYNN RESORTS (MACAU) S.A.

7.5% Subordinated Notes

Maximum Aggregate Amount – \$122,000,000

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AMENDED AND RESTATED NOTE PURCHASE AGREEMENT

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Dated September 14, 2005

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Wynn Resorts (Macau) S.A.  
335-341 Alameda Dr. Carlos D'Assumpção  
9th Floor, Hotline Center  
Macau

7.5% Subordinated Notes

September 14, 2005

Wynn Group Asia, Inc.  
3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Ladies and Gentlemen:

Wynn Resorts (Macau) S.A., a company organized under the laws of the Macau Special Administrative Region of the People's Republic of China (the "**Company**"), agrees with Wynn Group Asia, Inc., a Nevada corporation ("**you**" or "**Purchaser**") as follows:

The Company previously authorized the issuance and sale of at least \$122,000,000 aggregate principal amount of its 7.5% Subordinated Notes pursuant to that certain Note Purchase Agreement between the Company and the Purchaser dated September 14, 2004 ("**Original NPA**"). Under the Original NPA, the Company previously sold, and the Purchaser purchased, a note in the aggregate principal amount of \$50,000,000 pursuant to a certain "7.5% Subordinated Note Due 2012" dated August 24, 2005 (the "**Previous Note**").

The Company and the Purchaser desire to amend and restate the Original NPA in order to modify certain provisions related to the sale and purchase of the Previous Note and the Notes (as defined herein). The Company and the Purchaser agree that this Amended and Restated Note Purchase Agreement (this "**Agreement**") supercedes and replaces the Original NPA in its entirety.

#### **1. AUTHORIZATION OF NOTES**

The Company will authorize the issuance and sale of at least \$80,000,000, and up to \$122,000,000, aggregate principal amount of its 7.5% Subordinated Notes (the "**Notes**", such term to include the Previous Note and any notes issued in substitution for any notes issued pursuant to this Agreement). The principal amount of the Previous Note shall be included within the aggregate amount of Notes issued and sold, or to be issued and sold, by the Company hereunder. The Notes shall be substantially in the form set out in Exhibit 1, with such changes therefrom, if any, as may be agreed to by you and the Company (and the Previous Note shall be in the form so issued). Certain capitalized terms used in this Agreement are defined in Schedule A. References to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit to this Agreement.

#### **2. SALE AND PURCHASE OF NOTES**

Subject to the terms and conditions of this Agreement, the Company will issue and sell to you and you will purchase from the Company, at the Closing(s) provided for in Section 3,

Notes in at least \$80,000,000, and up to \$122,000,000, aggregate principal amount at the purchase price of 100% of the principal amount thereof. The Company and the Purchaser hereby acknowledge and agree that the Previous Note constitutes part of the Notes issued and sold, or to be issued and sold, under this Agreement and is included within aggregate principal amount of Notes issued and sold, or to be issued and sold by the Company and purchased by the Purchaser hereunder.

### 3. CLOSING

The sale and purchase of the Notes shall occur at the offices of the Company, in such amounts, on such days and at such times as requested by the Company in one or more written notices (each, a “**Drawdown Notice**”) delivered to you at least 5 days prior to the requested date, at one or more closings (each, a “**Closing**”), or in such other amount, at such other place, day or time as may be agreed upon by the Company and you. Each Drawdown Notice shall request a draw of at least \$5,000,000 and no more than \$72,000,000. At each Closing the Company will deliver to you the Note to be purchased by you at such Closing in the form of a single Note dated the date of such Closing and registered in your name, against delivery by you to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer for the account of the Company to such account number as may be notified in writing by the Company.

### 4. CONDITIONS TO CLOSING

Your obligation to purchase and pay for any additional Notes to be sold to you at the relevant Closing is subject to the fulfillment, prior to or at the relevant Closing, of the following conditions:

#### 4.1. Representations and Warranties

The representations and warranties of the Company in this Agreement shall be true and correct in all material respects on the date of this Agreement and at the time of the Closing (unless any such representation or warranty is expressly stated to be given as of a different date).

#### 4.2. Performance; No Default

The Company shall have performed and complied in all material respects with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the relevant Closing. There shall not have occurred and be continuing an Event of Default under this Agreement or the Senior Loan Facilities.

#### 4.3. Compliance Certificates

(a) Officer’s Certificate. The Company shall have delivered to you an Officer’s Certificate, dated the date of the Closing, certifying that the conditions specified in Sections 4.1 and 4.2 have been fulfilled.

(b) Secretary’s Certificate. The Company shall have delivered to you a certificate certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and the Agreement.

#### 4.4. Purchase Not Prohibited By Applicable Law, etc.

On the date of the Closing your purchase of Notes shall (i) not be prohibited by the laws and regulations of the Macau Special Administrative Region of the People’s Republic of China, the United States of America and the State of Nevada and (ii) not violate any applicable law or regulation that could reasonably be expected to restrain, prevent or otherwise impose materially adverse conditions on the issuance of the Notes.

#### **4.5. Base Equity**

Not less than \$230,000,000 shall have been irrevocably and unconditionally contributed as “Base Equity” (as defined in the Common Terms Agreement) to the Company.

#### **4.6. Litigation**

There shall not be pending or, to our knowledge, threatened, any action, suit, investigation, litigation or proceeding in any court or before any arbitrator or governmental instrumentality that would reasonably be expected to have a material adverse effect on the issuance of or performance of the Notes.

### **5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to you that:

#### **5.1. Organization; Power and Authority**

The Company has been duly organized and is validly existing as a company under the laws of the Macau Special Administrative Region of the People’s Republic of China, with power and authority to own or lease and operate its properties and conduct its business and to enter into and to perform its obligations under this Agreement and the Notes.

#### **5.2. Authorization, etc.**

The execution and delivery of, and the performance by the Company of its obligations under, this Agreement and the Notes have been duly and validly authorized by all necessary action on the part of the Company, and this Agreement has been, and each Note will be at the Closing, duly executed and delivered by the Company.

#### **5.3. Enforceability**

Assuming due and valid authorization, execution and delivery thereof by you, this Agreement is, and when issued and delivered in accordance with the terms of this Agreement, each Note will be, a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors’ rights generally and (ii) the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceeding therefor may be brought.

#### **5.4. No Material Adverse Change**

There is no action, suit, claim or proceeding pending or, to the knowledge of the Company, threatened (A) against the Company or (B) that has as the subject thereof any officer or director of, or property owned or leased by or to, the Company, in each case, before any court or administrative agency or otherwise where, in any such case, there is both a reasonable possibility of such action, suit or proceeding being determined adversely to the Company and where any such action, suit, claim or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change, or prevent, adversely affect, hinder or delay the consummation of the transactions contemplated by this Agreement or the performance by the Company of its obligations hereunder or under the Notes.

## **6. REPRESENTATIONS OF THE PURCHASER**

You represent and warrant to the Company that:

### **6.1. Organization; Power and Authority**

Purchaser has been duly organized and is validly existing as a corporation in good standing under the laws of its jurisdiction of organization, with power and authority to enter into and to perform its obligations under this Agreement.

### **6.2. Authorization, etc.**

The execution and delivery of, and the performance by Purchaser of its obligations under, this Agreement have been duly and validly authorized by all necessary action on its part, and Purchaser has duly executed and delivered this Agreement.

### **6.3. Enforceability**

Assuming due and valid authorization, execution and delivery thereof by the Company, this Agreement is a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws of general application affecting enforcement of creditors' rights generally and (ii) the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceeding therefor may be brought.

## **7. PREPAYMENT OF THE NOTES**

### **7.1. Mandatory Prepayments**

From and after the date on which all obligations under the Senior Loan Facilities have been discharged, the mandatory prepayment provisions of Schedule 9 of the Common Terms Agreement (or the prepayment provisions of any amended, supplemental, refinanced or replacement Senior Loan Facilities) shall apply *mutatis mutandis* to the Notes where the context permits such construction, and to the extent the context does not permit such construction, such provisions shall apply as closely as possible under the circumstances.

### **7.2. Mandatory Disposition or Redemption Pursuant to Gaming Laws**

Notwithstanding any other provision hereof, if any Gaming Authority requires a holder or beneficial owner of Notes to be licensed, qualified or found suitable under any applicable Gaming Law and the holder or beneficial owner (1) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the Gaming Authority), or (2) is notified by a Gaming Authority that it shall not be licensed, qualified or found suitable, the Company shall have the right, at its option, to:

(a) require the holder or beneficial owner to dispose of its Notes within 30 days (or such lesser period as required by the Gaming Authority) following the earlier of:

- (1) the termination of the period described above for the holder or beneficial owner to apply for a license, qualification or finding of suitability; or
- (2) the receipt of the notice from the Gaming Authority that the holder or beneficial owner shall not be licensed, qualified or found suitable by the Gaming Authority; or



(b) redeem the Notes of the holder or beneficial owner at a redemption price equal to:

- (1) the price determined by the Gaming Authority; or
- (2) if the Gaming Authority does not determine a price, the lesser of:
  - (A) the principal amount of the Notes; and
  - (B) the price that the holder or beneficial owner paid for the Notes,

and in the case of (A) or (B), together with accrued and unpaid interest on the Notes to the earlier of (1) the date of redemption or such earlier date as is required by the Gaming Authority or (2) the date of the finding of unsuitability by the Gaming Authority, which may be less than 30 days following the notice of redemption. Immediately upon a determination by a Gaming Authority that a holder or beneficial owner of Notes shall not be licensed, qualified or found suitable, the holder or beneficial owner shall not have any further rights with respect to the Notes to:

(i) exercise, directly or indirectly, through any Person, any right conferred by the Notes, this Agreement or the Deed of Appointment and Priority; or

(ii) receive any interest or any other distribution or payment with respect to the Notes, or any remuneration in any form from the Company for services rendered or otherwise, except the redemption price of the Notes.

The Company is not required to pay or reimburse any holder or beneficial owner of Notes who is required to apply for such license, qualification or finding of suitability for the costs relating thereto. Those expenses shall be the obligation of the holder or beneficial owner.

### **7.3. Optional Prepayments**

The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes at 100% of the principal amount so prepaid, without premium. The Company will give you written notice of each optional prepayment under this Section 7.3 not less than 7 days and not more than 30 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, and the interest to be paid on the prepayment date with respect to such principal amount being prepaid.

### **7.4. Maturity; Surrender, etc.**

In the case of each prepayment of Notes pursuant to this Section 7, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled.

## **8. COVENANTS OF THE COMPANY**

### **8.1. Senior Loan Facilities Covenants**

The covenants of Schedule 5 of the Common Terms Agreement (or the covenants of any amended, supplemented, refinanced or replacement Senior Loan Facilities) shall apply *mutatis mutandis* to the Notes where the context permits such construction, and to the extent the context does not permit such construction, such provisions shall apply as closely as possible under the

circumstances. Any and all waivers, consents or approvals made or given, or deemed given, by the holders of the Senior Indebtedness (or any agent or adviser acting on their behalf) under the Senior Loan Facilities shall apply to the Notes with the same effect as if the waiver had been given by the holders of the Notes.

## **8.2. Aggregate Principal Amount of Senior Indebtedness**

Notwithstanding Section 8.1, the Company shall not amend, supplement, refinance or replace the Senior Loan Facilities such that the principal amount of funded Senior Indebtedness outstanding at any time exceeds \$1,200,000,000 (or if the Company incurs Financial Indebtedness (as defined in the Common Terms Agreement) permitted under paragraph 2(f) of Schedule 5, Part B of the Common Terms Agreement, \$1,200,000,000 plus an amount being 150% of the aggregate amount of such Financial Indebtedness incurred by the Company).

## **9. COVENANTS OF THE HOLDERS OF NOTES**

It is the express intention of the parties that the Company is entitled to have outstanding at any time up to \$1,200,000,000 (or if the Company incurs Financial Indebtedness (as defined in the Common Terms Agreement) permitted under paragraph 2(f) of Schedule 5, Part B of the Common Terms Agreement, \$1,200,000,000 plus an amount being 150% of the aggregate amount of such Financial Indebtedness incurred by the Company) aggregate principal amount of funded Senior Indebtedness. To this end, each holder of Notes shall cooperate with the Company in its incurrence of Senior Indebtedness by taking all actions requested by the Company to facilitate such incurrence, including, without limitation, entering into intercreditor agreements that, taken as a whole, are not less favorable to the holders of Notes than the terms of the Deed of Appointment and Priority.

## **10. EVENTS OF DEFAULT**

The events of default in Schedule 10 of the Common Terms Agreement (or the events of default of any amended, supplemented, refinanced or replacement Senior Loan Facilities) (each, an **“Event of Default”**) shall apply *mutatis mutandis* to the Notes where the context permits such construction, and to the extent the context does not permit such construction, such provisions shall apply as closely as possible under the circumstances. Any and all waivers of a Default or an Event of Default given, or deemed given, by the holders of the Senior Indebtedness (or any agent or adviser acting on their behalf) under the Senior Loan Facilities shall apply to the Notes with the same effect as if the waiver had been given by the holders of the Notes.

## **11. REMEDIES ON DEFAULT, ETC.**

### **11.1. Deed of Appointment and Priority**

No holder of Notes may exercise any rights or remedies or take any action in respect of the breach of any provision of this Agreement or the Notes or upon the occurrence and continuation of an Event of Default except as provided in the Deed of Appointment and Priority (or the provisions of any amended, supplemented, refinanced or replacement agreement governing intercreditor arrangements). Any proceeds from the exercise of remedies in accordance with the Deed of Appointment and Priority shall be applied in accordance with the terms of the Deed of Appointment and Priority (or the provisions of any amended, supplemented, refinanced or replacement agreement governing intercreditor arrangements).

## **12. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES**

### **12.1. Registration of Notes**

The Company shall keep at its principal executive office a register for the registration (and registration of transfers) of Notes. The name and address of each holder of Notes, and, subject to Section 12.2, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary.

### **12.2. Transfer and Exchange of Notes**

Except as provided in the Deed of Appointment and Priority or in Section 7.2 hereof, the rights of each holder of Notes under this Agreement and the Notes may not be assigned or transferred without the consent of the holders of the Senior Indebtedness, such consent not to be unreasonably withheld. Except as provided in the Deed of Appointment and Priority, the rights of each holder of Notes under this Agreement and the Notes may not be assigned or transferred without the prior written consent of the Company. Subject to compliance with applicable law, obtaining the requisite consents and to the execution of deeds of accession acceptable to the holders of the Senior Indebtedness and the Company, upon surrender of any Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Each Note may be transferred only in whole, and not in part. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representations set forth in Schedule B as of the date of transfer and shall be deemed to have agreed to, and shall be subject to, all terms and provisions of this Agreement and the Notes.

### **12.3. Replacement of Notes**

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note, and

(a) in the case of loss, theft or destruction, of an indemnity reasonably satisfactory to it, or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

### **13. PAYMENTS ON NOTES**

#### **13.1. Method and Place of Payment**

The Company will pay, or arrange for payment of, all sums becoming due on such Note for principal and interest by wire transfer of immediately available funds to an account specified in writing by the holder of such Note. Upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, you shall surrender such Note for cancellation, promptly after any such request, to the Company at its principal executive office. Prior to any sale or other disposition of any Note held by you, you will surrender such Note to the Company in exchange for a new Note or Notes in accordance with Section 12.2.

All payments made by the Company hereunder shall be made irrespective of, and without any deduction for, any setoff, counterclaim or withholding. If any amount payable hereunder is required by applicable law to be withheld by the Company, then the Company shall pay such additional amount to the Purchaser so that the net amount received by the Purchaser shall equal the payment due to the Purchaser without regard to the amount so withheld.

### **14. EXPENSES, ETC.**

#### **14.1. Transaction Expenses**

All costs and expenses incurred by the Purchaser in connection with this Agreement and the consummation of the transactions contemplated hereby shall be paid by the Purchaser, and all costs and expenses incurred by the Company in connection with this Agreement and the consummation of the transactions contemplated hereby shall be paid by the Company.

### **15. ENTIRE AGREEMENT**

This Agreement, the Notes and the Deed of Appointment and Priority, embody the entire agreement and understanding between you and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

### **16. AMENDMENT AND WAIVER**

#### **16.1. Requirements**

Except as otherwise provided in Sections 8 and 10, this Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3 or 4 hereof will be effective as to you unless consented to by you in writing, and (b) no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Sections 8 and 10, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest on the Notes, or (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver.

#### **16.2. Binding Effect, etc.**

Any amendment or waiver consented to as provided in this Agreement applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No course of dealing between the Company and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any

holder of such Note. As used herein, the term “**this Agreement**” and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

## **17. NOTICES**

All notices and communications provided for hereunder shall be in writing and either hand delivered in person or sent (a) by facsimile if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid) or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent or hand delivered:

- (i) if to you, at the address specified on the first page of this Agreement, or at such other address as you shall have specified to the Company in writing,
- (ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or
- (iii) if to the Company, to the Company at its address set forth on the first page of this Agreement beginning hereof to the attention of the General Counsel, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 17 will be deemed given on the third Business Day after transmittal.

## **18. CONFIDENTIAL INFORMATION**

For the purposes of this Section 18, “**Confidential Information**” means information delivered to you or your representatives by or on behalf of the Company in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature or confidential information of the Company or any Affiliate of the Company, provided, that such term does not include information that (a) was publicly known prior to the time of such disclosure, or (b) subsequently becomes publicly known through no act or omission by you or any Person acting on your behalf. You will maintain the confidentiality of such Confidential Information and not disclose it to any other Person; provided, that you may deliver or disclose Confidential Information to (i) your directors, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by your Notes), (ii) your financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 18, (iii) any other Person to which such delivery or disclosure may be necessary or appropriate (A) to effect compliance with any law, rule, regulation or order applicable to you, (B) in response to any subpoena or other legal process, (C) in connection with any litigation to which you are a party, or (D) as may be provided for in the Deed of Appointment and Priority.

Notwithstanding anything to the contrary contained herein, you and each of your representatives may disclose to any person, without limitation, the “tax treatment” and “tax structure” (in each case, within the meaning of U.S. Treasury Regulation Section 1.6011-4) of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analysis) that are provided to you and your representatives relating to such tax treatment and tax structure

## **19. CROSS ACCELERATION**

If the maturity of the Senior Indebtedness is accelerated following the occurrence of an event of default thereunder, the maturity of the Notes shall be accelerated to the maturity date of the Senior Indebtedness upon receipt by the Company of a written notice signed by the Required Holders stating

their election to accelerate the maturity of the Notes. Any exercise of rights or remedies by the holders of the Notes shall be subject to the provisions of Section 11.

## **20. MISCELLANEOUS**

### **20.1. Security**

The performance by the Company of its obligations under the Notes is secured as set forth in the Deed of Appointment and Priority.

### **20.2. Subordination**

The obligations of the Company under the Notes and this Agreement, and all security interests, liens and encumbrances granted to secure such obligations, are subordinated as set forth in the Deed of Appointment and Priority.

### **20.3. Successors and Assigns**

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective permitted successors and assigns.

### **20.4. Payments Due on Non-Business Days**

Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

### **20.5. Severability**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

### **20.6. Construction**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

### **20.7. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**20.8. Governing Law, Jurisdiction**

This Agreement and the Notes shall be governed by and construed in accordance with the internal laws of the State of New York including, without limitation, Sections 5-1401 and 5-1402 of the New York general obligations law and Rule 327(b) of the New York Civil Practice Laws and Rules. The Company and Purchaser hereby irrevocably submit to the jurisdiction of any New York state court sitting in the Borough of Manhattan in the City of New York or any federal court sitting in the Borough of Manhattan in the City of New York in respect of any suit, action or proceeding arising out of or relating to this Agreement or the Notes, and irrevocably accepts for itself and in respect of its property, generally and unconditionally, jurisdiction of the aforesaid courts. The Company and Purchaser irrevocably waive, to the fullest extent they may effectively do so under applicable law, any objection which they may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each of the Company and the Purchaser hereby irrevocably appoints CT Corporation System as its authorized agent on which any and all legal process related to this Agreement or the Notes may be served in any such action, suit or proceeding brought in any New York state court sitting in the Borough of Manhattan in the City of New York or any federal court sitting in the Borough of Manhattan in the City of New York.

\* \* \* \* \*

*[Signatures Appear on Following Page]*

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Company, whereupon the foregoing shall become a binding agreement between you and the Company dated as of the first day written above.

Very truly yours,

WYNN RESORTS (MACAU) S.A.

By: \_\_\_\_\_ /s/ **MATT MADDOX**

Name: **Matt Maddox**

Title: **CFO**

ACKNOWLEDGED AND AGREED:

WYNN GROUP ASIA, INC.

By: \_\_\_\_\_ /s/ **MATT MADDOX**

Name: **Matt Maddox**

Title: **Attorney**



**DEFINED TERMS**

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

**“Affiliate”** means, at any time, and with respect to any Person, (a) any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, and (b) any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interests of the Company or any Subsidiary or any corporation of which the Company and its Subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interests. As used in this definition, **“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Company.

**“Agreement”** is defined in the third paragraph of this Agreement.

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York or the Macau Special Administrative Region of the People’s Republic of China are required or authorized to be closed.

**“Closing”** is defined in Section 3.

**“Common Terms Agreement”** means the Common Terms Agreement, as amended, dated as of September 14, 2004, by and among the Company, the holders of the Senior Indebtedness and the other parties thereto, relating to the financing of the Company’s proposed hotel-casino resort in Macau.

**“Company”** is defined in the first paragraph of this Agreement.

**“Confidential Information”** is defined in Section 18.

**“Deed of Appointment and Priority”** means the Deed of Appointment and Priority, as amended, dated as of September 14, 2004, by and among the Company, the Purchaser and the other parties thereto.

**“Event of Default”** is defined in Section 10.

**“Gaming Authority”** means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of the United States federal government, any foreign government, any state, province or city or other political subdivision or otherwise, whether now or hereafter in existence, including the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, and similar or analogous agency or authority in the Macau Special Administrative Region of the People’s Republic of China, and any other applicable gaming regulatory authority or agency, in each case, with authority to regulate any gaming operation (or proposed gaming operation) owned, managed or operated by the Company or any of its Affiliates.

**“Gaming Law”** means the gaming laws, rules, regulations or ordinances of any jurisdiction or jurisdictions to which the Company or any of its Affiliates is, or may be at any time after the date hereof, subject.

**“holder”** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company.

**“Material Adverse Change”** means a material adverse change in the business, properties, assets, operations or financial condition of the Company and its subsidiaries taken as a whole, whether or not occurring in the ordinary course of business.

**“Notes”** is defined in Section 1.

**“Officer’s Certificate”** means a certificate of the President, General Manager, Chief Financial Officer, Treasurer or any Vice President of the Company.

**“Original NPA”** is defined in the second paragraph of this Agreement.

**“Performance Bond Facility Agreement”** means the bank reimbursement agreement dated September 14, 2004, by and between the Company and Banco Nacional Ultramarino, S.A.

**“Person”** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

**“Previous Note”** is defined in the second paragraph of this Agreement.

**“Purchaser”** is defined in the first paragraph of this Agreement.

**“Required Holders”** means, at any time, the holders of in excess of 50% in principal amount of the Notes at the time outstanding.

**“\$”** denotes the lawful currency of the United States of America.

**“Securities Act”** means the Securities Act of 1933, as amended.

**“Senior Loan Facilities”** means the credit facilities, loan agreements, letters of credit or other agreements pursuant to which Senior Indebtedness is incurred, and initially includes the Senior Finance Documents (as defined in the Common Terms Agreement).

**“Senior Indebtedness”** means indebtedness designated by the Company in an amount funded at any given time not in excess of \$1,200,000,000 (or if the Company incurs Financial Indebtedness (as defined in the Common Terms Agreement) permitted under paragraph 2(f) of Schedule 5 Part B of the Common Terms Agreement, \$1,200,000,000 plus an amount being 150% of the aggregate amount of such Financial Indebtedness incurred by the Company) (exclusive of any indebtedness under the “Performance Bond Facility Agreement” (as defined in the Common Terms Agreement)), which shall rank senior to the Notes in accordance with the Deed of Appointment and Priority.

**PURCHASE FOR INVESTMENT**

*(To be made by a transferee Purchaser)*

Purchaser is knowledgeable, sophisticated and experienced in business and financial matters; it has previously invested in securities similar to the Notes and it acknowledges that the Notes are transferable only under limited circumstances; it is aware that its investment in the Notes is a speculative investment that has limited liquidity and is subject to the risk of complete loss; it is able to bear the economic risk of its investment in the Notes and is able to afford the complete loss of such investment. Purchaser has been given a full opportunity to ask questions of, and to receive answers from, the Company and its representatives concerning Purchaser's investment in the Notes, the business of the Company, and such other information as Purchaser desires in order to evaluate an investment in the Notes, and all such questions have been answered to the full satisfaction of Purchaser. Purchaser has been furnished with such information about the Company's assets, operations, and business activities which Purchaser has requested and which Purchaser considers necessary or relevant to enable it to make a decision about its investment in the Notes. Purchaser is an "accredited investor" as defined in Rule 501 promulgated pursuant to the Securities Act. Purchaser acknowledges that the Notes are restricted securities and may not be transferred without registration under the Securities Act and applicable state securities or pursuant to an exemption therefrom.

## FORM OF NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR ANY FOREIGN OR STATE SECURITIES LAWS. NO SALE OR DISTRIBUTION OF THIS NOTE MAY BE EFFECTED OTHER THAN PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933 OR FOREIGN OR STATE SECURITIES LAWS. THIS NOTE IS SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN THE NOTE PURCHASE AGREEMENT PURSUANT TO WHICH IT WAS ISSUED.

Wynn Resorts (Macau) S.A.

7.5% SUBORDINATED NOTE DUE

[\$ [ ]

[Date]

FOR VALUE RECEIVED, the undersigned, Wynn Resorts (Macau) S.A. (herein called the "Company"), a company organized under the laws of the Macau Special Administrative Region of the People's Republic of China, hereby promises to pay to Wynn Group Asia, Inc., or registered assigns, the principal sum of [ ] UNITED STATES DOLLARS (US\$[ ]) on the Maturity Date (as defined below), with interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid balance thereof at the rate of 7.5% per annum from the date hereof, payable semiannually, on the [ ] day of [ ] and [ ] in each year, commencing with the [ ] or [ ] next succeeding the date hereof, until the principal hereof shall have become due and payable; provided, that if the Company is prohibited from making any interest payment(s) pursuant to the terms of the Senior Loan Facilities, the amount that otherwise would have been paid on such interest payment date(s) shall be paid on the next interest payment date, together with interest thereon from the date of the initial missed interest payment date to the date of payment on which the Company is not prohibited from making such interest payment. "Maturity Date" means the later of (x) [insert date corresponding to the seventh anniversary of the issuance of the first note issued pursuant to the Note Purchase Agreement] and (y) [insert date 6 months after initial scheduled maturity date of Senior Loan Facilities]; provided, that if any amounts are outstanding under the Performance Bond Facility Agreement on what would otherwise be the maturity date, the maturity date shall be the date 30 days after payment of such outstanding amount.

Payments of principal of and interest with respect to this Note are to be made in lawful money of the United States of America at [ ] or at such other place as provided in the Note Purchase Agreement referred to below.

This Note was issued pursuant to an Amended and Restated Note Purchase Agreement, dated as of September \_\_\_\_\_, 2005 (as from time to time amended, the "Note Purchase Agreement"), between the Company and the Purchaser and is entitled to the benefits and is subject to the obligations therein. Each transferee holder of this Note will be deemed, by its acceptance hereof, to have made the representations set forth in Schedule B to the Note Purchase Agreement as of the

date of transfer, and each holder shall be deemed to have agreed to, and shall be subject to, all terms and provisions of the Note Purchase Agreement and the Notes.

The Company will make required payments of principal as specified in the Note Purchase Agreement. This Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement.

If the maturity of the Senior Loan Facilities is accelerated as a result of the occurrence of an event of default thereunder, the maturity of the Notes shall be accelerated to the maturity date of the Senior Loan Facilities upon receipt by the Company of a written notice signed by the Required Holders stating their election to accelerate the maturity of the Notes.

No holder of this Note may exercise any rights or remedies or take any action in respect of the breach of any provision of the Note Purchase Agreement or this Note or upon the occurrence and continuation of an Event of Default except as provided in the Deed of Appointment and Priority (or the provisions of any amended, supplemented, refinanced or replacement agreement governing intercreditor arrangements). Any proceeds from the exercise of remedies in accordance with the Deed of Appointment and Priority shall be applied in accordance with the terms of the Deed of Appointment and Priority (or the provisions of any amended, supplemented, refinanced or replacement agreement governing intercreditor arrangements).

The obligations of the Company under this Note and the Note Purchase Agreement, and all security interests, liens and encumbrances granted to secure such obligations, are subordinated as set forth in the Deed of Appointment and Priority.

This Note shall be governed by and construed in accordance with the internal laws of the State of New York including, without limitation, Sections 5-1401 and 5-1402 of the New York general obligations law and Rule 327(b) of the New York Civil Practice Laws and Rules. By its acceptance hereof, the holder irrevocably submits to the jurisdiction of any New York state court sitting in the Borough of Manhattan in the City of New York or any federal court sitting in the Borough of Manhattan in the City of New York in respect of any suit, action or proceeding arising out of or relating to the Note Purchase Agreement or this Note, and irrevocably accepts for itself and in respect of its property, generally and unconditionally, jurisdiction of the aforesaid courts. By its acceptance hereof, the holder hereby irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Note Purchase Agreement.

WYNN RESORTS (MACAU) S.A.

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

**DATED 14 SEPTEMBER 2005**

**WYNN RESORTS (MACAU) S.A.**  
as Company

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Hotel Facility Agent

and

**CERTAIN FINANCIAL INSTITUTIONS**  
as Hotel Facility Lenders

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**HOTEL FACILITY AGREEMENT  
AMENDMENT AGREEMENT**

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**THIS AGREEMENT** is made on 14 September 2005 between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Hotel Facility Agent**”); and
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Hotel Facility Lenders.

**RECITALS:**

- (A) The Company proposes to expand the Original Project.
- (B) The Secured Parties have agreed to amend certain Finance Documents and enter into additional Finance Documents and the Lenders have agreed to increase the size of certain of the Facilities originally provided thereunder in connection with the Expansion.
- (C) It has been agreed to amend the Hotel 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 referred to set out or referred to in the Schedule 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.

**2. AMENDMENT**

The Hotel Facility Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Hotel Facility Agreement*).

**3. CONTINUITY AND FURTHER ASSURANCE**

**3.1 Continuing obligations**

The provisions of the Hotel 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 Hotel 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 is governed by English law.

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

**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: /s/ *Matthew Maddox*

Address: 335-341 Alameda Dr. Carlos d' Assumpção  
9<sup>th</sup> Floor  
Hotline Center  
Macau

Tel: (853) 889-966

Fax: (853) 329-966

Attention: Matt Maddox

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Tel: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**The Hotel Facility Agent**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5671/ (852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Michael Poon  
Risk & Agency

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5414/ (852) 2166-5344

Fax: (852) 2868-1874

Attention: Kenny Chan/ Elaine Tsang  
Commercial Back Office - Loans

**The Hotel Facility Lenders**

**BANK OF CHINA LIMITED MACAU BRANCH**

By: /s/ *Allen Fok* /s/ *Huang Miao*

Address: Avenida Doutor Mario Soares  
Bank of China Building  
Macau

Tel: (853) 792-1698/(853) 792-1659

Fax: (853) 792-1659

Attention: Wong Weng Tim/ Kuan Sio Keng

**AAREAL BANK AG**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: Paulinenstrasse 15  
65189 Wiesbaden  
Germany

Tel: (49) 611-348-3430/ (49) 611-348-3381

Fax: (49) 611-348-2757/ (49) 611-348-2246

Attention: Fei Mao-Sander/Alexander Schöneich

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**BAYERISCHE LANDESBANK, HONG KONG BRANCH**

By: /s/ *Stephan Schmidbauer* /s/ *Silvia Chin*  
Address: 19<sup>th</sup> Floor, Standard Chartered Bank Building  
4A Des Voeux Road, Central  
Hong Kong  
Tel: (852) 2978-8322/(852) 2978-8377  
Fax: (852) 2978-8352  
Attention: Doris Pang/Mary Chan

**INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED**

By: /s/ *Wilson Wan* /s/ *Kenneth Yung*  
Address: 33<sup>rd</sup> Floor, ICBC Tower  
3 Garden Road, Central  
Hong Kong  
Tel: (852) 3510-8682/ (852) 3510-8680  
Fax: (852) 2851-9361  
Attention: Amy Wong/Esther Cheng  
Loans Processing Department

**THE BANK OF EAST ASIA, LIMITED**

By: /s/ *William Chu* /s/ *Christine Wong*  
Address: 18<sup>th</sup> Floor  
10 Des Voeux Road Central  
Hong Kong  
Tel: (852) 3608-0963/ (852) 3608-0968  
Fax: (852) 3608-6133  
Attention: William Chu/Christine Wong  
Corporate Lending & Syndication Department  
Corporate Banking Division

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**SCHEDULE  
AMENDED HOTEL FACILITY AGREEMENT**

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**  
as Company

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Hotel Facility Agent

and

**THE HOTEL FACILITY LENDERS**  
referred to herein

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**HOTEL FACILITY AGREEMENT**  
(As amended by the Hotel Facility Agreement Amendment  
Agreement dated 14 September 2005)

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**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the “Company”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Hotel Facility Agent**”); and
- (3) **THE HOTEL FACILITY LENDERS** (as defined below).

**WHEREAS:**

The Hotel Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the Hotel Project 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**

**1.1 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 Hotel 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, Available Tranche C Commitment and Available Tranche D Commitment of such Hotel 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, the Available Tranche C Facility and the Available Tranche D Facility.

“**Available Tranche A Commitment**” means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche A Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) any amounts of the Available Tranche A Commitment of such Hotel Facility Lender 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;
- (b) the aggregate amount of Tranche A Advances which have been made by such Hotel Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche A Advance due to be made on or before the proposed Advance Date.



**“Available Tranche B Commitment”** means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche B Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) any amounts of the Available Tranche B Commitment of such Hotel Facility Lender 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;
- (b) the aggregate amount of Tranche B Advances which have been made by such Hotel Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche B Advance due to be made on or before the proposed Advance Date.

**“Available Tranche C Commitment”** means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche C Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) any amounts of the Available Tranche C Commitment of such Hotel Facility Lender 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;
- (b) the aggregate amount of Tranche C Advances which have been made by such Hotel Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche C Advance due to be made on or before the proposed Advance Date.

**“Available Tranche D Commitment”** means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche D Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) any amounts of the Available Tranche D Commitment of such Hotel Facility Lender 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;
- (b) the aggregate amount of Tranche D Advances which have been made by such Hotel Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche D 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 Hotel 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 Hotel 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 Hotel Facility Lenders at such time.

“**Available Tranche D Facility**” means, at any time, the aggregate amount of the Available Tranche D Commitments of all the Hotel 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 Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent.

“**HIBOR**” means, in relation to any Tranche B Advance or Tranche D Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for HK dollars or for the Interest Period for that Hotel Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Hotel 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 Hotel Facility Advance.

“**Hotel Base Debt Facility**” means the Tranche A Facility and the Tranche B Facility.

“**Hotel Contingent Debt Facility**” means the Tranche C Facility and the Tranche D Facility.

“**Hotel Facility**” means the Hotel Base Debt Facility and the Hotel Contingent Debt Facility.

“**Hotel Facility Advance**” means, as the context may require, a Tranche A Advance, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and “**Hotel Facility Advances**” shall mean each Tranche A Advance, Tranche B Advance, Tranche C Advance and Tranche D Advance or any of them.

“**Hotel Facility Lender**” means any commercial bank or financial institution which:

- (a) is named in Schedule 1 (*The Hotel Facility Lenders*); or
- (b) has become a party hereto 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.

“**Hotel Finance Documents**” means:

- (a) this Agreement;
- (b) the Common Terms Agreement;

- (c) any other Senior Finance Document to which a Hotel Facility Lender is a party in its capacity as a Hotel Facility Lender; and
- (d) any other document designated as such by the Hotel Facility Agent and the Company.

“**Hotel Finance Parties**” means the Hotel Facility Agent and the Hotel Facility Lenders.

“**Hotel Loan**” means the aggregate principal amount for the time being outstanding hereunder.

“**LIBOR**” means, in relation to any Tranche A Advance or Tranche C Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for US dollars or for the Interest Period for that Hotel Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Hotel 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 Hotel Facility Advance.

“**Majority Hotel Facility Lenders**” means:

- (a) before any Hotel Facility Advances have been made, a Hotel Facility Lender or Hotel Facility Lenders whose Available Commitments amount in aggregate to more than 50% of the Available Facility (or, if all Available Commitments have been reduced to zero, amounted in aggregate to more than 50% of the Available Facility immediately prior to the reduction); and
- (b) thereafter, a Hotel Facility Lender or Hotel Facility Lenders whose US dollar equivalent participations in the Hotel Facility Advances then outstanding (or, where all such Hotel Facility Advances have been repaid, immediately prior to such repayment) amount in aggregate to more than 50% of the US dollar equivalent of all Hotel Facility Advances then outstanding.

“**Margin**” means in relation to any Advance hereunder, 3.00% per annum but:

- (a) provided no Default has occurred and is continuing, the Margin shall be reduced to 2.75% per annum following the achievement of Substantial Completion and the satisfaction of the Opening Conditions in respect of the Original Project; and
- (b) if the first Quarterly Date has occurred, the Leverage Ratio as at the most recent Quarterly Date 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:

<u>Leverage Ratio</u>	<u>Margin</u>
Less than 1.5	2.00%
1.5 up to 2.0	2.50%
2.0 or above	2.75%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions 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, Société Générale and Citibank, N.A.; and
- (b) HIBOR, the principal Hong Kong offices of Deutsche Bank AG, Société Générale and Citibank, N.A.,

or such other bank or banks designated from time to time by the Hotel 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 British Bankers’ Association Interest Settlement Rate for US dollars for the relevant period, displayed on the appropriate page (being currently “LIBOR01”) of the Reuters Monitor Money Rates Service screen; and
- (b) HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the Hotel Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Hotel Facility Lenders.

“**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 Hotel 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 (*Grant of the Hotel Base Debt Facilities*).

“**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 Hotel 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 (*Grant of the Hotel Base Debt Facilities*).

“**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 Hotel Facility Lenders under the Tranche C Facility.

“**Tranche C Facility**” means the US dollar term loan facility granted to the Company under Clause 3.2.1 (*Grant of the Hotel Contingent Debt Facilities*).

“**Tranche D 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 Hotel Facility Lenders under the Tranche D Facility.

“**Tranche D Facility**” means the HK dollar term loan facility granted to the Company under Clause 3.2.2 (*Grant of the Hotel Contingent Debt Facilities*).

## 1.2 Interpretation

In this Agreement:

1.2.1 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;

1.2.2 any reference to the “**Hotel Facility Agent**” or “**Hotel 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

1.2.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

## 1.3 Third Party Rights

1.3.1 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*).

1.3.2 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.

1.3.3 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.

1.4 **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 Hotel 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 Mr Wong Chi Seng, his liability shall be limited to his 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 HOTEL FACILITY**

3.1 **Grant of the Hotel Base Debt Facilities**

3.1.1 **Tranche A Facility**

The Hotel 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 USD64,888,889.

3.1.2 **Tranche B Facility**

The Hotel 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 HKD353,953,439.

3.2 **Grant of the Hotel Contingent Debt Facilities**

3.2.1 **Tranche C Facility**

The Hotel 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 USD7,111,111.

3.2.2 **Tranche D Facility**

The Hotel 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 HKD38,789,418.

4. **PURPOSE**

The Company shall apply all amounts borrowed by it under the Hotel Facility to finance Project Costs incurred or to be incurred in connection with the Hotel Project.

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 HOTEL FACILITY**

6.1 **Drawdown of Advances**

The provisions of Clause 3 (*Drawdown of Advances*) and Clause 4.1 (*Hotel 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 Hotel Facility Lender's Participation**

6.2.1 Each Hotel 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.

6.2.2 Each Hotel 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.

6.2.3 Each Hotel 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.

6.2.4 Each Hotel Facility Lender will participate through its Facility Office in each Tranche D Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche D Commitment to the Available Tranche D Facility immediately prior to the making of that Tranche D Advance.

6.3 **Reduction of Available Commitment**

If a Hotel Lender's Available Tranche A Commitment or, as the case may be, Available Tranche B Commitment, Available Tranche C Commitment or Available Tranche D Commitment is reduced in accordance with the terms hereof or the Common Terms Agreement after the Intercreditor Agent or the Hotel Facility Agent has received an Advance Request for a Tranche A Advance or, as the case may be, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and such reduction was not taken into account in the Available Tranche A Facility or, as the case may be, the Available Tranche B Facility, the Available Tranche C Facility or the Available Tranche D Facility, then the amount of that Tranche A Advance or, as the case may be, Tranche B Advance, Tranche C Advance or Tranche D Advance shall be reduced accordingly.

**7. REPAYMENT**

**7.1 Repayment**

Subject to Clause 7.2 (*Final Maturity*), the Company shall repay the Hotel 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 Hotel Facility Advances and the aggregate HK dollar denominated Hotel Facility Advances outstanding as at the end of the last day of the Hotel Facility Availability Period.

**7.2 Final maturity**

The Company shall repay on the Final Repayment Date all amounts outstanding or due and payable under the Hotel Facility on that day.

**7.3 No re-borrowing**

The Company may not re-borrow any part of the Hotel Facility which is repaid.

**8. PREPAYMENT AND CANCELLATION**

All prepayments of Hotel 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**

**9.1 Calculation of Interest**

The rate of interest on each Hotel Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

9.1.1 the Margin; and

9.1.2 LIBOR (in the case of a Tranche A Advance or a Tranche C Advance) or HIBOR (in the case of a Tranche B Advance or a Tranche D Advance).

**9.2 Payment of interest**

Accrued interest on each Hotel Facility Advance is payable by the Company on the last day of each Interest Period relating to that Hotel Facility Advance.

**9.3 Default 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

### 11.1 Advances

Promptly, and in any event, not less than 4 Business Days before the proposed Advance Date for each Hotel Facility Advance, the Hotel Facility Agent shall notify each Hotel Facility Lender of the proposed amount of the relevant Hotel Facility Advance and the aggregate principal amount of the relevant Hotel Facility Advance allocated to such Hotel Facility Lender pursuant to Clause 6.2 (*Each Hotel Facility Lender's Participation*) and each Hotel Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Hotel Facility Agent for the account of the Company its said portion of such Hotel Facility Advance.

### 11.2 Interest rate determination

The Hotel Facility Agent shall promptly notify the Company and the Hotel Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

### 11.3 Changes to interest rates

The Hotel Facility Agent shall promptly notify the Company and the Hotel 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.

### 11.4 Interest 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 Hotel Facility Agent shall provide to the Company and each Hotel 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. FEES

### 12.1 Tranche A and Tranche C Commitment fees

The Company shall pay to the Hotel Facility Agent (for the account of each Hotel Facility Lender) in arrears a commitment fee in US dollars computed at the rate of 1.25% per annum on that Hotel Facility Lender's Available Tranche A Commitment and Available Tranche C Commitment for the Hotel Facility Availability Period.

### 12.2 Tranche B and Tranche D Commitment fees

The Company shall pay to the Hotel Facility Agent (for the account of each Hotel Facility Lender) in arrears a commitment fee in HK dollars computed at the rate of 1.25% per annum on that Hotel Facility Lender's Available Tranche B Commitment and Available Tranche D Commitment for the Hotel Facility Availability Period.

### 12.3 Payment

The accrued commitment fees are payable on the last day of each successive period of three months which ends during the Hotel Facility Availability Period, on the last day of

the Hotel Facility Availability Period and, in relation to any of the Tranche A Facility, the Tranche B Facility, the Tranche C Facility or the Tranche D Facility which is fully drawn or cancelled (in full or part), on the date it is fully drawn or the cancellation is effective (and, where the cancellation is as to only part of the Tranche A Available Commitment, the Tranche B Available Commitment, the Tranche C Available Commitment or the Tranche D Available Commitment, payment shall be made as of that date in respect of the commitment fee accrued in relation to that part).

**13. CHANGES TO THE PARTIES**

**13.1 Transfers by the Hotel Facility Agent**

The Hotel Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Hotel Finance Documents to a replacement Hotel 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 Hotel Finance Documents.

**13.3 Transfers by the Hotel Facility Lenders**

A Hotel Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Hotel 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 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 Hotel Facility Lender, the Company or, as the case may be, such Hotel Facility Lender shall make the same available to the Hotel 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 Hotel Facility Agent shall specify from time to time.

## 14.2 Partial Payments

14.2.1 If the Hotel Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Hotel Facility Lenders under the Hotel Finance Documents, the Hotel Facility Agent shall apply that payment towards the obligations of the Company under the Hotel Finance Documents in the following order:

- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Hotel 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 Hotel Facility Lenders under Clause 15.3 (*Indemnity to Hotel 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 Hotel 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 Hotel Facility Lenders under the Hotel Finance Documents;
- (e) **fifthly**, in or towards payment *pro rata* of all accrued but unpaid interest (including default interest) due to the Hotel Facility Lenders under the Hotel Finance Documents;
- (f) **sixthly**, in or towards payment *pro rata* of any principal due to the Hotel Facility Lenders under the Hotel Finance Documents but unpaid; and
- (g) **seventhly**, in or towards payment *pro rata* of any other sum due to the Hotel Facility Lenders under the Hotel Finance Documents but unpaid.

14.2.2 The Hotel Facility Agent shall, if so directed by the Majority Hotel 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 HOTEL 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 Hotel Facility Agent acting on the instructions of the Majority Hotel Facility Lenders.

**15.2 Failure to Give Instructions**

If the Hotel Facility Agent gives notice to the Hotel Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Hotel Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Hotel Facility Lender which fails to respond by the date and time so specified shall have its portion of the Hotel Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Hotel Facility Agent by the Majority Hotel Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Hotel Facility Advances outstanding, the Available Commitments and portion of Hotel Facility Advances of such Hotel Facility Lender shall be deducted).

**15.3 Indemnity to Hotel Facility Agent**

15.3.1 Each Hotel Facility Lender shall, rateably in accordance with its share of the US dollar equivalent of all outstanding Hotel Facility Advances (or, if no Hotel Facility Advance has been made, in accordance with its share of the US dollar equivalent of the total undrawn Available Commitment of all the Hotel Facility Lenders) for the time being (or, if all such Advances have been repaid or all Available Commitments reduced to zero, immediately prior to the repayment thereof or, as the case may be, such reduction), indemnify the Hotel Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Hotel Facility Agent (other than by reason of the negligence or wilful misconduct of the Hotel Facility Agent) in acting as Hotel Facility Agent under any of the Finance Documents (unless the Hotel 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 Hotel 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 Hotel Facility Lender, indemnify such Hotel Facility Lender in relation to any payment actually made by such Hotel 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 shall be 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 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 Hotel Finance Parties only. As a result, no Hotel 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 Hotel 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.

**SCHEDULE 1**  
**THE HOTEL FACILITY LENDERS**

<b>Hotel Facility Lender</b>	<b>Tranche A Commitment (USD)</b>	<b>Tranche B Commitment (HKD)</b>	<b>Tranche C Commitment (USD)</b>	<b>Tranche D Commitment (HKD)</b>
Bank of China Limited Macau Branch	—	308,891,711	—	33,851,146
Aareal Bank AG	28,839,507	—	3,160,493	—
Bayerische Landesbank, Hong Kong Branch	18,024,691	—	1,975,309	—
Industrial and Commercial Bank of China (Asia) Limited	18,024,691	—	1,975,309	—
The Bank of East Asia, Limited	—	45,061,728	—	4,938,272

**SCHEDULE 2**  
**REPAYMENT SCHEDULE**

<u>Repayment Date</u>	<u>Percentage (%)</u>
First Repayment Date	5.3750
Second Repayment Date	4.5000
Third Repayment Date	6.0000
Fourth Repayment Date	6.0000
Fifth Repayment Date	6.0000
Sixth Repayment Date	6.0000
Seventh Repayment Date	7.2500
Eighth Repayment Date	7.3750
Ninth Repayment Date	7.3750
Tenth Repayment Date	7.3750
Eleventh Repayment Date	7.7500
Twelfth Repayment Date	7.7500
Thirteenth Repayment Date	8.0000
Fourteenth Repayment Date	8.0000
Fifteenth Repayment Date	5.2500

**DATED 14 SEPTEMBER 2005**

**WYNN RESORTS (MACAU) S.A.**  
as Company

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Project Facility Agent

and

**CERTAIN FINANCIAL INSTITUTIONS**  
as Project Facility Lenders

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**PROJECT FACILITY AGREEMENT  
AMENDMENT AGREEMENT**

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**THIS AGREEMENT** is made on 14 September 2005 between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Project Facility Agent**”); and
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Project Facility Lenders.

**RECITALS:**

- (A) The Company proposes to expand the Original Project.
- (B) The Secured Parties have agreed to amend certain Finance Documents and enter into additional Finance Documents and the Lenders have agreed to increase the size of certain of the Facilities originally provided thereunder in connection with the Expansion.
- (C) It has been agreed to amend the Project Facility Agreement as set out below.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Incorporation of defined terms**

- (a) Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.
- (b) The principles of construction and rules of interpretation referred to set out or referred to in the Schedule 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.

**2. AMENDMENT**

The Project Facility Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Project Facility Agreement*).

**3. CONTINUITY AND FURTHER ASSURANCE**

**3.1 Continuing obligations**

The provisions of the Project 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 Project 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 this 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 is governed by English law.

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

**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: /s/ *Matthew Maddox*

Address: 335-341 Alameda Dr. Carlos d' Assumpção  
9<sup>th</sup> Floor  
Hotline Center  
Macau

Tel: (853) 889-966

Fax: (853) 329-966

Attention: Matt Maddox

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Tel: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**The Project Facility Agent**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5671/ (852) 2166-5665

Fax: (852) 2804-6215

Attention: Sunny Lui/ Michael Poon  
Risk & Agency

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5414/ (852) 2166-5344

Fax: (852) 2868-1874

Attention: Kenny Chan/ Elaine Tsang  
Commercial Back Office - Loans

**The Project Facility Lenders**

**BANK OF AMERICA, N.A.**

By: /s/ *Frederick Chin*

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2597-3910

Fax: (852) 2597-3914

Attention: Danny Chu

Copy to:

Bank of America, N.A.

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2847-5226/ (852) 2847-5897

Fax: (852) 2847-5886/ (852) 2847-5232

Attention: Brian Ho/Tiffany Lam

**DEUTSCHE BANK AG, HONG KONG BRANCH**

By: /s/ *Jocelyn Court* /s/ *Juhi Prasad*

Address: 45<sup>th</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-8130

Fax: (852) 2203-7241

Attention: Jackie Leung

Copy to:

Address: Floor 10  
60 Wall Street  
New York  
NY  
USA

Tel: (1) 212-250-6039

Fax: (1) 212-797-5690

Attention: MaryKay Coyle

And to:

Address: 51<sup>st</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-8047/(852) 2203-7463

Fax: (852) 2203-7215

Attention: Chris Gammons/Melissa Lu

---

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

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Attention: Kenny Chan  
Commercial Back Office - Loans

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Address: Level 38, 3 Pacific Place  
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Hong Kong

Tel: (852) 2166-5610/(852) 2166-5615

Fax: (852) 2804-6215

Attention: David Gore/Kitty Leung

**AOZORA BANK, LTD.**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: 3-1  
Kudan-Minami 1-chome  
Chiyoda-ku  
Tokyo 102-8660  
Japan

Tel: (81) 3-5212-9412/ (81) 3-3239-8038/ (81) 3-5212-9410

Fax: (81) 3-3263-9872/ (81) 3-3263-7284/ (81) 3-3263-9872

Attention: Emiko Sano/Kouji Amano/Akira Nozu

**BANCO NACIONAL ULTRAMARINO, S.A.**

By: /s/ *Herculano Sousa* /s/ *Artur Santos*

Address: Avenida de Almeida Ribeiro  
No. 22  
Macau

Tel: (853) 355-188/ (853) 355-828/ (853) 398-9134

Fax: (853) 355-800/ (853) 356-867

Attention: Ronald Kan Cheok Kuan/Vitor Rosário/Violet Choi

**WESTLB AG, HONG KONG BRANCH**

By: /s/ *Peter Geldart* /s/ *Mike Chung*

Address: 36<sup>th</sup> Floor, Bank of America Tower  
12 Harcourt Road  
Hong Kong

Tel: (852) 2842-0214/ (852) 2842-0436

Fax: (852) 2842-0290

Attention: William Ip/Florence Yip

Copy to:

Address: 36<sup>th</sup> Floor, Bank of America Tower  
12 Harcourt Road  
Hong Kong

Tel: (852) 2842-0458/ (852) 2842-0211

Fax: (852) 2842-0298

Attention: Jasper Wong/Angela Chen



---

**DBS BANK LTD., HONG KONG BRANCH**

By: /s/ *Peter Chan*

Address: 16<sup>th</sup> Floor, Man Yee Building  
68 Des Voeux Road Central  
Hong Kong

Tel: (852) 2848-3451/ (852) 2848-3452

Fax: (852) 2877-6703

Attention: Samuel Wong/Colum Ting  
Corporate Banking Middle Office

**THE ROYAL BANK OF SCOTLAND PLC**

By: /s/ *Sandra Pemberton*

Address: 50 Raffles Place  
#08-00, Singapore Land Tower  
Singapore 048623

Tel: (65) 6416-8734/ (65) 6416-8735

Fax: (65) 6223-2070

Attention: Grace Toh/Looi Yin Peng

**UNITED OVERSEAS BANK LIMITED**

By: /s/ *Chow Yew Hon*

Address: 25<sup>th</sup> Floor, Gloucester Tower  
The Landmark  
11 Pedder Street, Central  
Hong Kong

Tel: (852) 2820-9172/ (852) 2820-9167

Fax: (852) 2501-5738

Attention: Rosita Tse/Wanna So  
Credit Administration Department

**COMMERZBANK AKTIENGESELLSCHAFT, HONG KONG BRANCH**

By: */s/ Devlin Li* */s/ David Chan*

Address: 21<sup>st</sup> Floor, Hong Kong Club Building  
3A Chater Road, Central  
Hong Kong

Tel: (852) 2842-9605/ (852) 2842-9662

Fax: (852) 2842-9605/ (852) 2842-9609

Attention: Andreas Peter Kurtz/Sally Yuen

**ALLIED IRISH BANKS, p.l.c.**

By: */s/ David Gore* */s/ Sun Peng Lui*

Address: Trade Centre  
IFSC  
Dublin 1  
Ireland

Tel: (353) 1-641-7678

Fax: (353) 1-670-0064

Attention: Shane O'Neill  
Structured Finance

**STANDARD CHARTERED FIRST BANK KOREA LIMITED**

By: */s/ David Gore* */s/ Sun Peng Lui*

Address: 100 Gongpyung-dong  
Jongro-gu  
Seoul  
Korea

Tel: (82) 2-3702-4807

Fax: (82) 2-3702-4926

Attention: Gun Ko  
Corporate Finance, Project & Export Finance

---

**THE BANK OF NOVA SCOTIA**

By: /s/ **Brendan King**

Address: 25<sup>th</sup> Floor, United Centre  
95 Queensway  
Hong Kong

Tel: (852) 2861 4882

Fax: (852) 2527 2527

Attention: Caesar Ng

**BAYERISCHE HYPO- UND VEREINSBANK  
AG, HONG KONG BRANCH**

By: /s/ **Freddy Hung** /s/ **Edmond Chan**

Address: 13<sup>th</sup> Floor, Citic Tower  
1 Tim Mei Avenue, Central  
Hong Kong

Tel: (852) 2533-4100

Fax: (852) 2533-4700

Attention: Rita Hung

**HSB NORDBANK AG, HONG KONG BRANCH**

By: /s/ **Gilbert Yu** /s/ **Ulrich Gasser**

Address: 26<sup>th</sup> Floor  
Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2843-2665/ (852) 2843-2646

Fax: (852) 2845-9018

Attention: Stephen Chan/Bobby Kwok  
Banking Services

Copy to:

HSH Nordbank AG, Hong Kong Branch

By:

Address: 26<sup>th</sup> Floor  
Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2843-1019/ (852) 2843-2695

Fax: (852) 2845-9018

Attention: Gilbert Yu/Iris Wong

**BANCO COMERCIAL DE MACAU, S.A.**

By: /s/ **Sam Tou** /s/ **Kenneth Chan**

Address: Avenida da Praia Grande  
No. 572  
Macau

Tel: (853) 7910-861/ (853) 7910-273

Fax: (853) 580-967

Attention: Sam Tou/Ida Chau

**BANK OF SCOTLAND**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: 565 Fifth Avenue  
New York, NY 10017  
USA

Tel: (212) 450-0875/ (212) 450-0876/ (212) 450-0880

Fax: (212) 479-2807

Attention: Shirley Vargas/Victoria McFadden/Elizabeth Taturan

**BANCO ESPÍRITO SANTO DO ORIENTE, S.A.**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: Av. Dr. Mário Soares  
No. 323  
Bank of China Building  
28<sup>th</sup> Floor "A, E-F"  
Macau

Tel: (853) 7965-215/ (853) 7965-222/ (853) 7965-223

Fax: (853) 785-228

Attention: Sylvana Chan/Christine Lee

**CREDIT INDUSTRIEL ET COMMERCIAL, SINGAPORE  
BRANCH**

By: /s/ *Julia Tan* /s/ *Heng Seow Ee*

Address: 63 Market Street #15-01  
Singapore 048942

Tel: (65) 6231-9720

Fax: (65) 6536-7008

Attention: Kiang Kin Ngoh  
Credit Administration

**FAR EASTERN INTERNATIONAL BANK**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: 26<sup>th</sup> Floor, No.207, Sec. 2  
Tun Hwa S. Road, Taipei  
Taiwan, R.O.C.

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Attention: Chingh Siang Chen/Corrina Chen

---

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**NORDKAP BANK AG**

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Attention: Flavia Sennhauser

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**SCHEDULE**  
**AMENDED PROJECT FACILITY AGREEMENT**

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**  
as Company

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Project Facility Agent

and

**THE PROJECT FACILITY LENDERS**  
referred to herein

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**PROJECT FACILITY AGREEMENT**  
(As amended by the Project Facility Agreement Amendment  
Agreement dated 14 September 2005)

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**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Project Facility Agent**”); and
- (3) **THE PROJECT FACILITY LENDERS** (as defined below).

**WHEREAS:**

The Project Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the Projects 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**

**1.1 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 Project 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, Available Tranche C Commitment and Available Tranche D Commitment of such Project 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, the Available Tranche C Facility and the Available Tranche D Facility.

“**Available Tranche A Commitment**” means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche A Commitment” in Schedule 1 (*The Project Facility Lenders*) **less:**

- (a) any amounts of the Available Tranche A Commitment of such Project Facility Lender 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;
- (b) the aggregate amount of Tranche A Advances which have been made by such Project Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche A Advance due to be made on or before the proposed Advance Date.

**“Available Tranche B Commitment”** means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche B Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) any amounts of the Available Tranche B Commitment of such Project Facility Lender 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;
- (b) the aggregate amount of Tranche B Advances which have been made by such Project Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche B Advance due to be made on or before the proposed Advance Date.

**“Available Tranche C Commitment”** means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche C Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) any amounts of the Available Tranche C Commitment of such Project Facility Lender 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;
- (b) the aggregate amount of Tranche C Advances which have been made by such Project Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche C Advance due to be made on or before the proposed Advance Date.

**“Available Tranche D Commitment”** means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche D Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) any amounts of the Available Tranche D Commitment of such Project Facility Lender 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;
- (b) the aggregate amount of Tranche D Advances which have been made by such Project Facility Lender at such time; and
- (c) in relation to any Advance Request, the amount of any Tranche D 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 Project 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 Project 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 Project Facility Lenders at such time.

“**Available Tranche D Facility**” means, at any time, the aggregate amount of the Available Tranche D Commitments of all the Project 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 Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent.

“**HIBOR**” means, in relation to any Tranche B Advance or Tranche D Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for HK dollars or for the Interest Period for that Project Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Project 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 Project Facility Advance.

“**LIBOR**” means, in relation to any Tranche A Advance or Tranche C Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for US dollars or for the Interest Period for that Project Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Project 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 Project Facility Advance.

“**Majority Project Facility Lenders**” means:

- (a) before any Project Facility Advances have been made, a Project Facility Lender or Project Facility Lenders whose Available Commitments amount in aggregate to more than 50% of the Available Facility (or, if all Available Commitments have been reduced to zero, amounted in aggregate to more than 50% of the Available Facility immediately prior to the reduction); and
- (b) thereafter, a Project Facility Lender or Project Facility Lenders whose US dollar equivalent participations in the Project Facility Advances then outstanding (or, where all such Project Facility Advances have been repaid, immediately prior to such repayment) amount in aggregate to more than 50% of the US dollar equivalent of all Project Facility Advances then outstanding.

“**Margin**” means in relation to any Advance hereunder, 3.00% per annum but:

- (a) provided no Default has occurred and is continuing, the Margin shall be reduced to 2.75% per annum following the achievement of Substantial Completion and the satisfaction of the Opening Conditions in respect of the Original Project; and
- (b) if the first Quarterly Date has occurred, the Leverage Ratio as at the most recent Quarterly Date 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:

<u>Leverage Ratio</u>	<u>Margin</u>
Less than 1.5	2.00%
1.5 up to 2.0	2.50%
2.0 or above	2.75%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions 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.

“**Project Base Debt Facility**” means the Tranche A Facility and the Tranche B Facility.

“**Project Contingent Debt Facility**” means the Tranche C Facility and the Tranche D Facility.

“**Project Facility**” means the Project Base Debt Facility and the Project Contingent Debt Facility.

“**Project Facility Advance**” means, as the context may require, a Tranche A Advance, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and “**Project Facility Advances**” shall mean each Tranche A Advance, Tranche B Advance, Tranche C Advance and Tranche D Advance or any of them.

“**Project Facility Lender**” means any commercial bank or financial institution which:

- (a) is named in Schedule 1 (*The Project Facility Lenders*); or
- (b) has become a party hereto 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.

**“Project Finance Documents”** means:

- (a) this Agreement;
- (b) the Common Terms Agreement;
- (c) any other Senior Finance Document to which a Project Facility Lender is a party in its capacity as a Project Facility Lender; and
- (d) any other document designated as such by the Project Facility Agent and the Company.

**“Project Finance Parties”** means the Project Facility Agent and the Project Facility Lenders.

**“Project Loan”** means the aggregate principal amount for the time being outstanding hereunder.

**“Reference Banks”** means, in relation to:

- (a) LIBOR, the principal London offices of Deutsche Bank AG, Société Générale and Citibank, N.A.; and
- (b) HIBOR, the principal Hong Kong offices of Deutsche Bank AG, Société Générale and Citibank, N.A.,

or such other bank or banks designated from time to time by the Project 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 British Bankers’ Association Interest Settlement Rate for US dollars for the relevant period, displayed on the appropriate page (being currently “LIBOR01”) of the Reuters Monitor Money Rates Service screen; and
- (b) HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the Project Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Project Facility Lenders.

**“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 Project 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 (*Grant of the Project Base Debt Facilities*).

“**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 Project 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 (*Grant of the Project Base Debt Facilities*).

“**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 Project Facility Lenders under the Tranche C Facility.

“**Tranche C Facility**” means the US dollar term loan facility granted to the Company under Clause 3.2.1 (*Grant of the Project Contingent Debt Facilities*).

“**Tranche D 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 Project Facility Lenders under the Tranche D Facility.

“**Tranche D Facility**” means the HK dollar term loan facility granted to the Company under Clause 3.2.2 (*Grant of the Project Contingent Debt Facilities*).

## 1.2 Interpretation

In this Agreement:

1.2.1 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;

1.2.2 any reference to the “**Project Facility Agent**” or “**Project 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

1.2.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

## 1.3 Third Party Rights

1.3.1 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*).

1.3.2 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.

1.3.3 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.

#### 1.4 **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 Project 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 Mr Wong Chi Seng, his liability shall be limited to his 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 PROJECT FACILITY**

##### 3.1 **Grant of the Project Base Debt Facilities**

###### 3.1.1 **Tranche A Facility**

The Project 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 USD331,522,272.

###### 3.1.2 **Tranche B Facility**

The Project 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 HKD1,678,639,506.

##### 3.2 **Grant of the Project Contingent Debt Facilities**

###### 3.2.1 **Tranche C Facility**

The Project 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 USD36,331,208.

###### 3.2.2 **Tranche D Facility**

The Project 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 HKD183,960,494.

#### 4. **PURPOSE**

The Company shall apply all amounts borrowed by it under the Project Facility to finance Project Costs incurred or to be incurred in connection with the Projects.

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 PROJECT FACILITY**

6.1 **Drawdown of Advances**

The provisions of Clause 3 (*Drawdown of Advances*) and Clause 4.1 (*Project 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 Project Facility Lender's Participation**

6.2.1 Each Project 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.

6.2.2 Each Project 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.

6.2.3 Each Project 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.

6.2.4 Each Project Facility Lender will participate through its Facility Office in each Tranche D Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche D Commitment to the Available Tranche D Facility immediately prior to the making of that Tranche D Advance.

6.3 **Reduction of Available Commitment**

If a Project Lender's Available Tranche A Commitment or, as the case may be, Available Tranche B Commitment, Available Tranche C Commitment or Available Tranche D Commitment is reduced in accordance with the terms hereof or the Common Terms Agreement after the Intercreditor Agent or the Project Facility Agent has received an Advance Request for a Tranche A Advance or, as the case may be, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and such reduction was not taken into account in the Available Tranche A Facility or, as the case may be, the Available Tranche B Facility, the Available Tranche C Facility or the Available Tranche D Facility, then the amount of that Tranche A Advance or, as the case may be, Tranche B Advance, Tranche C Advance or Tranche D Advance shall be reduced accordingly.



**7. REPAYMENT**

**7.1 Repayment**

Subject to Clause 7.2 (*Final Maturity*), the Company shall repay the Project 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 Project Facility Advances and the aggregate HK dollar denominated Project Facility Advances outstanding as at the end of the last day of the Project Facility Availability Period.

**7.2 Final maturity**

The Company shall repay on the Final Repayment Date all amounts outstanding or due and payable under the Project Facility on that day.

**7.3 No re-borrowing**

The Company may not re-borrow any part of the Project Facility which is repaid.

**8. PREPAYMENT AND CANCELLATION**

All prepayments of Project 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**

**9.1 Calculation of Interest**

The rate of interest on each Project Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

9.1.1 the Margin; and

9.1.2 LIBOR (in the case of a Tranche A Advance or a Tranche C Advance) or HIBOR (in the case of a Tranche B Advance or a Tranche D Advance).

**9.2 Payment of interest**

Accrued interest on each Project Facility Advance is payable by the Company on the last day of each Interest Period relating to that Project Facility Advance.

**9.3 Default 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

### 11.1 Advances

Promptly, and in any event, not less than 4 Business Days before the proposed Advance Date for each Project Facility Advance, the Project Facility Agent shall notify each Project Facility Lender of the proposed amount of the relevant Project Facility Advance and the aggregate principal amount of the relevant Project Facility Advance allocated to such Project Facility Lender pursuant to Clause 6.2 (*Each Project Facility Lender's Participation*) and each Project Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Project Facility Agent for the account of the Company its said portion of such Project Facility Advance.

### 11.2 Interest rate determination

The Project Facility Agent shall promptly notify the Company and the Project Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

### 11.3 Changes to interest rates

The Project Facility Agent shall promptly notify the Company and the Project 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.

### 11.4 Interest 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 Project Facility Agent shall provide to the Company and each Project 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. FEES

### 12.1 Tranche A and Tranche C Commitment fees

The Company shall pay to the Project Facility Agent (for the account of each Project Facility Lender) in arrears a commitment fee in US dollars computed at the rate of 1.25% per annum on that Project Facility Lender's Available Tranche A Commitment and Available Tranche C Commitment for the Project Facility Availability Period.

### 12.2 Tranche B and Tranche D Commitment fees

The Company shall pay to the Project Facility Agent (for the account of each Project Facility Lender) in arrears a commitment fee in HK dollars computed at the rate of 1.25% per annum on that Project Facility Lender's Available Tranche B Commitment and Available Tranche D Commitment for the Project Facility Availability Period.

### 12.3 **Payment**

The accrued commitment fees are payable on the last day of each successive period of three months which ends during the Project Facility Availability Period, on the last day of the Project Facility Availability Period and, in relation to any of the Tranche A Facility, the Tranche B Facility, the Tranche C Facility or the Tranche D Facility which is fully drawn or cancelled (in full or part), on the date it is fully drawn or the cancellation is effective (and, where the cancellation is as to only part of the Tranche A Available Commitment, the Tranche B Available Commitment, the Tranche C Available Commitment or the Tranche D Available Commitment, payment shall be made as of that date in respect of the commitment fee accrued in relation to that part).

## 13. **CHANGES TO THE PARTIES**

### 13.1 **Transfers by the Project Facility Agent**

The Project Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Project Finance Documents to a replacement Project 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 Project Finance Documents.

### 13.3 **Transfers by the Project Facility Lenders**

A Project Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Project 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 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 Project Facility Lender, the Company or, as the case may be, such Project Facility Lender shall make the same available to the Project

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 Project Facility Agent shall specify from time to time.

## 14.2 Partial Payments

14.2.1 If the Project Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Project Facility Lenders under the Project Finance Documents, the Project Facility Agent shall apply that payment towards the obligations of the Company under the Project Finance Documents in the following order:

- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Project 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 Project Facility Lenders under Clause 15.3 (*Indemnity to Project 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 Project 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 Project Facility Lenders under the Project Finance Documents;
- (e) **fifthly**, in or towards payment *pro rata* of all accrued but unpaid interest (including default interest) due to the Project Facility Lenders under the Project Finance Documents;
- (f) **sixthly**, in or towards payment *pro rata* of any principal due to the Project Facility Lenders under the Project Finance Documents but unpaid; and
- (g) **seventhly**, in or towards payment *pro rata* of any other sum due to the Project Facility Lenders under the Project Finance Documents but unpaid.

14.2.2 The Project Facility Agent shall, if so directed by the Majority Project 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 PROJECT 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 Project Facility Agent acting on the instructions of the Majority Project Facility Lenders.

**15.2 Failure to Give Instructions**

If the Project Facility Agent gives notice to the Project Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Project Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Project Facility Lender which fails to respond by the date and time so specified shall have its portion of the Project Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Project Facility Agent by the Majority Project Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Project Facility Advances outstanding, the Available Commitments and portion of Project Facility Advances of such Project Facility Lender shall be deducted).

**15.3 Indemnity to Project Facility Agent**

15.3.1 Each Project Facility Lender shall, rateably in accordance with its share of the US dollar equivalent of all outstanding Project Facility Advances (or, if no Project Facility Advance has been made, in accordance with its share of the US dollar equivalent of the total undrawn Available Commitment of all the Project Facility Lenders) for the time being (or, if all such Advances have been repaid or all Available Commitments reduced to zero, immediately prior to the repayment thereof or, as the case may be, such reduction), indemnify the Project Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Project Facility Agent (other than by reason of the negligence or wilful misconduct of the Project Facility Agent) in acting as Project Facility Agent under any of the Finance Documents (unless the Project 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 Project 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 Project Facility Lender, indemnify such Project Facility Lender in relation to any payment actually made by such Project 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 shall be 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 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 Project Finance Parties only. As a result, no Project 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 Project 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.

**SCHEDULE 1**  
**THE PROJECT FACILITY LENDERS**

Project Facility Lender	Tranche A Commitment (USD)	Tranche B Commitment (HKD)	Tranche C Commitment (USD)	Tranche D Commitment (HKD)
Bank of America, N.A.	19,800,751	154,445,856	2,169,945	16,925,573
Deutsche Bank AG, Hong Kong Branch	19,800,750	154,445,855	2,169,946	16,925,574
Société Générale, Hong Kong Branch	19,800,750	154,445,855	2,169,946	16,925,574
Aozora Bank, Ltd.	39,601,501	—	4,339,891	—
Banco Nacional Ultramarino, S.A.	—	308,891,711	—	33,851,146
WestLB AG, Hong Kong Branch	27,037,037	98,002,821	2,962,963	10,740,035
DBS Bank Ltd., Hong Kong Branch	—	281,185,185	—	30,814,815
The Royal Bank of Scotland plc	—	246,037,037	—	26,962,963
United Overseas Bank Limited	28,839,506	—	3,160,494	—
Commerzbank Aktiengesellschaft, Hong Kong Branch	27,037,037	—	2,962,963	—
Allied Irish Banks, p.l.c.	22,530,864	—	2,469,136	—
Standard Chartered First Bank Korea Limited	31,543,210	—	3,456,790	—
The Bank of Nova Scotia	—	140,592,593	—	15,407,407
Bayerische Hypo- und Vereinsbank AG, Hong Kong Branch	18,024,691	—	1,975,309	—
HSH Nordbank AG, Hong Kong Branch	—	140,592,593	—	15,407,407

<u>Project Facility Lender</u>	<u>Tranche A Commitment (USD)</u>	<u>Tranche B Commitment (HKD)</u>	<u>Tranche C Commitment (USD)</u>	<u>Tranche D Commitment (HKD)</u>
Banco Comercial de Macau, S.A.	22,530,864	—	2,469,136	—
Bank of Scotland	13,518,519	—	1,481,481	—
Banco Espírito Santo do Oriente, S.A.	9,012,346	—	987,654	—
Crédit Industriel et Commercial, Singapore Branch	9,012,346	—	987,654	—
Far Eastern International Bank	9,012,346	—	987,654	—
Hana Bank Hong Kong Branch	7,209,877	—	790,123	—
Nordkap Bank AG	7,209,877	—	790,123	—



**SCHEDULE 2  
REPAYMENT SCHEDULE**

<u>Repayment Date</u>	<u>Percentage (%)</u>
First Repayment Date	5.3750
Second Repayment Date	4.5000
Third Repayment Date	6.0000
Fourth Repayment Date	6.0000
Fifth Repayment Date	6.0000
Sixth Repayment Date	6.0000
Seventh Repayment Date	7.2500
Eighth Repayment Date	7.3750
Ninth Repayment Date	7.3750
Tenth Repayment Date	7.3750
Eleventh Repayment Date	7.7500
Twelfth Repayment Date	7.7500
Thirteenth Repayment Date	8.0000
Fourteenth Repayment Date	8.0000
Fifteenth Repayment Date	5.2500

**DATED 14 SEPTEMBER 2005**

**WYNN RESORTS (MACAU) S.A.**  
as Company

and

**CERTAIN FINANCIAL INSTITUTIONS**  
as Revolving Credit Facility Lenders

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**REVOLVING CREDIT FACILITY AGREEMENT  
AMENDMENT AGREEMENT**

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**THIS AGREEMENT** is made on 14 September 2005 between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”); and
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Revolving Credit Facility Lenders.

**RECITALS:**

- (A) The Company proposes to expand the Original Project.
- (B) The Secured Parties have agreed to amend certain Finance Documents and enter into additional Finance Documents and the Lenders have agreed to increase the size of certain of the Facilities originally provided thereunder in connection with the Expansion.
- (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**

- (a) Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.
- (b) 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.

**1.2 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**

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 any Revolving Credit Facility Lender 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 17 (*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 is 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/ *Matthew Maddox*

Address: 335-341 Alameda Dr. Carlos d' Assumpção  
9<sup>th</sup> Floor  
Hotline Center  
Macau

Tel: (853) 889-966

Fax: (853) 329-966

Attention: Matt Maddox

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Tel: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**The Revolving Credit Facility Lenders**

**BANCO NACIONAL ULTRAMARINO, S.A.**

By: /s/ *Herculano Sousa* /s/ *Artur Santos*

Address: Avenida de Almeida Ribeiro  
No. 22  
Macau

Tel: (853) 355-188/ (853) 355-828/ (853) 398-9134

Fax: (853) 355-800/ (853) 356-867

Attention: Ronald Kan Cheok Kuan/Vitor Rosário/Violet Choi

**BANCO COMERCIAL DE MACAU, S.A.**

By: /s/ **Sam Tou** /s/ **Kenneth Chan**

Address: Avenida da Praia Grande  
No. 572  
Macau

Tel: (853) 7910-861/ (853) 7910-273

Fax: (853) 580-967

Attention: Sam Tou/Ida Chau

**BANCO DELTA ASIA S.A.R.L.**

By: /s/ **David Lau** /s/ **Wong Kai Fun**

Address: Rua Do Campo  
No. 39-41  
Macau

Tel: (853) 3958-200/ (853) 3958-505

Fax: (853) 570-068/ (853) 3958-729

Attention: Philip Ng/Alex Chou

**SCHEDULE**  
**AMENDED REVOLVING CREDIT FACILITY AGREEMENT**

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**  
as Company

and

**THE REVOLVING CREDIT FACILITY LENDERS**  
referred to herein

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**REVOLVING CREDIT FACILITY AGREEMENT**  
(As amended by the Revolving Credit Facility Agreement  
Amendment Agreement dated 14 September 2005)

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**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”); and
- (2) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Original Revolving Credit Facility Lenders*) as lenders (the “**Original Revolving Credit Facility Lenders**”).

**WHEREAS:**

The Revolving Credit Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the Projects 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**

**1.1 Definitions**

In this Agreement, unless otherwise defined herein, all terms defined in the Common Terms Agreement shall have the same meaning herein and in addition:

“**Advance Request**” means a request for an Advance in substantially the form set out in Schedule 2 (*Form of Advance Request for a Revolving Credit Facility Advance*).

“**Available Commitment**” means a Revolving Credit Facility Lender’s Commitment *minus*:

- (a) the aggregate amount of its participation in any outstanding Revolving Credit Facility Advances (other than, in relation to any proposed Revolving Credit Facility Advance, such Revolving Credit Facility Lender’s participation in any Revolving Credit Facility Advances that are due to be repaid or prepaid on or before the proposed Advance Date); and
- (b) in relation to any proposed Revolving Credit Facility Advance, the aggregate amount of its participation in any Revolving Credit Facility Advances that are due to be made on or before the proposed Advance Date.

“**Available Facility**” means, at any time, the aggregate for the time being of each Revolving Credit Facility Lender’s Available Commitment.

“**Commitment**” means at any time:

- (a) in relation to an Original Revolving Credit Facility Lender, the amount set out opposite its name under the heading “Commitment” in Schedule 1 (*Original Revolving Credit Facility Lenders*) and the amount of any other Commitment transferred to it pursuant to Clause 12.2 (*Transfers by the Revolving Credit Facility Lenders*); and

(b) in relation to any other Revolving Credit Facility Lender, the amount of any Commitment transferred to it pursuant to Clause 12.2 (*Transfers by the Revolving Credit Facility Lenders*),

to the extent not cancelled, reduced or transferred by it pursuant to this Agreement or the Common Terms Agreement (including Clause 8 (*Repayments, Prepayments and Cancellation*) and Clause 14 (*Illegality*) of the Common Terms Agreement).

“**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 Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent.

“**HIBOR**” means, in relation to any Revolving Credit Facility Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for HK dollars or the Interest Period of that Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Revolving Credit Facility Lenders (at the request of any Revolving Credit Facility Lender) 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 Advance.

“**Interest Period**” means, in relation to an Advance, each period determined in accordance with Clause 10 (*Interest Periods*).

“**Majority Revolving Credit Facility Lenders**” means:

- (a) if there are no Revolving Credit Facility Advances then outstanding, a Revolving Credit Facility Lender or Revolving Credit Facility Lenders whose Available Commitments aggregate more than 50% of the Available Facility (or, if all Available Commitments have been reduced to zero, aggregated more than 50% of the Available Facility immediately prior to the reduction); or
- (b) at any other time, a Revolving Credit Facility Lender or Revolving Credit Facility Lenders whose participations in the Revolving Credit Facility Advances then outstanding aggregate more than 50% of all the Revolving Credit Facility Advances then outstanding.

“**Margin**” means 2.50% per annum.

“**Quotation Day**” means, in relation to any period for which an interest rate is to be determined, the first day of that period.

“**Reference Banks**” means the principal office in Hong Kong of Deutsche Bank AG, Société Générale and Citibank, N.A., or such other banks as may be appointed by the

Majority Revolving Credit Facility Lenders with, if such designation is made prior to an occurrence of an Event of Default which is continuing, the consent of the Company.

**“Revolving Credit Facility”** means the revolving loan facility made available under this Agreement as described in Clause 3 (*The Facility*).

**“Revolving Credit Facility Advance”** means an Advance made or to be made under the Revolving Credit Facility or the principal amount outstanding for the time being of that Advance including a Rollover Advance.

**“Revolving Credit Facility Lender”** means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (Original Revolving Credit Facility Lenders); or
- (b) has become a party hereto in accordance with Clause 12 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

**“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 Lenders and the Company.

**“Rollover Advance”** means one or more Revolving Credit Facility Advances:

- (a) made or to be made on the same day that a maturing Revolving Credit Facility Advance is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the maturing Revolving Credit Facility Advance; and
- (c) made or to be made to the Company for the purpose of refinancing a maturing Revolving Credit Facility Advance.

**“Screen Rate”** means, in relation to HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the Majority Revolving Credit Facility Lenders may specify another page or service displaying the appropriate rate after consultation with the Company.

“**Termination Date**” means the third anniversary of the Signing Date (as may be extended, by no more than a year at any time, with the consent of all of the Revolving Credit Facility Lenders) and which extension shall be notified to the Intercreditor Agent.

## 1.2 Interpretation

In this Agreement:

1.2.1 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;

1.2.2 any reference to the “**Intercreditor 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

1.2.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

## 1.3 Third Party Rights

1.3.1 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 16 (*Governing Law*) and Clause 17 (*Jurisdiction*).

1.3.2 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 enjoy the benefit of any term of this Agreement.

1.3.3 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.

## 1.4 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 Mr. Wong Chi Seng, his liability shall be limited to his 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 FACILITY**

Subject to the terms of this Agreement, the Revolving Credit Facility Lenders make available to the Company a revolving loan facility in an aggregate amount of HKD117,000,000.

4. **PURPOSE**

The Company shall apply all amounts borrowed by it under the Revolving Credit Facility towards general corporate purposes and working capital requirements of the Company other than payment of Senior Secured Indebtedness, Restricted Payments or payment under the IP Agreement.

5. **CONDITIONS OF UTILISATION**

5.1 **Conditions precedent**

The provisions of Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) 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 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 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;
- (d) the Company shall have paid or arranged for payment out of the requested Advance of all fees, expenses and other charges then due and payable by it under Revolving Credit Facility Finance Documents; and
- (e) a Project Certificate of Occupancy shall have been issued.

### 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 Advance, more than four Revolving Credit Facility Advances would be outstanding.

## 6. **AVAILABILITY OF THE REVOLVING CREDIT FACILITY**

### 6.1 **Drawdown of Advances**

Subject to the terms of this Agreement and the Common Terms Agreement, the Company may request, and the Revolving Credit Facility Lenders shall make, Revolving Credit Facility Advances under the Revolving Credit Facility if, not later than 11:00 a.m. on the fifth Business Day before the proposed Advance Date, the Intercreditor Agent and the Revolving Credit Facility Lenders shall have received a completed Advance Request in respect of each such Advance.

### 6.2 **Completion of an Advance Request**

6.2.1 Each Advance Request in respect of a Revolving Credit Facility Advance is irrevocable and shall not be regarded as having been duly completed unless:

- (a) 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 in substantially the form set out in paragraph 3(ii) of Part C of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement, has also been delivered to the Intercreditor Agent;
- (b) the proposed Advance Date is a Business Day within the Revolving Credit Facility Availability Period;
- (c) the currency and amount of the Advance comply with Clause 6.3 (*Currency and amount*);
- (d) the amount of each Revolving Credit Facility Lender's participation in the Advance complies with Clause 6.4 (*Lenders' Participation*); and
- (e) the proposed Interest Period complies with Clause 10 (*Interest Periods*).

6.2.2 Only one Advance may be requested in each Advance Request.

### 6.3 **Currency and amount**

6.3.1 The currency specified in an Advance Request for a Revolving Credit Facility Advance must be HK dollars.

6.3.2 The amount of the proposed Revolving Credit Facility Advance must be:

- (a) a minimum of HKD5,000,000 or, if less, the Available Facility; and
- (b) less than or equal to the Available Facility.

**6.4 Lenders' participation**

6.4.1 If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Revolving Credit Facility Lender shall make its participation in each Revolving Credit Facility Advance available by the Advance Date through its Facility Office.

6.4.2 The amount of each Revolving Credit Facility Lender's participation in each Revolving Credit Facility Advance will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Advance.

**7. REPAYMENT**

The Company shall repay each Revolving Credit Facility Advance on the last day of its Interest Period.

**8. CANCELLATION**

**8.1 Voluntary cancellation**

8.1.1 The Company may, if it gives the Intercreditor Agent and the Revolving Credit Facility Lenders not less than 15 days' prior written notice, cancel the whole or any part (being a minimum amount of HKD10,000,000) of the Available Facility, provided that any such cancellation prior to the third anniversary of the Signing Date shall require the prior consent of the Intercreditor Agent.

8.1.2 Any cancellation under Clause 8.1(a) above shall reduce the Available Commitments of the Revolving Credit Facility Lenders rateably.

**8.2 Restrictions**

8.2.1 Any notice of cancellation given under this Clause 8 shall be irrevocable and shall specify the date or dates upon which the relevant cancellation is to be made and the amount of the cancellation.

8.2.2 Any cancellation pursuant to this Clause 8 shall be made together with accrued interest and fees on the amount cancelled and without premium or penalty.

8.2.3 The Company shall not cancel all or any part of the Available Facility except in accordance with this Agreement or the Common Terms Agreement (including Clause 8 (*Repayment, Prepayment and Cancellation*) and Clause 14 (*Illegality*) of the Common Terms Agreement).

8.2.4 No amount of the Available Facility cancelled under this Clause 8 may be subsequently reinstated.

**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 Margin; and
- (b) HIBOR.



**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**

Each Revolving Credit Facility Lender shall promptly notify the Intercreditor Agent and the Company of the determination of a rate of interest under this Agreement.

**9.5 Changes to interest rates**

Each Revolving Credit Facility Lender 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**

10.1 The Company may select an Interest Period for a Revolving Credit Facility Advance in the Advance Request for that Advance.

10.2 Subject to this Clause 10, the Company may select an Interest Period for such Advance of 1, 2 or 3 months.

10.3 An Interest Period for a Revolving Credit Facility Advance shall not extend beyond the Termination Date.

10.4 Each Interest Period for a Revolving Credit Facility Advance shall start on the Advance Date applicable to such Advance.

10.5 A Revolving Credit Facility Advance shall have one Interest Period only.

10.6 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 on or prior to the Termination Date) or the preceding Business Day (if there is not).

10.7 Interest on a Revolving Credit Facility 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.

**11. COMMITMENT FEE**

11.1 The Company shall pay to each Revolving Credit Facility Lender a fee in HK dollars computed at the rate of 1.25% per annum on that Revolving Credit Facility Lender's daily Available Commitment from the Signing Date to the end of the Revolving Credit Facility Availability Period.

11.2 The accrued commitment fee is payable 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.

## 12. CHANGES TO THE PARTIES

### 12.1 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.

### 12.2 Transfers by the Revolving Credit Facility Lenders

A Revolving Credit Facility Lender may assign, transfer or novate all (but not some only) 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. PAYMENTS

### 13.1 Payments

13.1.1 All payments under this Agreement shall be made in accordance with Clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

13.1.2 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 to a Revolving Facility Lender or by a Revolving Credit Facility Lender to the Company, the Company or, as the case may be, such Revolving Credit Facility Lender, shall make the same available to such Revolving Credit Facility Lender or, as the case may be, the Company, 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 Lender or, as the case may be, the Company shall specify from time to time.

### 13.2 Partial Payments

13.2.1 If a Revolving Credit Facility Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to such Revolving Credit Facility Lender under the Revolving Credit Facility Finance Documents, such Revolving Credit Facility Lender 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 Lender 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 costs and expenses incurred by the Revolving Credit Facility Lender which the Company is obliged to reimburse;

- (c) **thirdly**, in or towards payment *pro rata* of all accrued and unpaid interest, fees and commissions due to the Revolving Credit Facility Lender under the Revolving Credit Facility Finance Documents;
- (d) **fourthly**, in or towards payment *pro rata* of any principal due to the Revolving Credit Facility Lender under the Revolving Credit Facility Finance Documents but unpaid; and
- (e) **fifthly**, in or towards payment *pro rata* of any other sum due to the Revolving Credit Facility Lender under the Revolving Credit Facility Finance Documents but unpaid.

13.2.2 Sub-paragraph (a) above will override any appropriation made by the Company.

### 13.3 **Currency of account**

Subject to sub-clauses 26.7.1 to 26.7.3 of Clause 26.7 (*Currency of account*) of the Common Terms Agreement, HK dollars is the currency of account and payment for any sum due from the Company under any Revolving Credit Facility Finance Document.

### 14. **DECISION MAKING AMONGST REVOLVING CREDIT FACILITY LENDERS**

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 each of the Revolving Credit Facility Lenders.

### 15. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

### 16. **GOVERNING LAW**

This Agreement shall be governed by English law.

### 17. **JURISDICTION**

#### 17.1 **Jurisdiction of English courts**

17.1.1 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**").

17.1.2 The Parties 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.

17.1.3 This Clause 17.1 (*Jurisdiction of English Courts*) is for the benefit of the Revolving Credit Facility Lenders only. As a result, no Revolving Credit Facility Lender 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 Facility Lenders may take concurrent proceedings in any number of jurisdictions.

**17.2 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.

**SCHEDULE 1**  
**ORIGINAL REVOLVING CREDIT FACILITY LENDERS**

<u>Revolving Credit Facility Lender</u>	<u>Commitment (HKD)</u>
Banco Nacional Ultramarino, S.A.	47,000,000
Banco Comercial de Macau, S.A.	40,000,000
Banco Delta Asia S.A.R.L.	30,000,000

**SCHEDULE 2**  
**FORM OF ADVANCE REQUEST FOR A REVOLVING CREDIT FACILITY ADVANCE**

To: [ ] as Intercreditor Agent  
[ ] as Revolving Credit Facility Lenders

Date: [ ]

Dear Sirs,

**Wynn Resorts (Macau) S.A. - Revolving Credit Facility Agreement dated 14 September 2004 (the "Agreement")**

**Advance Request No. [ ]**

1. We refer to the Agreement and the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 and made between, among others, Wynn Resorts (Macau) S.A. (the "**Company**"), the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project 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 under the Revolving Credit Facility referred to in the Agreement.
3. This Advance Request is irrevocable.
4. We wish to borrow the following Advance under the Revolving Credit Facility on the following terms:

Proposed Advance Date: [ ]<sup>1</sup>

Amount: HKD[ ]<sup>2</sup>

Lender's Participation:	Lender	Participation (HKD)
	[ ]	[ ]

Interest Period: [1, 2 or 3] 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;

<sup>1</sup> Specify a Business Day.

<sup>2</sup> In compliance with Clause 6.3 of the Agreement.

- (b) the Advance requested will not be applied towards payment of Senior Secured Indebtedness, Restricted Payments or payments under the IP Agreement; and
- (c) since the CP Satisfaction 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 Advance requested above and hereby authorise the Revolving Facility Lenders to date such receipts on the date such Advances are made.<sup>3</sup>
7. The proceeds of the above Advance should be credited to [                      ].

Yours faithfully,

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

<sup>4</sup>Responsible Officer  
for and on behalf of

**Wynn Resorts (Macau) S.A.**

Attachments: Receipts for the Advance

<sup>3</sup> Each receipt must be numbered in series, the number corresponding to the number in the heading of the relevant Advance Request.

<sup>4</sup> Each Advance Request must be signed by an officer of the Company whose specimen signature has been delivered to the Intercreditor Agent pursuant to Clause 3.2.1 of the Common Terms Agreement.

**DATED 14 SEPTEMBER 2005**

**WYNN RESORTS (MACAU) S.A.**  
the Company

**CERTAIN FINANCIAL INSTITUTIONS**

as Hotel Facility Lenders, Project Facility Lenders, Revolving Credit Facility Lenders  
and Hedging Counterparties

**BANC OF AMERICA SECURITIES ASIA LIMITED**  
**DEUTSCHE BANK AG, HONG KONG BRANCH**  
**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Global Coordinating Lead Arrangers

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Hotel Facility Agent and Project Facility Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Intercreditor Agent

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**  
as Security Agent

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COMMON TERMS AGREEMENT  
AMENDMENT AGREEMENT

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**THIS AGREEMENT** is dated 14 September 2005 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Hotel Facility Lenders;
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Project Facility Lenders;
- (4) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Revolving Credit Facility Lenders;
- (5) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Hedging Counterparties;
- (6) **BANC OF AMERICA SECURITIES ASIA LIMITED, DEUTSCHE BANK AG, HONG KONG BRANCH** and **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in their capacities as Global Coordinating Lead Arrangers;
- (7) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Hotel Facility Agent;
- (8) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Project Facility Agent;
- (9) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Intercreditor Agent; and
- (10) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Security Agent.

**RECITALS:**

- (A) The Company proposes to expand the Original Project.
- (B) The Secured Parties have agreed to amend certain Finance Documents and enter into additional Finance Documents and the Lenders have agreed to increase the size of certain of the Facilities originally provided thereunder in connection with the Expansion.
- (C) It has been agreed to amend the Common Terms Agreement as set out below.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Incorporation of defined terms**

- (a) Unless a contrary indication appears, a term defined in or by reference in the Schedule or, if not defined in or by reference in the Schedule, the Deed of Appointment and Priority has the same meaning in this Agreement.
- (b) The principles of construction and rules of interpretation set out in the Schedule 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:

- (a) the Hotel Facility Agreement Amendment Agreement dated on or about the date hereof between the Company, the Hotel Facility Agent and the Hotel Facility Lenders as a Senior Finance Document;
- (b) the Project Facility Agreement Amendment Agreement dated on or about the date hereof between the Company, the Project Facility Agent and the Project Facility Lenders as a Senior Finance Document;
- (c) the Revolving Credit Facility Agreement Amendment Agreement dated on or about the date hereof between the Company and the Revolving Credit Facility Lenders as a Senior Finance Document;
- (d) this Agreement as a Senior Finance Document;
- (e) the Deed of Appointment and Priority Deed of Amendment dated on or about the date hereof between the Original First Ranking Lenders, the Hedging Counterparties, the Second Ranking Finance Party, the Third Ranking Finance Party, the Company, the Security Agent, the Intercreditor Agent, the Hotel Facility Agent, the Project Facility Agent, the GCLAs and the POA Agent as a Security Document;
- (f) the Wynn Resorts Support Agreement Deed of Amendment dated on or about the date hereof between Wynn Resorts, the Company and the Security Agent as a Security Document;
- (g) the First Amendment to the Capital Contributions Account Control Agreement dated on or about the date hereof between the Company, the Security Agent and Bank of America, N.A. as a Security Document;
- (h) the First Amendment to the Bank Account Control Agreement dated on or about the date hereof between Wynn Asia, the Security Agent and Bank of America, N.A. as a Security Document;
- (i) the Deed of Acknowledgment of Security dated on or about the date hereof between the Company, Wynn HK, Wynn Holdings, Wynn International, Wynn Asia and the Security Agent as a Security Document;
- (j) the Confirmation of Company Share Pledge dated on or about the date hereof between Wynn HK, Wynn International, the Security Agent and the Company as a Security Document;

- (k) the Confirmation of Wong Share Pledge dated on or about the date hereof between Mr Wong Chi Seng, the Security Agent and the Company as a Security Document;
- (l) the Supplement to the Gaming Concession Consent Agreement dated on or about the date hereof between the Government of the Macau SAR, the Company and the Security Agent as a Security Document; and
- (m) the Supplement to the Land Concession Consent Agreement dated on or about the date hereof between the Government of the Macau SAR, the Company and the Security Agent as a Security Document.

**2. AMENDMENT**

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

**3. REPRESENTATIONS**

The representations and warranties set out in schedule 4 of the Schedule and expressed to be made on the Expansion Signing Date are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the date of this Agreement and 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.

**4. CONTINUITY AND FURTHER ASSURANCE**

**4.1 Continuing obligations**

The provisions of the Common Terms Agreement shall, save as amended by this Agreement, continue in full force and effect.

**4.2 Further assurance**

The Company shall, upon the written request of the Intercreditor 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.

**5. MISCELLANEOUS**

**5.1 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 (*Notices*), Clause 31 (*Partial Invalidity*), Clause 32 (*Remedies and Waivers*) and Clause 38 (*Jurisdiction*) of the Schedule 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.

**5.2 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.

**6. GOVERNING LAW**

This Agreement is governed by English law.

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

**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: /s/ *Matthew Maddox*

Address: 335-341 Alameda Dr. Carlos d' Assumpção  
9<sup>th</sup> Floor  
Hotline Center  
Macau

Tel: (853) 889-966

Fax: (853) 329-966

Attention: Matt Maddox

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Tel: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

**The Lenders and the POA Agent**

*(As Project Facility Lender)*

**BANK OF AMERICA, N.A.**

By: */s/ Frederick Chin*

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2597-3910

Fax: (852) 2597-3914

Attention: Danny Chu

Copy to:

Bank of America, N.A.

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2847-5226/ (852) 2847-5897

Fax: (852) 2847-5886/ (852) 2847-5232

Attention: Brian Ho/Tiffany Lam

*(As Project Facility Lender)*

**DEUTSCHE BANK AG, HONG KONG BRANCH**

By: */s/ Jocelyn Court* */s/ Juhi Prasad*

Address: 45<sup>th</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-8130

Fax: (852) 2203-7241

Attention: Jackie Leung

Copy to:

Address: Floor 10  
60 Wall Street  
New York  
NY  
USA

Tel: (1) 212-250-6039

Fax: (1) 212-797-5690

Attention: MaryKay Coyle

And to:

Address: 51<sup>st</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-8047/(852) 2203-7463

Fax: (852) 2203-7215

Attention: Chris Gammons/Melissa Lu

*(As Project Facility Lender)*

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5414

Fax: (852) 2868-1874

Attention: Kenny Chan  
Commercial Back Office - Loans



Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5610/(852) 2166-5615

Fax: (852) 2804-6215

Attention: David Gore/Kitty Leung

*(As Project Facility Lender)*

**AOZORA BANK, LTD.**

By: */s/ David Gore* */s/ Sun Peng Lui*

Address: 3-1  
Kudan-Minami 1-chome  
Chiyoda-ku  
Tokyo 102-8660  
Japan

Tel: (81) 3-5212-9412/ (81) 3-3239-8038/ (81) 3-5212-9410

Fax: (81) 3-3263-9872/ (81) 3-3263-7284/ (81) 3-3263-9872

Attention: Emiko Sano/Kouji Amano/Akira Nozu

*(As Project Facility Lender, Revolving Credit Facility Lender and POA Agent)*

**BANCO NACIONAL ULTRAMARINO, S.A.**

By: */s/ Herculano Sousa* */s/ Artur Santos*

Address: Avenida de Almeida Ribeiro  
No. 22  
Macau

Tel: (853) 355-188/ (853) 355-828/ (853) 398-9134

Fax: (853) 355-800/ (853) 356-867

Attention: Ronald Kan Cheok Kuan/Vitor Rosário/Violet Choi

---

*(As Hotel Facility Lender)*

**BANK OF CHINA LIMITED MACAU BRANCH**

By: /s/ **Allen Fok** /s/ **Huang Miao**

Address: Avenida Doutor Mario Soares  
Bank of China Building  
Macau

Tel: (853) 792-1698/ (853) 792-1659

Fax: (853) 792-1659

Attention: Wong Weng Tim/ Kuan Sio Keng

*(As Project Facility Lender)*

**WESTLB AG, HONG KONG BRANCH**

By: /s/ **Peter Geldart** /s/ **Mike Cheng**

Address: 36<sup>th</sup> Floor, Bank of America Tower  
12 Harcourt Road  
Hong Kong

Tel: (852) 2842-0214/ (852) 2842-0436

Fax: (852) 2842-0290

Attention: William Ip/Florence Yip

Copy to:

WestLB AG, Hong Kong Branch

Address: 36<sup>th</sup> Floor, Bank of America Tower  
12 Harcourt Road  
Hong Kong

Tel: (852) 2842-0458/ (852) 2842-0211

Fax: (852) 2842-0298

Attention: Jasper Wong/Angela Chen

(As Project Facility Lender)

**DBS BANK LTD., HONG KONG BRANCH**

By: /s/ **Peter Chan**

Address: 16<sup>th</sup> Floor, Man Yee Building  
68 Des Voeux Road Central  
Hong Kong

Tel: (852) 2848-3451/ (852) 2848-3452

Fax: (852) 2877-6703

Attention: Samuel Wong/Colum Ting  
Corporate Banking Middle Office

(As Project Facility Lender)

**THE ROYAL BANK OF SCOTLAND PLC**

By: /s/ **Sandra Pemberton**

Address: 50 Raffles Place  
#08-00, Singapore Land Tower  
Singapore 048623

Tel: (65) 6416-8734/ (65) 6416-8735

Fax: (65) 6223-2070

Attention: Grace Toh/Looi Yin Peng

(As Hotel Facility Lender)

**AAREAL BANK AG**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: Paulinenstrasse 15  
65189 Wiesbaden  
Germany

Tel: (49) 611-348-3430/ (49) 611-348-3381

Fax: (49) 611-348-2757/ (49) 611-348-2246

Attention: Fei Mao-Sander/Alexander Schöneich

(As Project Facility Lender)

**UNITED OVERSEAS BANK LIMITED**

By: */s/ Chow Yew Hon*  
Address: 25<sup>th</sup> Floor, Gloucester Tower  
The Landmark  
11 Pedder Street, Central  
Hong Kong  
Tel: (852) 2820-9172/ (852) 2820-9167  
Fax: (852) 2501-5738  
Attention: Rosita Tse/Wanna So  
Credit Administration Department

(As Project Facility Lender)

**COMMERZBANK AKTIENGESELLSCHAFT, HONG KONG BRANCH**

By: */s/ Devlin Li* */s/ David Chan*  
Address: 21<sup>st</sup> Floor, Hong Kong Club Building  
3A Chater Road, Central  
Hong Kong  
Tel: (852) 2842-9605/ (852) 2842-9662  
Fax: (852) 2842-9605/ (852) 2842-9609  
Attention: Andreas Peter Kurtz/Sally Yuen

(As Project Facility Lender)

**ALLIED IRISH BANKS, p.l.c.**

By: */s/ David Gore* */s/ Sun Peng Lui*  
Address: Trade Centre  
IFSC  
Dublin 1  
Ireland  
Tel: (353) 1-641-7678  
Fax: (353) 1-670-0064  
Attention: Shane O'Neill  
Structured Finance

(As Project Facility Lender)

**STANDARD CHARTERED FIRST BANK KOREA LIMITED**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: 100 Gongpyung-dong  
Jongro-gu  
Seoul  
Korea

Tel: (82) 2-3702-4807

Fax: (82) 2-3702-4926

Attention: Gun Ko Corporate Finance, Project & Export Finance

(As Project Facility Lender)

**THE BANK OF NOVA SCOTIA**

By: /s/ *Brendan King*

Address: 25<sup>th</sup> Floor, United Centre  
95 Queensway  
Hong Kong

Tel: (852) 2861 4882

Fax: (852) 2527 2527

Attention: Caesar Ng

(As Hotel Facility Lender)

**BAYERISCHE LANDESBANK, HONG KONG BRANCH**

By: /s/ *Stephan Schmidbauer* /s/ *Silvia Chin*

Address: 19<sup>th</sup> Floor, Standard Chartered Bank Building  
4A Des Voeux Road, Central  
Hong Kong

Tel: (852) 2978-8322/(852) 2978-8377

Fax: (852) 2978-8352

Attention: Doris Pang/Mary Chan

(As Project Facility Lender)

**BAYERISCHE HYPO- UND VEREINSBANK AG, HONG KONG BRANCH**

By: /s/ **Freddy Hung** /s/ **Edmond Chan**

Address: 13<sup>th</sup> Floor, Citic Tower  
1 Tim Mei Avenue, Central  
Hong Kong

Tel: (852) 2533-4100

Fax: (852) 2533-4700

Attention: Rita Hung

(As Project Facility Lender)

**HSH NORDBANK AG, HONG KONG BRANCH**

By: /s/ **Gilbert Yu** /s/ **Ulrich Gasser**

Address: 26<sup>th</sup> Floor  
Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2843-2665/ (852) 2843-2646

Fax: (852) 2845-9018

Attention: Stephen Chan/Bobby Kwok  
Banking Services

Copy to:

HSH Nordbank AG, Hong Kong Branch

By:

Address: 26<sup>th</sup> Floor  
Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2843-1019/ (852) 2843-2695

Fax: (852) 2845-9018

Attention: Gilbert Yu/Iris Wong

(As Hotel Facility Lender)

**INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED**

By: /s/ **Wilson Wan** /s/ **Kenneth Yung**

Address: 33<sup>rd</sup> Floor, ICBC Tower  
3 Garden Road, Central  
Hong Kong

Tel: (852) 3510-8682/ (852) 3510-8680

Fax: (852) 2851-9361

Attention: Amy Wong/Esther Cheng  
Loans Processing Department

(As Project Facility Lender and Revolving Credit Facility Lender)

**BANCO COMERCIAL DE MACAU, S.A.**

By: /s/ **Sam Tou** /s/ **Kenneth Chan**

Address: Avenida da Praia Grande  
No. 572  
Macau

Tel: (853) 7910-861/ (853) 7910-273

Fax: (853) 580-967

Attention: Sam Tou/Ida Chau

(As Project Facility Lender)

**BANK OF SCOTLAND**

By: /s/ **Jocelyn Court** /s/ **Juhi Prasad**

Address: 565 Fifth Avenue  
New York, NY 10017  
USA

Tel: (212) 450-0875/ (212) 450-0876/ (212) 450-0880

Fax: (212) 479-2807

Attention: Shirley Vargas/Victoria  
McFadden/Elizabeth Taturan

(As Project Facility Lender)

**BANCO ESPÍRITO SANTO DO ORIENTE, S.A.**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: Av. Dr. Mário Soares  
No. 323  
Bank of China Building  
28<sup>th</sup> Floor "A, E-F"  
Macau

Tel: (853) 7965-215/ (853) 7965-222/ (853) 7965-223

Fax: (853) 785-228

Attention: Sylvana Chan/Christine Lee

(As Project Facility Lender)

**CREDIT INDUSTRIEL ET COMMERCIAL, SINGAPORE BRANCH**

By: /s/ *Julia Tam* /s/ *Heng Seow Ee*

Address: 63 Market Street #15-01  
Singapore 048942

Tel: (65) 6231-9720

Fax: (65) 6536-7008

Attention: Kiang Kin Ngoh  
Credit Administration

(As Project Facility Lender)

**FAR EASTERN INTERNATIONAL BANK**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: 26<sup>th</sup> Floor, No.207, Sec. 2  
Tun Hwa S. Road, Taipei  
Taiwan, R.O.C.

Tel: (886) 2-2376-5776/ (886) 2-2376-5780

Fax: (886) 2-2376-5654

Attention: Chingh Siang Chen/Corrina Chen



(As Project Facility Lender)

**HANA BANK HONG KONG BRANCH**

By: /s/ **Hyung-Joon Park**

Address: 3314-16, 33<sup>rd</sup> Floor  
Two International Finance Centre  
8 Finance Street, Central  
Hong Kong

Tel: (852) 2522-3646/ (822) 3771-2348

Fax: (852) 2526-2999

Attention: Hyung-Joon Park/Yong-Jin Park

(As Project Facility Lender)

**NORDKAP BANK AG**

By: /s/ **Jocelyn Court** /s/ **Juhi Prasad**

Address: Thurgauerstrasse 54  
8050 Zurich  
Switzerland

Tel: (41) 44-306-49-18

Fax: (41) 44-306-49-11

Attention: Lai-Kuen Mak-Yau

Copy to:

Nordkap Bank AG

By:

Address: Thurgauerstrasse 54  
8050 Zurich  
Switzerland

Tel: (41) 44-306-49-26

Fax: (41) 44-306-49-11

Attention: Flavia Sennhauser

---

*(As Hotel Facility Lender)*

**THE BANK OF EAST ASIA, LIMITED**

By: /s/ **William Chu** /s/ **Christine Wong**

Address: 18<sup>th</sup> Floor  
10 Des Voeux Road Central  
Hong Kong

Tel: (852) 3608-0963/ (852) 3608-0968

Fax: (852) 3608-6133

Attention: William Chu/Christine Wong  
Corporate Lending & Syndication Department  
Corporate Banking Division

*(As Revolving Credit Facility Lender)*

**BANCO DELTA ASIA S.A.R.L.**

By: /s/ **David Lau** /s/ **Wong Kai Fun**

Address: Rua Do Campo  
No. 39-41  
Macau

Tel: (853) 3958-200/ (853) 3958-505

Fax: (853) 570-068/ (853) 3958-729

Attention: Philip Ng/Alex Chou

---

**The Hedging Counterparties**

**BANC OF AMERICA SECURITIES ASIA LIMITED**

By: */s/ Kevin Salerno*  
Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong  
Tel: (852) 2597-3910/ (852) 2847-5266  
Fax: (852) 2597-3914/ (852) 2847-5886  
Attention: Danny Chu/Brian Ho

Copy to:

Banc of America Securities Asia Limited

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong  
Tel: (852) 2847-6002  
Fax: (852) 2810-0821  
Attention: Russell McCormack

**DEUTSCHE BANK AG**

By: */s/ Jocelyn Court*      */s/ Juhi Prasad*  
Address: 5 Temasek Boulevard  
#12-08 Suntec Tower 5  
Singapore 038985  
Tel: (65) 6423-8132  
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**SOCIÉTÉ GÉNÉRALE**

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Attention: Kenny Chan/ Elaine Tsang  
Commercial Back Office - Loans

---

**The Intercreditor Agent**

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**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

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Risk & Agency

**SCHEDULE**

**AMENDED COMMON TERMS AGREEMENT**

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**

the Company

**CERTAIN FINANCIAL INSTITUTIONS**

as Hotel Facility Lenders, Project Facility Lenders, Revolving Credit Facility Lenders  
and Hedging Counterparties

**BANC OF AMERICA SECURITIES ASIA LIMITED**

**DEUTSCHE BANK AG, HONG KONG BRANCH**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

as Global Coordinating Lead Arrangers

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

as Hotel Facility Agent and Project Facility Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

as Intercreditor Agent

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

as Security Agent

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COMMON TERMS AGREEMENT

(As amended by the Common Terms Agreement Amendment  
Agreement dated 14 September 2005)

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**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **THE FINANCIAL INSTITUTIONS** defined below as Hotel Facility Lenders;
- (3) **THE FINANCIAL INSTITUTIONS** defined below as Project Facility Lenders;
- (4) **THE FINANCIAL INSTITUTIONS** defined below as Revolving Credit Facility Lenders;
- (5) **THE FINANCIAL INSTITUTIONS** defined below as Hedging Counterparties;
- (6) **BANC OF AMERICA SECURITIES ASIA LIMITED, DEUTSCHE BANK AG, HONG KONG BRANCH** and **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in their capacities as global coordinating lead arrangers of the Facilities (the “**Global Coordinating Lead Arrangers**” or “**GCLAs**”);
- (7) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Hotel Facility Agent;
- (8) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Project Facility Agent;
- (9) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Intercreditor Agent; and
- (10) **SOCIÉTÉ GÉNÉRALE, HONG KONG 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 the purpose of the Projects 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**

**1.1 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:

“**Account**” means each of the Operating Accounts and the other accounts specified in sub-paragraphs 1.1(a) through (q) of Schedule 6 (*Accounts*).

“**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 Lender**” means a party who has agreed to provide the Company with a term loan facility permitted by paragraph 2(f) of Part B of Schedule 5 (*Covenants*) and who has executed and delivered to the Intercreditor Agent:

- (a) a duly completed Additional Lender’s Accession Deed executed by such party; 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 Lender Facility**” means, in relation to an Additional Lender, the term loan facilities provided by the Additional Lender to the Company.

“**Additional Lender Facility Agreement**” means, in relation to an Additional Lender, the agreement between the Additional Lender and the Company for the provision of that Additional Lender’s Additional Lender Facility.

“**Additional Lender Facility Availability Period**” means, in relation to an Additional Lender Facility, the period specified in respect thereof in Clause 4.2 (*Project 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 Operating Account**” has the meaning given in paragraph 4.2 of Schedule 6 (*Accounts*).

“**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 Facility, in substantially the form set out in schedule 2 to the Revolving Credit Facility Agreement.

“**Advisers**” means the Technical Adviser, the Insurance Adviser, the Market Adviser and the Tax Adviser.

“**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 Mr Wong Chi Seng shall not, by virtue of fulfilling either of these requirements alone as a result of the shares held by him in the Company as at the Signing Date or as a result of his role as executive director of the Company, be an Affiliate of the Company).

“**Affiliate Agreement**” means any agreement entered into by the Company with an Affiliate of the Company involving expenditures by any party thereto or any other flow of funds of not less than USD1,000,000 (or its equivalent) and including any agreement relating to the receipt and payment of amounts referred to in paragraph 4.2(c) of Schedule 6 (*Accounts*).

“**Affiliated Offshore Account**” has the meaning given in paragraph 4.2 of Schedule 6 (*Accounts*).

“**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 on or before the Expansion Signing Date with such changes as the Intercreditor Agent may agree with the Company.

“**A. M. Best**” means A.M. Best Company or its successor company.

“**Ancillary Finance Documents**” means:

- (a) the Fee Letters; and
- (b) the Underwriting Agreement.

“**Approved IP Fees**” means the IP Fees as set out in the IP Agreement but without regard to any amendment, variation or supplement, whether pursuant to the terms of the IP Agreement or otherwise, subsequent to the Second Amendment to Intellectual Property License Agreement referred to in the definition thereof in this Clause 1.1.

“**Approved List**” means the list of entities agreed between the GCLAs and the Company as a condition precedent to the CP Satisfaction Date.

“**Area 4**” means “Casino Area 4” as defined in the Construction Contract and includes that part of the Expansion depicted or described as comprising “Area 4 G/F”, “Casino Area 4 (Phase 1)” or “Expansion Area 4” (but not any premises to be occupied by individual retail or restaurant tenants) in Attachments 4 and 5 to Exhibit B of the Construction Contract as at the date hereof.

“**Area 5**” means “Casino Area 5” as defined in the Construction Contract and includes that part of the Expansion depicted or described as comprising “Area 5 G/F”, “Casino Area 5 (Phase 2)” or “Expansion Area 5” (but not any premises to be occupied by individual retail or restaurant tenants) in Attachments 4 and 5 to Exhibit B of the Construction Contract as at the date hereof.

“**Area 6**” means the remainder of the Expansion not comprised in Area 4 or Area 5 and includes that part of the Expansion depicted or described as such in Attachments 4 and 5 to Exhibit B of the Construction Contract as at the date hereof.

“**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 Deloitte & Touche 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 Hotel Facility Availability Period, the Project 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.

“**Available Funding**” means, on any date, the aggregate (without double counting) US dollar equivalent of:

- (a) the undrawn and uncanceled Available Commitments under the Term Loan Facilities of each Lender (other than any Lender in breach of any obligation

under the Senior Finance Documents to fund or maintain its participation in any Advance thereunder *provided* in the event that a Lender is in breach of its obligation to fund any Advance, its Available Commitment shall not be discounted in calculating Available Funding for the purpose of the making of the Advance which such Lender has failed to fund, but shall be discounted for any subsequent Advance for so long as such Lender remains in breach);

- (b) the aggregate amount of the undrawn Base Equity Commitment, the undrawn Subordinated Funding and any undrawn Contingent Equity Commitment;
- (c) the amount standing to the credit of the Accounts to the extent such balances are available to meet Project Costs;
- (d) the proceeds of any delay in start-up Insurance which the Intercreditor Agent is reasonably satisfied will be received by the Company during the stated indemnity period in the policy or, if earlier, during the period before the estimated date of Construction Completion used for determining the amount of Remaining Project Costs;
- (e) delay liquidated damages payable by the Prime Contractor under the Construction Contract which the Intercreditor Agent is reasonably satisfied will be received by the Company during the relevant indemnity period or, if earlier, during the period before the estimated date of Construction Completion used for determining the amount of Remaining Project Costs;
- (f) any other committed funds comprised in Financial Indebtedness permitted pursuant to paragraph 2(f) of Part B of Schedule 5 (*Covenants*) or under any agreement which has been approved by the Intercreditor Agent under paragraph 2(h) of Part B of Schedule 5 (*Covenants*) and which are, in each case, unconditionally available to be drawn down to meet Remaining Project Costs and not otherwise included in paragraph (a) above;
- (g) funds held in the Upfront Premium Account that are available to be used and applied by the Company pursuant to paragraph 17(d) of Part B of Schedule 5 (*Covenants*) to meet Remaining Project Costs and to the extent not otherwise required to be retained or applied towards, or used or committed for, any other purpose; and
- (h) forecast Net Operating Cashflow not exceeding an amount equal to:
  - (i) the Net Operating Cashflow Amount (which, unless the most recent Monthly Construction Period Report and Project Schedule continue to project an Opening Date falling (or, as the case may be, such Opening Date has already fallen) and the satisfaction of the Opening Conditions specified in paragraph (a)(iii) of the definition thereof (or, as the case may be, such Opening Conditions have already been satisfied) on or before:
    - (A) 1 October 2006 in the case of the Original Project, shall, for the purposes of this provision, be reduced by USD134,305,601;



(B) 19 March 2007 in the case of Area 4 of the Expansion, shall, for the purposes of this provision, be reduced by USD14,189,935; and

(C) 10 June 2007 in the case of Area 5 of the Expansion, shall, for the purposes of this provision, be reduced by USD9,604,463)

less

(ii) Net Operating Cashflow applied towards Project Costs,

and which the Intercreditor Agent is satisfied will be available to meet Remaining Project Costs.

**“Base Debt Facility”** means the Hotel Base Debt Facility, the Project Base Debt Facility or each of any Additional Lender Facilities.

**“Base Equity”** means Equity (other than advances under the Subordinated Funding Agreement) in an amount of USD230,000,000 or its equivalent paid up or advanced pursuant to the Base Equity Commitment and including the US dollar equivalent of a minimum of MOP200,000,000 paid up by the Shareholders by way of subscription for shares in the Company.

**“Base Equity Commitment”** means the commitment by Wynn Resorts to ensure the provision of Base Equity to the Company pursuant to Clause 2.2.2 of the Wynn Resorts Support Agreement.

**“Base Net Operating Cashflow Amount”** means USD118,600,000 (or its equivalent).

**“Base Project Costs”** means the equivalent of USD1,085,600,000.

**“Base Subordinated Funding”** means an amount of USD80,000,000 to be subscribed by the Subordinated Funding Provider to the Company for notes under the Subordinated Funding 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, 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, London, Tokyo and New York.

“**Capital Contributions Account**” means the Accounts so designated in Schedule 6 (*Accounts*).

“**Capital Contributions Account Control Agreement**” means the Capital Contributions Account control agreement dated on or about the date of this Agreement between the Company, the Security Agent and Bank of America, N.A.

“**Capital Expenditure**” means, in relation to the Company, for any period, the aggregate of all expenditures by the Company 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 *provided* that the amount of Capital Expenditures in respect of fixed or capital assets or additions to equipment in any Fiscal Year shall not include:

- (a) to the extent applied during such Fiscal Year to the replacement of Property pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*), the Net Cash Proceeds received by the Company from the Disposition of Property pursuant to paragraph 5(a) of Part B of Schedule 5 (*Covenants*);
- (b) the Insurance Proceeds and/or Eminent Domain Proceeds received by the Company for any casualties to, or Taking of, fixed or capital assets and applied during such Fiscal Year to the repair or replacement of fixed or capital assets in accordance with the terms of this Agreement;
- (c) any payment made or owed by the Company pursuant to the Land Concession Contract; or
- (d) any other such amount approved by the Intercreditor Agent.

Notwithstanding the foregoing, any Project Costs that otherwise would have constituted Capital Expenditures by virtue of the foregoing shall be excluded from this definition.

“**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 the Company for any period, EBITDA of the Company 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 the Company in cash during such period on account of Capital Expenditures made pursuant to paragraph 7(b) of Part B of Schedule 5 (*Covenants*) (excluding the principal amount of any Financial Indebtedness and any Equity used to fund such expenditures and any such expenditures financed with the proceeds of any Reinvestment Deferred Amount);

(f) the aggregate amount actually paid by the Company in cash during such period on account of any accrued charges from any prior period; and

(g) Tax paid by the Company during such period.

“**Certificate of Final Completion**” means, in relation to the Original Project, the “Original Project Certificate of Final Completion” and, in relation to the Expansion, the “Expansion Project Certificate of Final Completion”, each as defined in the Construction Contract.

“**Certificate of Substantial Completion**” means, in relation to the Original Project, any “Original Project Certificate of Substantial Completion” and, in relation to the Expansion, any “Expansion Project Certificate of Substantial Completion”, each as defined in the Construction Contract.

“**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);

(b) the adoption of a plan relating to the liquidation or dissolution of any Wynn Obligor or any successor thereto; 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 Capital Contributions Account Control Agreement, the US Operating Account Control Agreement and the documents granting the Liens referred to in paragraph 4.2(e)(i)(2) (*Additional Operating Accounts*) of Schedule 6 (*Accounts*).

“**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 between the parties hereto.

“**Commonly Controlled Entity**” means an entity, whether or not incorporated, which is under common control with any Wynn Obligor (excluding Wynn Resorts) 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.

“**Company’s CP Satisfaction Date Certificate**” has the meaning given in paragraph 6 of Part A of Schedule 2 (*Conditions Precedent*).

“**Compensation Proceeds Account**” means the accounts so designated in Schedule 6 (*Accounts*).

“**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 Completion**” shall occur when the following conditions precedent to such completion are, in the reasonable opinion of the Intercreditor Agent, satisfied:

- (a) Substantial Completion has been achieved and a Certificate of Substantial Completion has been issued in accordance with the Construction Contract and this Agreement in respect of the Original Project as a whole and the Expansion as a whole;
- (b) all Project Costs (other than Project Costs consisting of (i) Retainage Amounts, and other amounts, that are being withheld from the Contractors in accordance with the provisions of the Project Documents; (ii) amounts being contested in good faith by the Company so long as, where such amounts (other than those sought by way of claims against the Company which the Technical Adviser has certified as being spurious, vexatious or otherwise without foundation) exceed, in aggregate, USD7,700,000 or its equivalent, adequate reserves have been established; (iii) amounts payable in respect of Project Punchlist Items to the extent not covered by the foregoing sub-paragraph (i); and (iv) amounts incurred by the Prime Contractor or any other Contractors under a Major Project Document within the last 30 days and to be paid under any Advance Request which has been submitted but not yet disbursed) have been paid in full;
- (c) all documents relating to construction of the Projects which are required under articles 13(1), 35(2)(4), 35(2)(11), 36(1), 37(3), 37(4), 37(5), 37(6), 37(7), 67, 85(3) of the Concession Contract have been submitted by the Prime Contractor to the Company;
- (d) the Opening Date for each of the Original Project and the Expansion has been achieved, the Opening Conditions have been satisfied in respect of the Original Project and the Expansion and the Original Project and the Expansion are open for business (or, in the case of the theatre comprising part of Area 6 of the Expansion, capable of being so opened for business);
- (e) the Licensor has notified in writing its approval of the facilities referred to in section 4.01 of the IP Agreement to the Company;
- (f) Macau SAR approval and classification of the casino and gaming zones comprised in the Original Project and the Expansion as required by article 9 of the Concession Contract;
- (g) delivery by the Company of the list and inventory required to be delivered under articles 10 and 44 of the Concession Contract in accordance with the provisions thereof;
- (h) definitive registration with the Macau Real Estate Registry has been completed in respect of all the land described in the Land Concession Contract and all horizontal property (including the horizontal property comprising the casino) comprised in the Projects; and

- (i) registration with the Commercial and Movables Property Registry of the Macau SAR of the “Pledge List” referred to in the Pledge over Gaming Equipment and Utensils in accordance with the provisions thereof.

“**Construction Completion Date**” means the date upon which Construction Completion occurs.

“**Construction Contract**” means the amended and restated construction contract dated 14 September 2005 between the Prime Contractor and the Company for the construction of the Projects.

“**Construction Contract Direct Agreement**” means the Amended and Restated Construction Contract Direct Agreement dated 14 September 2005 between the Prime Contractor, the Company and the Security Agent in the Agreed Form.

“**Construction Disbursement Accounts**” means the accounts so designated in Schedule 6 (*Accounts*).

“**Construction Period Insurances**” means the insurances identified as such in Appendix 1 (*Construction Period Insurances*) to Schedule 7 (*Insurance*) and effected in accordance with the terms of Schedule 7 (*Insurance*).

“**Contingent Debt Facility**” means the Hotel Contingent Debt Facility or the Project Contingent Debt Facility.

“**Contingent Equity**” means Equity, in addition to Base Equity and advances under the Subordinated Funding Agreement, in an amount equal to the sum of:

- (a) USD30 million; and
- (b) any Securities Account Shortfall,

paid up or advanced pursuant to the Contingent Equity Commitment.

“**Contingent Equity Commitment**” has the meaning given in the Wynn Resorts Support Agreement.

“**Contingent Net Operating Cashflow Amount**” means USD39,500,000 (or its equivalent).

“**Contingent Subordinated Funding**” means an amount of USD42,000,000 subscribed by the Subordinated Funding Provider to the Company in addition to Base Subordinated Funding for notes under the Subordinated Funding Agreement pursuant to the Contingent Subordinated Funding Commitment.

“**Contingent Subordinated Funding Commitment**” has the meaning given in the Wynn Resorts Support Agreement.

“**Contractors**” means any architects, consultants, designers, contractors, suppliers or any other Persons party to a Major Project Document and engaged by the Company in connection with the design, engineering, development, construction, installation, maintenance or operation of either Project (including the Prime Contractor).

“**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.

“**Controlled Group**” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Company, are treated as a single employer under section 414(b) or 414(c) of the Internal Revenue Code of 1986 of the United States of America, as amended.

“**CP Satisfaction Date**” means the date on which all conditions precedent set out in Part A of Schedule 2 (*Conditions Precedent*) have been satisfied in accordance with sub-clause 2.1.2 of Clause 2.1 (*Conditions Precedent to the CP Satisfaction 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 Company at such date.

“**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 Company at such date, but excluding:

- (a) the current portion of any Funded Debt of the Company; and
- (b) without duplication of paragraph (a) above, all Financial Indebtedness consisting of Revolving Credit Facility 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.

“**Debt Service**” means, in relation to the Company for any period, all principal repayments under the Facilities and all Financing Costs payable or accrued during such period.

“**Debt Service Accounts**” means the USD Debt Service Account and the HKD Debt Service Account.

“**Debt Service Cover Ratio**” means, in relation to the Company for any period, the ratio of CFADS to Debt Service for such period.

“**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 the Lenders, the Subordinated Funding Provider, 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.

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

**“Direct Agreements”** means each of the following documents:

- (a) the Gaming Concession Consent Agreement;
- (b) the Land Concession Consent Agreement;
- (c) the Construction Contract Direct Agreement;
- (d) the IP Direct Agreement;
- (e) the PASA Direct Agreement;
- (f) the Account Bank Notices and Acknowledgements; and
- (g) 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, on behalf of or in favour of the Company (whether or not in conjunction with any other person) with one or more insurers in accordance with the terms of Schedule 7 (*Insurance*).

**“Direct Insurer”** means the insurer(s) with whom a Direct Insurance is placed from time to time in accordance with Schedule 7 (*Insurance*).

**“Disbursement Accounts”** means the Hotel Facility USD Disbursement Account, the Hotel Facility HKD Disbursement Account, the Project Facility USD Disbursement Account, the Project Facility HKD Disbursement Account and the Construction Disbursement Accounts.

**“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” 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 the Company for any period, the Net Income of the Company for such period *plus*, without duplication and to the extent reflected as a charge in its 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 by the Company during such period (other than sales of inventory in the ordinary course of business); and
- (f) any extraordinary expenses or losses,

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

- (g) interest income;
  - (h) an amount equal to the aggregate net non-cash gain on the Disposition of Property by the Company during such period (other than sales of inventory in the ordinary course of business);
  - (i) any extraordinary income or gains; and
  - (j) any upfront premium or similar income or gains derived from, or in connection with the grant of, any Subconcession,
- all as determined in accordance with applicable GAAP.

“**ECF Percentage**” means, with respect to any Fiscal Year:

- (a) 75% of the Excess Cash Flow if the Leverage Ratio as of the last day of such Fiscal Year is 3:1 or more;
- (b) 50% of the Excess Cash Flow if the Leverage Ratio as of the last day of such Fiscal Year is less than 3:1; or
- (c) 25% of the Excess Cash Flow if, as of the last day of such Fiscal Year:
  - (i) the aggregate principal amount outstanding under the Term Loan Facilities is less than USD275,000,000 or its equivalent; and
  - (ii) the Leverage Ratio is less than 2:1.

**“Eminent Domain Proceeds”** means all amounts and proceeds (including monetary instruments) received in respect of any Event of Eminent Domain relating to either Project less any costs or expenses incurred by the Company 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 the Company 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.

**“Equator Principles”** means the voluntary set of guidelines for determining, assessing and managing environmental and social risk in project financing promoted and published by the International Finance Corporation and first adopted by other financial institutions on or about 4 June 2003.

**“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 under the Subordinated Funding or by way of Shareholder Loans.

**“Equity Issuance”** means:

- (a) any allotment or issuance (or the entering into by the Company 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 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 any secondary sales of any shares, equity interests or other securities of the Company by any or all of the holders of such shares, equity interests or other securities.

“**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; and
- (b) any Taxes incurred or required to be paid by the Company 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 the Company, for any Fiscal Year, CFADS for such Fiscal Year *plus*, without duplication the US dollar equivalents of:

- (a) to the extent included in Net Income for such Fiscal Year, interest income received by the Company during such Fiscal Year; and
- (b) the aggregate amount drawn under the Term Loan Facilities for the purposes of rebalancing pursuant to Clause 7.2.1(b) (*Rebalancing between Debt, Equity and Net Operating Cashflow*) during such Fiscal Year,  
*minus*, without duplication, the US dollar equivalents of:
- (c) the aggregate amount of Financing Costs paid by the Company in cash during such Fiscal Year;
- (d) the aggregate amount of interest under the Subordinated Funding Agreement paid by the Company in cash during such Fiscal Year;
- (e) the aggregate amount of all prepayments of Revolving Credit Facility Advances during such Fiscal Year to the extent accompanying permanent voluntary reductions of the Revolving Credit Facility Commitments and all voluntary prepayments of Term Loan Facility Advances during such Fiscal Year;
- (f) the aggregate amount of all scheduled principal payments of the Company under the Facility Agreements made during such Fiscal Year (other than in respect of the 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);
- (g) the aggregate amount of all Net Operating Cashflow for such Fiscal Year applied towards Project Costs; and
- (h) the net change (if any) over such Fiscal Year in the balance maintained by the Company in each of the Debt Service Accounts, the Reserve Accounts (which net change shall, for the avoidance of doubt, be subtracted from CFADS if positive and added if negative).

**“Expansion”** means that part of the Projects comprised in the expansion of the Original Project to include the following three phases:

- (a) Area 4;
- (b) Area 5; and
- (c) Area 6.

**“Expansion Signing Date”** means the date of the Common Terms Agreement Amendment Agreement.

**“Facility”** means any of:

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

**“Facility Agents”** means the Hotel Facility Agent and the Project Facility Agent.

**“Facility Agreements”** means:

- (a) the Hotel Facility Agreement;
- (b) the Project Facility Agreement;
- (c) the Revolving Credit Facility Agreement; and
- (d) 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 (or, in the case of the Revolving Credit Facility, the Revolving Credit Facility Lenders and, in the case of each Additional Lender Facility, the relevant Additional Lender) 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 between the Company on the one hand and the Agents and the Security Agent on the other hand, each dated on or about the date of this Agreement.

**“Final Completion”** means the occurrence of both “Original Project Final Completion” and “Expansion Project Final Completion”, each as defined in the Construction Contract.

**“Final Completion Costs”** means such Project Costs as are required to be incurred following Substantial Completion of the Original Project and the Expansion to achieve Final Completion (other than insofar as they may relate to the operation, equipping or provision of inventory of either Project, rather than its design, development or construction), including Project Costs required to be incurred to complete Project Punchlist Items.

**“Final Completion Date”** means the date on which the later of “Original Project Final Completion” and “Expansion Project Final Completion” (each as defined in the Construction Contract) occurs.

**“Final Repayment Date”**, in relation to each of the Hotel Facility, the Project Facility and any Additional Lender Facility, means the seventh anniversary of the Signing Date.

**“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 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.

**"Financial Model"** means the computer model, stored on computer disc(s), and consisting of algorithms as set out on the print-out from such disc(s), each to be initialled

at the Expansion Signing Date by the Intercreditor Agent and the Company solely for the purposes of identification.

**“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) net amounts payable by the Company under any Hedging Agreement; and
- (e) any value added or other taxes payable by the Company in respect of paragraphs (a) through (d) above and, save to the extent already included in paragraph (c) above, any withholding tax on a party under a Senior Finance Document or the Performance Bond Facility in respect of which the Company has an obligation to gross up.

**“First Repayment Date”** means, in relation to each of the Term Loan Facilities, 14 March 2008.

**“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 and the other Wynn Obligors ending on 31 December of each calendar year.

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

**“Forecast Funding Shortfall”** means, at any given time, the amount, if any, by which Remaining Project Costs exceed Available Funding.

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

- (a) the lists of documents comprising Senior Finance Documents and Security Documents set out in the definitions thereof and the definitions of Required Lenders and Fundamental Term in Clause 1.1;
- (b) the provisions setting out the date for, or the amount of, or the currency of, any payment of principal or interest under a Senior Finance Document or any interest rate hedging payment to a Hedging Counterparty;
- (c) Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) (save in relation to the identity of the opinion providers as set forth in paragraph 14 of Part A of Schedule 2 (*Conditions Precedent*) and paragraph 30 of Part A of Schedule 2 (*Conditions Precedent*));

- (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 provisions dealing with the conditions under which assets may be released from the Security or 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(f) of Part B of Schedule 5 (*Covenants*), the provisions setting out the priority and ranking of the Secured Obligations (and any other provisions which, if amended, would have the effect of changing the priority or ranking thereof) and the provisions dealing with the designation of a document as a Senior Finance Document (to the extent it involves any sharing in the Security or the granting, creating or sharing in any other Lien over the Project Security and is not a document necessary for the purposes of incurring the Financial Indebtedness referred to in paragraph 2(f) of Part B of Schedule 5 (*Covenants*)) and any provision which, if amended, would have the effect of permitting such a designation;
- (i) the provisions dealing with the amount and timing for payment of any amount payable by Wynn Resorts (or which Wynn Resorts is obliged to cause the payment of) under the Wynn Resorts Support Agreement;
- (j) Clause 25 (*Sharing Among the Senior Secured Creditors*);
- (k) Clause 33 (*Intercreditor Arrangements*); and
- (l) Schedule 17 (*Payment Waterfall*) and any provision of this Agreement, the Sponsors' Subordination Deed or the Deed of Appointment of Priority which, if amended, would change the payment waterfall outlined in Schedule 17 (*Payment Waterfall*).

Notwithstanding the above, 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 clause 24.1(c) (*Required Consents*) thereof with respect to subparagraphs (a), (e), (f), (g), (h), (k) and (l) above and any Decision related to such changes shall be effected pursuant to subparagraph (a) of the definition of Required Lenders (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.

**“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.

**“GAAP”** means, in respect of the Company, the International Accounting Standards issued by the International Accounting Standards Board or its successor 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) dated on or about the date of this Agreement 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 Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Société Générale Asia Limited acting as such under the Senior Finance Documents.

**“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.

**“Guaranteed Date of Substantial Completion”** means, in respect of the Original Project, the “Guaranteed Date of Original Project Substantial Completion” and, in respect of the Expansion, the “Guaranteed Date of Expansion Project Substantial Completion”, each as defined in the Construction Contract.

**“Guarantee Obligation”** means any guarantee, indemnity, letter of credit or other legally binding assurance against financial loss granted by one Person in respect of any Financial Indebtedness 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).

**"Hazardous Substance"** means radioactive materials, asbestos and other substances defined as "hazardous" or of a similar nature under any Environmental Law.

**"Hedging Agreements"** means any agreement entered into by the Company in accordance with the Hedging Arrangements.

**"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 D of Schedule 1 (*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*).

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

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

**“Hotel Base Debt Facility”** has the meaning given in the Hotel Facility Agreement.

**“Hotel Contingent Debt Facility”** has the meaning given in the Hotel Facility Agreement.

**“Hotel Facility”** means the term loan facilities provided pursuant to the Hotel Facility Agreement.

**“Hotel Facility Agent”** means Société Générale Asia Limited as facility agent for the Hotel Facility Lenders or its successor appointed in accordance with this Agreement.

**“Hotel Facility Agreement”** means the agreement so entitled between the Company, the Hotel Facility Agent and the Hotel Facility Lenders.

**“Hotel Facility Availability Period”** means the period specified in Clause 4.1 (*Hotel Facility Availability Period*).

**“Hotel Facility HKD Disbursement Account”** means the account so designated in Schedule 6 (*Accounts*).

**“Hotel Facility Lender”** means a lender identified as such in Part A of Schedule 1 (*Hotel Facility Lenders*) or a Transferee in respect of the Hotel Facility.

**“Hotel Facility USD Disbursement Account”** means the account so designated in Schedule 6 (*Accounts*).

**“Hotel Lending Group”** means the Hotel Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Hotel Facility Agreement.

**“Hotel Project”** means the design, development and construction in accordance with the Construction Contract of a luxury hotel resort, retail and entertainment complex on land leased to the Company under the Land Concession Contract and the ownership, operation and maintenance thereof by the Company but shall not include the design, development, construction, ownership, operation or maintenance by the Company of a casino pursuant to the Concession Contract nor the purchase of any associated gaming equipment or utensils.

**“Hotel Project Costs”** means such Project Costs as relate to the Hotel Project.

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

**“Information Memorandums”** means the information memorandum dated June 2004 and the information memorandum dated June 2005 prepared by the Company in relation to the Projects for the purposes of the financing of any or all of the Facilities.

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

**“Insolvency of a Multiemployer Plan”** has the meaning given in section 4245(6) of ERISA.

**“Insurance”** means a Direct Insurance or a Reinsurance.

**“Insurance Adviser”** means, as the case may be:

- (a) JLT Risk Solutions Asia as the insurance adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letters dated 15 September 2003 and 27 April 2005;
- (b) the insurance adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date; or
- (c) the insurance adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of Projects.

**“Insurance Broker’s Letter of Undertaking”** means a letter of undertaking in substantially the form set out in Appendix 5 to Schedule 7 (*Insurance*) or in such other form as may be approved by the Intercreditor Agent acting in consultation with the Insurance Adviser, such approval not to be unreasonably withheld.

**“Insurance Proceeds”** means all amounts and proceeds (including monetary instruments) paid under any insurance policy maintained by the Company (including, without limitation, any insurance policy required to be maintained by the Company 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) less any costs or expenses incurred by the Company or its agents in collecting such amounts and proceeds.

**“Insurance Requirements”** means all material terms of any insurance policy required pursuant to the Senior Finance Documents (including Schedule 7 (*Insurance*)).

**“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 (including those referred to in paragraphs 2.3.2 and 2.4.2 of Schedule 7 (*Insurance*)).

**“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 Société Générale Asia Limited 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 the Company for 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 Intellectual Property License Agreement dated 1 January 2003 between the Licensor and the Company, as amended by the First Amendment to Intellectual Property License Agreement dated 1 April 2004 and the Second Amendment to Intellectual Property License Agreement dated 7 March 2005.

“**IP Fees**” means “Licensing Fee” as defined in the IP Agreement.

“**IP Direct Agreement**” means the agreement so entitled between the Licensor, the Company and the Security Agent in the Agreed Form.

“**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 dated on or about the date of this Agreement 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 Hotel Facility Lender, a Project Facility Lender, a Revolving Credit Facility Lender or an Additional Lender.

“**Lending Group**” means the Hotel Lending Group, the Project Lending Group and, in relation to each Additional Lender Facility Agreement, the Additional Lenders party thereto.

“**Leverage Ratio**” means, in relation to the Company for 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)).

“**Line Item**” means each of the following line item categories of the Project Budget:

- (a) Hard Construction Costs
  - (i) Construction and Building
  - (ii) Interior Furnishings and Equipment
  - (iii) Design Fees
  - (iv) Contractor’s Fees
  - (v) Construction Contingency
  - (vi) Owner’s Contingency
- (b) Pre-Opening Costs
  - (i) Payroll
  - (ii) Direct Expenses
  - (iii) Corporate Expenses
- (c) Owner Furniture, Fittings and Equipment
  - (i) Casino

- (ii) Hotel
- (iii) Food and Beverage
- (iv) Others
- (d) Land Cost
- (e) Pre-Opening Working Capital
- (f) Capitalised Interest and Commitment Fees
  - (i) Base Debt Facility and Contingent Debt Facility
  - (ii) Revolving Credit Facility
  - (iii) Subordinated Funding
  - (iv) Performance Bond Facility
- (g) Tax, Fees and Expenses
- (h) Contingency

“**Liquidated Damages**” means any liquidated damages paid pursuant to any obligation, default or breach under the Project Documents (other than any Termination Proceeds), in each case net of costs and expenses incurred by the Company or its agent pursuant to arm’s length transactions in connection with adjustment or settlement thereof and taxes paid with respect thereto.

“**Livrança Covering Letter**” means the letter from the Company to the Security Agent dated on or about the date of this Agreement in relation to the Livranças.

“**Livranças**” means the promissory notes dated on or about the date of this Agreement issued by the Company, endorsed and payable to the Security Agent.

“**Loss Proceeds**” means all amounts and proceeds (including monetary instruments) in respect of any Event of Loss, including proceeds of any insurance policy required to be maintained by the Company under this Agreement, less any costs and expenses incurred by the Company or its agents in collecting such amounts and proceeds.

“**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 Construction Contract;
- (d) the Prime Contractor's Completion Guarantee;
- (e) the Prime Contractor's Performance Bond;
- (f) the Project Administration Services Agreement;
- (g) the IP Agreement;
- (h) the Subordinated Funding Agreement;
- (i) the Performance Bond Facility Agreement;
- (j) the Concession Contract Performance Bond; and
- (k) any other Project Document with a total contract price payable by the Company (or expected aggregate amount to be paid by the Company in the case of "cost plus" contracts) or which may otherwise involve liabilities, actual or contingent, of the Company in each case in an amount in excess of USD15,000,000 or its equivalent.

**"Major Project Participants"** means:

- (a) each Obligor;
- (b) the Macau SAR;
- (c) the Prime Contractor (for so long as it has any actual or contingent liabilities under the Construction Contract);
- (d) Leighton Holdings Limited and China Overseas Holdings Limited (for so long as, in each case, it has any actual or contingent liabilities under the Prime Contractor's Completion Guarantee);
- (e) the PASA Agent (for so long as it has any actual or contingent liabilities under the PASA); and
- (f) each other Person who is party to a Major Project Document.

**"Market Adviser"** means The Innovation Group as the market adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letters dated 26 November 2003 and 27 April 2005.

**"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 the Company and the Wynn Obligors (other than Wynn Resorts following the Sponsor Support Release Date), taken as a whole, or that calls into question in



- any material respect the Projections or any of the material assumptions on which the Projections were prepared;
- (b) any of the Projects, the Original Project or the Expansion;
- (c) the ability of the Company to achieve Substantial Completion in respect of the Original Project or the Expansion on or prior to the Guaranteed Date of Substantial Completion therefor;
- (d) the validity or enforceability of any Senior Finance Document;
- (e) the validity, enforceability or priority of any the Liens purported to be created under any of the Security Documents; or
- (f) the rights and remedies of any Secured Creditor under any Senior Finance Document.

“**Minimum Net Worth**” means, in relation to the Company in respect of:

- (a) the first Quarterly Date, the sum of:
  - (i) USD300,000,000 or its equivalent;
  - (ii) 100% of the negative amount (if any) of the Net Income of the Company through to the Expansion Opening Date; and
  - (iii) 50% or, if the Leverage Ratio of the Company determined in accordance with paragraph 1(a) of Part B of Schedule 5 (*Covenants*) in respect of the period ending on such Quarterly Date is less than or equal to 2.00, 25%, of the amount of Net Income (whether positive or negative) of the Company from the Expansion Opening Date through to such Quarterly Date,

less any amount of cash or cash proceeds paid or received in respect of the grant or entry into any Subconcession and applied towards the repayment of Equity; and

- (b) any subsequent Quarterly Date, the sum of:
  - (i) the Minimum Net Worth of the Company for the immediately preceding Quarterly Date; and
  - (ii) 50% or, if the Leverage Ratio of the Company determined in accordance with paragraph 1(a) of Part B of Schedule 5 (*Covenants*) in respect of the period ending on such Quarterly Date is less than or equal to 2.00, 25%, of the amount of Net Income (whether positive or negative) of the Company for the Fiscal Quarter ending on such Quarterly Date,

less any amount of cash or cash proceeds paid or received in respect of the grant or entry into any Subconcession and applied towards the repayment of Equity since the immediately preceding Quarterly Date.

“**Monthly Construction Period Report**” has the meaning given in paragraph 2(b) of Part A of Schedule 5 (*Covenants*).

“**Monthly Construction Progress Report**” means each of the monthly reports prepared by the Prime Contractor under section 7.5 of the Construction Contract.

“**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.

“**Mr Wynn**” means Mr Stephen A. Wynn.

“**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 in connection therewith.

“**Net Income**” means, in relation to the Company for any period, the net income (or loss) of the Company for such period, determined 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 applied towards the repayment of Equity and before any reduction in respect of preferred equity dividends.

“**Net Operating Cashflow**” means, at any time in relation to any period, net operating cash flow for that period from Project operations.

“**Net Operating Cashflow Amount**” means the sum of the Base Net Operating Cashflow Amount and the Contingent Net Operating Cashflow Amount.

**“Net Worth”** means, in relation to the Company at any date, the sum of:

- (a) all amounts that would, in conformity with GAAP, be included on a balance sheet of the Company under stockholders’ equity;
- (b) the amount of principal of any outstanding Subordinated Funding; and
- (c) the amount of principal of any outstanding Shareholder Loans,

as at such date.

**“Notice to Proceed”** has the meaning given to such term in the Construction Contract.

**“Notional Amount”**, in relation to a Hedging Agreement, has the meaning referred to in paragraph 9 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, any other Transferee Shareholder, the Licensor, any assignee or transferee of the Licensor under the IP Agreement and the IP Direct Agreement, the Subordinated Funding Provider and any party to a Senior

Finance Document referred to in paragraph (f) of the definition of Senior Finance Document (other than a Secured Party or a Person who is solely party to an acknowledgement of Security).

“**Opening Conditions**” means, collectively, the following in respect of the Original Project, the Expansion or a phase of the Expansion:

- (a) the Intercreditor Agent shall have received from the Company a certificate, substantially in the form set out in Part A of Schedule 19 (*Forms of Opening Conditions Certificates*), pursuant to which the Company certifies that:
- (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of each Project comprised in the Original Project, the Expansion or such phase for their intended uses shall have been installed and shall be operational;
  - (ii) the Project Certificates of Occupancy for the Original Project, the Expansion or such phase shall have been issued, each area of the Original Project, the Expansion or such phase in which any operation of casino games of chance or other forms of gaming will be carried out shall have been classified as a casino or gaming zone in accordance with Article 9 of the Concession Contract and (other than any Permit made or issued by or with a Governmental Authority the failure of which to obtain could not reasonably be expected to affect the operations of the Original Project or such phase in any material respect) each other Permit made or issued by or with a Governmental Authority required under applicable Legal Requirements to be obtained prior to the Opening Date for the Original Project, the Expansion or such phase shall have been obtained;
  - (iii) the Original Project, the Expansion or such phase (other than the premises to be occupied by individual retail and restaurant tenants) shall be fully open for business to the general public (or, in the case of the theatre comprising part of Area 6, capable of being so open) and at least, notwithstanding the foregoing, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables shall be operating, 80% of all rooms shall be ready for occupancy, at least 80% of restaurant outlets shall be open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating) and, in the case of the Expansion, 80% of each of the projected 500 slot machines and 150 gaming tables are operating;
  - (iv) any remaining work (including, in the case of the Original Project, any work on the Expansion and, in the case of each phase of the Expansion, any work on any other phase) shall be such that it will not materially affect the operation of the Original Project, the Expansion or such phase;

- (v) the failure to complete the remaining work would not materially affect the operation of the Original Project, the Expansion or such phase; and
  - (vi) the Company shall have available a fully trained staff to operate the Original Project, the Expansion or such phase; and
- (b) the Intercreditor Agent shall have received from the Technical Adviser a certificate, substantially in the form set out in Part B of Schedule 19 (*Forms of Opening Conditions Certificates*) in respect of the Original Project, the Expansion or such phase.

“**Opening Date**” means, in relation to the Expansion, the date on which all the Project Certificates of Occupancy required for the Original Project and each phase of the Expansion have been issued or, in relation to the Original Project or any phase of the Expansion, the date on which all the Project Certificates of Occupancy required for the Original Project or such phase have been issued.

“**OperatingAccounts**” means:

- (a) the US Operating Account, the USD Operating Account, the HKD Operating Account and the MOP Operating Account;
- (b) each additional operating account in respect of which the conditions set out in sub-paragraphs 1.1(i) through (iv) of Schedule 6 (*Accounts*) have been satisfied;
- (c) each “HK Account” designated as such pursuant to paragraph (c) of the definition thereof in the Charge over HK Accounts and each “Onshore Account” designated as such pursuant to paragraph (c) of the definition thereof in the Pledge over Onshore Accounts and, in each case, in respect of which the Security Agent has received an Account Bank Notice and Acknowledgement executed by the relevant Account Bank; and
- (d) each Additional Operating Account.

“**Operation Period Insurances**” means the insurances listed in Appendix 2 to Schedule 7 (*Insurance*) and effected in accordance with the terms of Schedule 7 (*Insurance*).

“**Operatives**” means a shareholder, officer, employee, servant, controlling Person, executive, director, agent, authorised representative or Affiliate of any of the Obligors.

“**Original Project**” means that part of the Projects the construction of which was contemplated by the original Construction Contract entered into by the Company and the Prime Contractor and dated 10 May 2004 as amended by the change order and amendment thereto dated 14 September 2004.

“**PASA Agent**” means Wynn Design & Development, LLC.

“**PASA Direct Agreement**” means the agreement so entitled between the PASA Agent, the Company and the Security Agent in the Agreed Form.

“**Patacas**” or “**MOP**” denotes the lawful currency of the Macau SAR.

**“Payment and Performance Bond”** means any payment and performance bond delivered under any Major Project Document in favour of the Company and supporting the Contractor’s obligations under any such Major Project Document (including the Prime Contractor’s Completion Guarantee and the Prime Contractor’s Performance Bond).

**“PBGC”** means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

**“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 on or about the date of this Agreement between the Performance Bond Provider and the Company in the Agreed Form.

**“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 the Projects as contemplated under the Transaction Documents, including those listed in Schedule 12 (*Permits*).

**“Permitted Businesses”** means the Projects, including:

- (a) the operation of casino games of chance or other forms of gaming permitted under the Concession Contract;
- (b) the development, construction, ownership and operation of a hotel resort and casino as contemplated in the Concession Contract; and
- (c) food and beverage, spa, entertainment production, convention, retail, foreign exchange, ground transportation and outsourcing of in-house facilities businesses which are necessary for, incident to, arising out of, supportive of or connected to the development, construction, ownership or operation of such hotel resort and casino.

**“Permitted Financial Indebtedness”** has the meaning given in paragraph 2 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 or P-1 from S&P or Moody's respectively and in each case maturing within nine months after the date of acquisition; and
- (f) money market funds or mutual funds at least 95% of the assets of which constitute Permitted Investments of the kinds described in paragraphs (a) through (e) above.

"**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.

"**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 Loan Party or any Commonly Controlled Entity maintains, administers, contributes to or is required to contribute to or under which any Loan Party or any Commonly Controlled Entity could reasonably be expected to incur any liability.

“**Plans and Specifications**” means the plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of the Projects provided to the Technical Adviser in accordance with paragraph 28 of Part A of Schedule 2 (*Conditions Precedent*) as may be amended in accordance with any variation permitted pursuant to paragraph 15 of Part B of Schedule 5 (*Covenants*).

“**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 Intellectual Property**” 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 Pledges, the Wynn International Share Charge and the Wynn HK Share Charge.

“**Power of Attorney**” means the irrevocable power of attorney dated on or about the date of this Agreement granted by the Company in favour of the Security Agent in connection with the Mortgage.

“**Prime Contractor**” means Leighton Contractors (Asia) Limited, China Construction Engineering (Macau) Company Limited and China State Construction Engineering (Hong Kong) Limited.

“**Prime Contractor’s Completion Guarantee**” means the Amended and Restated Parent Completion Guarantee dated 14 September 2005 given by Leighton Holdings Limited and China Overseas Holdings Limited to the Company in support of the Prime Contractor’s obligations under the Construction Contract.

“**Prime Contractor’s Performance Bond**” means the two Payment and Performance Bonds dated 14 September 2005 in an aggregate amount of not less than USD45,722,399 and delivered to the Company in support of the Prime Contractor’s obligations under the Construction Contract.

“**Proceedings**” has the meaning given to it in paragraph 12 (i) of Part A of Schedule 5 (*Covenants*) hereto.

“**Project**” means:

- (a) the Hotel Project; or
- (b) the design, development and construction in accordance with the Concession Contract and the Construction Contract of a casino on land leased to the Company under the Land Concession Contract, the ownership, operation and maintenance thereof by the Company and the purchase of associated gaming equipment and utensils,

and “**Projects**” means both of them.



**“Project Administration Services Agreement”** (or **“PASA”**) means the Amended and Restated Project Administration Services Agreement between the PASA Agent and the Company dated 14 September 2005.

**“Project Base Debt Facility”** has the meaning given in the Project Facility Agreement.

**“Project Budget”** means the budget referred to in paragraph 24 of Part A of Schedule 2 (*Conditions Precedent*) as updated from time to time in accordance with paragraph 4 of sub-section I of Part B of Schedule 2 (*Conditions Precedent*) or paragraph 2 of Part A of Schedule 5 (*Covenants*).

**“Project Certificates of Occupancy”** means the Licenças de Ocupação issued by the Macau SAR pursuant to applicable Legal Requirements for each of the Original Project and the Expansion (as applicable).

**“Project Contingent Debt Facility”** has the meaning given in the Project Facility Agreement.

**“Project Costs”** means all costs incurred, or to be incurred in accordance with the Project Budget, which costs shall include, without double counting:

- (a) all costs incurred under the Construction Contract;
- (b) interest, commissions or other Financing Costs payable under the Senior Finance Documents prior to the Expansion Opening Date;
- (c) commitment commission payable under the Performance Bond Facility prior to the Expansion Opening Date;
- (d) interest payable prior to the Expansion Opening Date in accordance with the Project Budget under the Subordinated Funding Agreement;
- (e) guarantee fees, legal fees and expenses, financial advisory fees and expenses, technical fees and expenses (including fees and expenses of the Technical Adviser and the Insurance Advisor), commitment fees, management fees and corporate overhead agency fees (including fees and expenses of the Agents), interest, taxes (including value added tax) and other out-of-pocket expenses payable by the Company under any documents related to the financing and administration of the Projects and in accordance with the Project Budget prior to the Expansion Opening Date;
- (f) the costs of acquiring Permits for the Projects prior to the Expansion Opening Date;
- (g) costs incurred in settling insurance claims in connection with Events of Loss and collecting Loss Proceeds at any time prior to the Expansion Opening Date;
- (h) working capital costs incurred in accordance with the Pre-Opening Working Capital Line Item in the Project Budget prior to the Expansion Opening Date; and

- (i) cash to collateralise commercial letters of credit to the extent that payment of any such cash amount to the vendor or materialman who is the beneficiary of such letter of credit would have constituted a “Project Cost” *provided* that the aggregate amount of all such letters of credit outstanding at any one time shall not, without the prior written consent of the Intercreditor Agent, exceed USD25,000,000 or its equivalent.

“**Project Documents**” means:

- (a) the Concession Contract, the Land Concession Contract, the Construction Contract, the Prime Contractor’s Completion Guarantee, the Prime Contractor’s Performance Bond, the Project Administration Services Agreement, the IP Agreement, the Subordinated Funding Agreement, each Payment and Performance Bond issued to the Company and each Affiliate Agreement; and
- (b) each other document or agreement entered into by the Company (other than the Senior Finance Documents) with a total contract price payable by the Company (or expected aggregate amount to be paid by the Company in the case of “cost plus” contracts) or which may otherwise involve liabilities, actual or contingent, in each case in an amount in excess of USD2,500,000 or its equivalent,

each as the same may be amended from time to time in accordance with the terms and conditions of this Agreement and thereof.

“**Project Facility**” means the term loan facilities provided pursuant to the Project Facility Agreement.

“**Project Facility Agent**” means Société Générale Asia Limited as facility agent for the Project Facility Lenders or its successor appointed in accordance with this Agreement.

“**Project Facility Agreement**” means the agreement so entitled between the Company, the Project Facility Agent and the Project Facility Lenders.

“**Project Facility Availability Period**” means, in relation to the Project Facility, the period specified in respect thereof in Clause 4.2 (*Project Facility Availability Period*).

“**Project Facility HKD Disbursement Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Project Facility Lender**” means a lender identified as such in Part B of Schedule 1 (*Project Facility Lenders*) or a Transferee in respect of the Project Facility.

“**Project Facility USD Disbursement Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Project Lending Group**” means the Project Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Project Facility Agreement.

“**Project Punchlist Items**” means minor or insubstantial details of construction or mechanical adjustment, the non-completion of which, when all such items are taken

together, will not interfere in any material respect with the use or occupancy of the Site Facilities for their intended uses or the ability of the owner, sub-concessionaire or master lessee, as applicable, of any portion of the Site Facilities (or any tenant thereof) to perform work that is necessary or desirable to prepare such portion of the Site Facilities for such use or occupancy *provided* that, in all events, "Project Punchlist Items" shall include (to the extent not already completed), without limitation, the items set forth in the punch lists to be delivered by the Company in connection with "Original Project Substantial Completion" and "Expansion Project Substantial Completion" under the Construction Contract.

**"Project Revenues"** means all income and receipts of the Company, including those derived from the ownership or operation of the Projects or the Permitted Businesses, including payments received by the Company under any Project Document, net payments, if any, received under Hedging Agreements, Liquidated Damages, Insurance Proceeds, Eminent Domain Proceeds, together with any receipts derived from the sale of any property pertaining to the Projects or the Permitted Businesses or incidental to the operation of the Projects or the Permitted Businesses, all as determined in conformity with cash accounting principles, and the proceeds of any condemnation awards relating to the Projects or the Permitted Businesses.

**"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 Schedule"** means the schedule referred to in paragraph 25 of Part A of Schedule 2 (*Conditions Precedent*) as updated from time to time in accordance with paragraph 4 of sub-section I of Part B of Schedule 2 (*Conditions Precedent*) or paragraph 2 of Part A of Schedule 5 (*Covenants*).

**"Project Works"** means the design, development and construction of the Projects and any other works contemplated by the Construction Contract.

**"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 Fiscal Quarter of the Company which ends not less than 6 months after the Construction Completion Date; and
- (b) with respect to each subsequent Quarterly Date, the last day of the next succeeding Fiscal Quarter of the Company.

“**Quotation Day**” means, in relation to any period for which an interest rate is to be determined, two 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 6 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 required by paragraph 1.2 of Schedule 7 (*Insurance*) to be taken out or effected in respect of any Direct Insurance.

“**Reinsurance Broker’s Letter of Undertaking**” means a letter of undertaking in substantially the form set out in Appendix 6 to Schedule 7 (*Insurance*) or in such other form as may be approved by the Intercreditor Agent acting in consultation with the Insurance Adviser, such approval not to be unreasonably withheld.

“**Reinsurer**” means an international reinsurer of good standing and responsibility with whom a Reinsurance is placed from time to time in accordance with Schedule 7 (*Insurance*).

“**Reinvestment Deferred Amount**” means, with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by the Company in connection therewith that are not applied to prepay the Advances under the Term Loan Facilities pursuant to paragraph 2 of Schedule 9 (*Mandatory Prepayment*) as a result of the delivery of a Reinvestment Notice.

“**Reinvestment Event**” means any Asset Sale in respect of which the Company has delivered a Reinvestment Notice.

“**Reinvestment Notice**” means, in relation to any Asset Sale referred to in paragraph 5(a) of Part B of Schedule 5 (*Covenants*), a written notice executed by a Responsible Officer of the Company and delivered to the Intercreditor Agent within 30 days after such Asset Sale, stating that no Event of Default has occurred and is continuing and that the Company intends and expects to use all or a specified portion of the Net Cash Proceeds of such Asset Sale to acquire assets permitted pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*).

“**Reinvestment Prepayment Amount**” means, with respect to any Reinvestment Notice, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire assets permitted pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*).

- “Reinvestment Prepayment Date”** means, with respect to any Reinvestment Event in respect of which a Reinvestment Notice is served, the earlier of:
- (a) the date occurring three months after such Reinvestment Event (or, if the contemplated acquisition of assets in connection with the corresponding Reinvestment Notice cannot be completed within such three month period but is reasonably expected to be completed within six months after such Reinvestment Event, nine months after such Reinvestment Event); and
  - (b) the date on which the Company shall have determined not to acquire assets permitted pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*) with all or any portion of the relevant Reinvestment Deferred Amount.

**“Related Party”** means:

- (a) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of Mr Wynn; and
- (b) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons directly or indirectly beneficially holding an 80% or more controlling interest of which consist of Mr Wynn and/or such other Persons referred to in paragraph (a) above.

**“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, Revolving Credit Facility Lender, Additional Lender 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 sub-paragraph 2(g) 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.

**“Relevant Party”** means a Person (other than a Substantial Shareholder or, in respect only of his direct shareholding in the Company as at the Signing Date, Mr Wong Chi Seng) who, legally or beneficially, directly or indirectly, owns or holds any of the outstanding Capital Stock of the Company other than directly or indirectly through Wynn International.

**“Relevant Party’s Undertaking”** means the undertakings set out in paragraph 3 of schedule 4 of the Term Sheet.

**“Remaining Costs”** means, at any given time for any Line Item category or Line Item, the “Balance to Complete” set forth in respect of that Line Item in the Project Budget (as in effect from time to time).

**“Remaining Project Costs”** means, at any given time (and without double counting), the sum of all Remaining Costs at that time.

**“Reorganization”** means, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of section 4241 of ERISA.

**“Repair Plan”** has the meaning given in paragraph 5 of Schedule 9 (*Mandatory Prepayment*).

**“Repayment Date”** means, in relation to a Term Loan Facility:

- (a) the First Repayment Date for such Facility; and
- (b) each subsequent date falling three months thereafter.

**“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 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).

**“Reserve Accounts”** means the USD Debt Service Reserve Account and the HKD Debt Service Reserve Account.

**“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. Unless otherwise qualified, all references to a “Responsible Officer” shall refer to a Responsible Officer of the Company.

**“Restricted Payments”** has the meaning given to it in paragraph 6 of Part B of Schedule 5 (*Covenants*) hereto.

**“Retainage Amounts”** means, at any given time, amounts which have accrued and are owing to a Contractor under the terms of a Project Document (other than the IP Agreement) for work or services already provided but which at such time (and in

accordance with the terms of such Project Document) are being withheld from payment to the Contractor, until certain subsequent events (e.g. completion benchmarks) have been achieved under the Project Document.

“**Revolving Credit Facility**” means the loan facility to be provided under the Revolving Credit Facility Agreement.

“**Revolving Credit Facility Agreement**” means the agreement so entitled between the Company and the Revolving Credit Facility Lenders.

“**Revolving Credit Facility Availability Period**” means the period specified in Clause 4.3 (*Revolving Credit Facility Availability Period*).

“**Revolving Credit Facility Lender**” means a lender identified as such in Part C of Schedule 1 (*Revolving Credit Facility Lenders*) or a Transferee in respect of the Revolving Credit Facility.

“**Revolving Credit Facility Termination Date**” means, in relation to the Revolving Credit Facility, the third anniversary of the Signing Date or such later date as may be agreed in accordance with the Revolving Credit Facility Agreement.

“**SEC**” means the Securities and Exchange Commission (or successors thereto) of the United States of America.

“**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.

“**Securities Account**” has the meaning given in the Wynn Resorts Support Agreement.

“**Securities Account Control Agreement**” means the bank account control agreement dated on or about the date of this Agreement between Wynn Asia, the Security Agent and Bank of America, N.A.

“**Securities Account Shortfall**” has the meaning given in the Wynn Resorts Support Agreement.

“**Security**” means the Liens created or purported to be created under the Security Documents.

“**Security Agent**” means Société Générale, Hong Kong 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 Documents**” means:

- (a) the Mortgage;
- (b) the Power of Attorney;
- (c) the Land Security Assignment;
- (d) the Assignment of Rights;

- (e) the Pledge over Gaming Equipment and Utensils;
- (f) the Pledge over Onshore Accounts;
- (g) the Assignment of Insurances;
- (h) the Assignment(s) of Reinsurances;
- (i) the Pledge over Intellectual Property;
- (j) the Floating Charge;
- (k) the Livranças and the Livrança Covering Letter;
- (l) the Debenture;
- (m) the Wynn Resorts Support Agreement;
- (n) the Capital Contributions Account Control Agreement;
- (o) the US Operating Account Control Agreement;
- (p) the Securities Account Control Agreement;
- (q) the Wynn Pledgors' Guarantee;
- (r) the Wong Share Pledge and the Wong Consent;
- (s) the Company Share Pledge;
- (t) the Wynn International Share Charge;
- (u) the Wynn HK Share Charge;
- (v) the Sponsors' Subordination Deed;
- (w) the Deed of Appointment and Priority;
- (x) each Direct Agreement;
- (y) 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 (including, if and when entered into, the Charge over HK Accounts) 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, entered into by a Transferee Shareholder or creating or evidencing security over an Additional Operating Account; and
- (z) 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 Debt**” means, at any date, the sum of all outstanding Advances made under the Facilities as at such date.

“**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 Wynn Pledgors’ Guarantee and the Wong Share Pledge.

“**Shareholder Loans**” means Financial Indebtedness (other than the Subordinated Funding) advanced by one or more of the Shareholders, the Wynn Obligors or Affiliates of the Wynn Obligors to the Company that is subordinated in accordance with the terms provided by the Sponsors’ Subordination Deed.

“**Shareholders**” means Wynn HK, Wynn International and Mr Wong Chi Seng.

“**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.

“**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.

“**Site Facilities**” means

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

“**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*).

“**Sponsor Support Release Date**” has the meaning given in the Wynn Resorts Support Agreement.

“**Sponsors’ Subordination Deed**” means the deed so entitled dated on or about the date of this Agreement between the Wynn Obligors (other than Wynn Resorts), the Company and the Security Agent.

“**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*).

“**Subcontract**” means any subcontract or purchase order entered into with any Subcontractor.

“**Subcontractor**” means any direct or indirect subcontractor of any tier under any Project Document.

“**Subordinated Debt**” means Financial Indebtedness that is subordinated in accordance with the terms provided by the Sponsors’ Subordination Deed.

“**Subordinated Funding**” means the Base Subordinated Funding, the Contingent Subordinated Funding and the amount (if any) by which the Subordinated Funding is increased pursuant to paragraph 15.2.1(c) of Part B of Schedule 5 (Covenants).

“**Subordinated Funding Agreement**” means the note purchase agreement dated 14 September 2004 and the amended and restated note purchase agreement dated 14 September 2005 between the Subordinated Funding Provider and the Company (and including the notes issued or contemplated to be issued thereunder).

“**Subordinated Funding Provider**” means the Purchaser as defined in the Subordinated Funding 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.

“**Substantial Completion**” means, in relation to the Original Project, “Original Project Substantial Completion” (as defined in the Construction Contract) in respect of the Original Project taken as a whole and, in relation to the Expansion, “Expansion Project Substantial Completion” (as defined in the Construction Contract) in respect of the Expansion taken as a whole and, in relation to Area 4 and Area 5 respectively of the Expansion, the handover to the Company or, only when and where applicable, the “partial Expansion Project Substantial Completion” of such phase of the Expansion taken as a whole pursuant to the Construction Contract.

“**Substantial Shareholder**” means any Person (other than in respect only of his direct shareholding in the Company as at the Signing Date, Mr Wong Chi Seng) who, legally or beneficially, directly or indirectly, owns or holds 5% or more of the outstanding Capital Stock of the Company other than directly or indirectly through Wynn International.

“**Substantial Shareholder’s Undertaking**” means the undertakings set out in paragraph 2 of schedule 4 of the Term Sheet.

“**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).

“**Taking**” means a taking or voluntary conveyance of all or part of any of the Project Security, 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 of the Project Security or any portion thereof.

“**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 Adviser**” means Ernst & Young as the tax adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letter dated 10 June 2004.

“**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*).

“**Technical Adviser**” means, as the case may be:

- (a) Mott Connell Ltd. as the technical adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letters dated 3 February 2004 and 27 April 2005;
- (b) the technical adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date; or
- (c) the technical adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of the Projects.

“**Technical Adviser’s Advance Certificate**” has the meaning given in paragraph 5 of sub-section I of Part B of Schedule 2 (*Conditions Precedent*).

“**Technical Adviser’s Monthly Report**” means a monthly status report, in form and substance acceptable to the Intercreditor Agent, delivered to the Intercreditor Agent on or before the fifteenth day of each calendar month up to and including the calendar month immediately following the Final Completion Date and describing in reasonable detail the progress of the construction of the Projects, including reviews and assessments of the Project Budget, the Project Schedule and the Monthly Construction Period Report and each of its attachments delivered during the preceding calendar month.

“**Term Loan Facilities**” means each of the term loan facilities provided pursuant to the Term Loan Facilities Agreements.

**“Term Loan Facilities Agreements”** means the Hotel Facility Agreement, the Project Facility Agreement and each Additional Lender Facility Agreement.

**“Term Loan Facility Lender”** means a Hotel Facility Lender or a Project Facility Lender.

**“Term Sheet”** has the meaning given in the Underwriting Agreement.

**“Termination Event”** has the meaning given in paragraph 12 (*Notices*) 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 Company at any date, the aggregate principal amount of all Financial Indebtedness of the Company at such date other than Financial Indebtedness arising in respect of:

- (a) paragraph (j) of the definition thereof (save in relation to any Realised Hedge Loss);
- (b) the Performance Bond Facility (save in relation to any drawing under the Concession Contract Performance Bond);
- (c) the Subordinated Funding; or
- (d) any Shareholder Loans.

**“Transaction Document”** means a Senior Finance Document or a Major Project Document.

**“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*).

**“Transferee Shareholder”** has the meaning given in the Wynn Resorts Support Agreement.

**“UCC”** means the Uniform Commercial Code of any State in the United States of America, as in effect from time to time.

**“Underwriting Agreement”** means the underwriting agreement between Wynn Resorts, the Company and the GCLAs dated 23 June 2005.

**“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*).

**“US Operating Account”** means the account so designated in Schedule 6 (*Accounts*).

**“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.

**“USD”** or **“US dollars”** 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 the outstanding Advances and the aggregate undrawn Available Commitments of such Lender under the Term Loan Facilities and, where such Decision Date falls after the commencement of the Revolving Credit Facility Availability Period, the Revolving Credit Facility;
- (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.

**“Wholly Owned Subsidiary”** means, as to any Person, any other Person all of the Capital Stock of which (other than directors’ qualifying shares required by any Legal Requirement) is beneficially owned by such Person directly and/or through other Wholly Owned Subsidiaries.

**“Wong Consent”** means the written consent dated 2 September 2004 given by Mrs Cheung Wai Hing in relation to the obligations of Mr Wong Chi Seng under and the Security granted pursuant to the Wong Share Pledge.

**“Wong Option Agreement”** means the option agreement between Mr Wong Chi Seng, Wynn International and the Company in substantially the Agreed Form.

“**Wong Share Pledge**” means the document so entitled dated on or about the date of this Agreement between Mr Wong Chi Seng and the Security Agent.

“**Working Capital**” means, at any date, an amount equal to Current Assets on such date minus Current Liabilities on such date.

“**Wynn Asia**” means Wynn Group Asia, Inc.

“**Wynn Event**” means:

- (a) the first day on which
  - (i) Mr Wynn and his Related Parties as a group control less than 20% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than size of equity interests (excluding, for purposes of calculating the outstanding Voting Stock of Wynn Resorts pursuant to this paragraph (a)(i), shares of Voting Stock issued in a primary issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts); or
  - (ii) Mr Wynn and his Related Parties as a group control less than 10% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than size of equity interests;
- (b) the first day prior to 31 December 2007 on which Mr Wynn does not act as either the Chairman of the Board of Directors of Wynn Resorts or the Chief Executive Officer of Wynn Resorts, other than:
  - (i) as a result of death or disability; or
  - (ii) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint Mr Wynn as Chairman of the Board of Directors of Wynn Resorts or Chief Executive Officer of Wynn Resorts;
- (c) the first day on which Wynn Resorts ceases to beneficially own, directly or indirectly:
  - (i) at any time prior to the Sponsor Support Release Date, at least that percentage of the outstanding Capital Stock of the Company (measured by both voting power and size of equity interests) as it so owned as at the date of this Agreement or at any time thereafter; or
  - (ii) at any time thereafter, 51% of the outstanding Capital Stock of the Company (measured by both voting power and size of equity interests); or
- (d) 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 and the Security Agent.

“**Wynn Obligor**” means Wynn Resorts, Wynn Holdings, Wynn Asia, Wynn International, Wynn HK and any Transferee Shareholder which is an Affiliate of Wynn Resorts.

“**Wynn Pledgors’ Guarantee**” means the guarantee so entitled dated on or about the date of this Agreement between Wynn Asia, Wynn Holdings, Wynn HK, Wynn International and the Security Agent.

“**Wynn Resorts**” means Wynn Resorts, Limited.

“**Wynn Resorts Support Agreement**” means the agreement so entitled dated on or about the date of this Agreement between Wynn Resorts, the Company and the Security Agent.

## 1.2 Principles of Construction

Any reference in this Agreement to:

“**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;

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;

“**including**” is without limitation;

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);

“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

a document being in “**substantially the Agreed Form**” or in substantially a specified form shall (save in the case of the definitions of “Shareholders’ Agreement” and “Wong Option Agreement” in Clause 1.1 (*Definitions*)) 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 typographical errors.

### 1.3 Rules of Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include every gender;
- (c) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced from time to time;
- (d) references to this Agreement are references to this Agreement and the Schedules;
- (e) references to clauses and Schedules are references to clauses of, and Schedules to, this Agreement;
- (f) headings are for convenience only and shall be ignored in construing this Agreement;
- (g) references to any party to this Agreement include references to its respective successors, permitted transferees and permitted assigns;
- (h) 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;
- (i) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;
- (j) references to any judgement include references to any order, injunction, decree, determination or award of any court or tribunal; and
- (k) a time of day is a reference to Hong Kong time unless otherwise stated.

#### 1.4 **Conflict with a Senior Finance Document**

In the case of any conflict between:

- 1.4.1 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;
- 1.4.2 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);
- 1.4.3 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
- 1.4.4 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.

#### 1.5 **Third party rights**

1.5.1 The Contracts (Rights of Third Parties) Act 1999 applies to:

- (a) 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;
- (b) 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;
- (c) paragraph 5 of Part A of Schedule 2 (*Conditions Precedent*) but only for the benefit of the relevant Responsible Officer;
- (d) paragraph 1 of Part A of Schedule 5 (*Covenants*) but only for the benefit of the relevant Responsible Officers of the Company; and
- (e) 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*).

1.5.2 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.

1.5.3 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.

1.6 **Advisers**

Where this Agreement contemplates the doing of any act or thing by an Adviser, the Intercreditor Agent shall use its reasonable endeavours to ensure that such act or thing is done by such Adviser in a timely manner.

2. **CONDITIONS PRECEDENT**

2.1 **Conditions Precedent to the CP Satisfaction Date**

2.1.1 The right of the Company to submit an Advance Request for the Initial Advance is subject to the Company having satisfied the conditions precedent set out in Part A of Schedule 2 (*Conditions Precedent*) in form and substance acceptable to the Intercreditor Agent.

2.1.2 In relation to each Facility, the Company shall be deemed to have satisfied:

- (a) the conditions precedent set out in
  - (i) paragraph 1(a) (in respect only of the Concession Contract, the Land Concession Contract, the Concession Contract Performance Bond and the IP Agreement);
  - (ii) paragraph 1(c) (in respect only of the Notice to Proceed);
  - (iii) paragraph 2(a) (in respect only of the Power of Attorney, the Livranças and the Livrança Covering Letter);
  - (iv) paragraph 2(b);
  - (v) paragraph 2(c) (in respect only of the Power of Attorney, the Livranças and the Livrança Covering Letter);
  - (vi) paragraph 3(a);
  - (vii) paragraph 3(c);
  - (viii) paragraph 3(d);
  - (ix) paragraph 4;
  - (x) paragraph 5(a)(i);
  - (xi) paragraph 5(b)(i) (in respect only of: China Overseas Holdings Limited, China State Construction Engineering (Hong Kong) Limited, Leighton Contractors (Asia) Limited, Leighton Holdings Limited, Wynn Asia, Wynn Resorts Holdings LLC, Wynn International, Wynn Resorts, Wynn HK, Wynn Holdings, Wynn Design & Development, LLC);
  - (xii) paragraph 8(b);
  - (xiii) paragraph 13;

- (xiv) paragraph 14(o);
- (xv) paragraph 14(p);
- (xvi) paragraph 16;
- (xvii) paragraph 17(a)(i);
- (xviii) paragraph 17(a)(ii);
- (xix) paragraph 17(a)(iv);
- (xx) paragraph 17(a)(v);
- (xxi) paragraph 17(a)(vi);
- (xxii) paragraph 17(a)(vii);
- (xxiii) paragraph 17(b);
- (xxiv) paragraph 17(c);
- (xxv) paragraph 18;
- (xxvi) paragraph 19;
- (xxvii) paragraph 25;
- (xxviii) paragraph 26; and
- (xxix) paragraph 28,

of Part A of Schedule 2 (*Conditions Precedent*) following execution and delivery of this Agreement by each of the Persons expressed to be a party hereto; and

- (b) the remaining conditions precedent in this Clause 2.1 if, prior to the date of the Advance Request for the Initial Advance, the Intercreditor Agent has notified the Company, the Facility Agents and the Revolving Credit Facility Lenders accordingly.

2.1.3 Notwithstanding anything in this Agreement to the contrary, the Company may, from time to time prior to the CP Satisfaction Date, but no more frequently than once every five Business Days, submit or resubmit to the Intercreditor Agent for approval (if such approval is required) additional documents, instruments, agreements, certificates and other items listed under conditions precedent in Part A of Schedule 2 (*Conditions Precedent*) that were not deemed satisfied under Clause 2.1.2(a). The Intercreditor Agent agrees to promptly review and, where it considers appropriate under the terms of the Senior Finance Documents, determine whether to approve any such submittals or resubmittals by the Company (or, if it considers it not appropriate to make such determination acting on its own, the Intercreditor Agent agrees promptly to forward to the relevant Senior Secured Creditors such submittals or resubmittals

for approval). Upon approval (whether by the Intercreditor Agent or the Required Lenders, as the case may be), the Intercreditor Agent shall notify the Company, the Facility Agents, any Additional Lender and the Revolving Credit Facility Lenders accordingly, and the item(s) so submitted (or resubmitted) and notified approved shall be deemed to have been satisfied with the same effect as the conditions precedent enumerated in Clause 2.1.2(a) as of the date of such notification.

## 2.2 **Conditions Precedent to each Advance**

The obligation of each Lender to participate in each Advance under a Term Loan Facility and the Initial Advance under the Revolving Credit Facility is subject to the Company having satisfied the conditions set out in Part B of Schedule 2 (*Conditions Precedent*) in respect of such Facility in form and substance acceptable to the Intercreditor Agent.

## 2.3 **Independent rights and obligations of Lenders**

2.3.1 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.

2.3.2 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.

2.3.3 A Senior Secured Creditor may, except as otherwise stated in the Senior Finance Documents, separately enforce its rights under the Senior Finance Documents.

2.3.4 Notwithstanding any other provision of the Senior Finance Documents, no Lender under a Term Loan Facility shall be obliged to make or participate in an Advance on a proposed Advance Date if drawdowns under another Term Loan Facility have been withheld, suspended or cancelled in accordance with the Senior Finance Documents.

## 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 (or, as the case may be, the Revolving Credit Facility Lenders) shall make, Advances under a Facility if:

3.1.1 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 and Additional Lenders (if any) not later than

3:00 p.m. on the sixth Business Day before the proposed Advance Date) or the fifth Business Day before the proposed Advance Date (in the case of an Advance under the Revolving Credit Facility), the Intercreditor Agent and the relevant Facility Agent and Additional Lenders (if any) or, as the case may be, the Revolving Capital Facility Lenders have received a completed Advance Request; and

3.1.2 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.

### 3.2 **Completion of an Advance Request**

Each Advance Request is irrevocable and shall not be regarded as having been completed unless:

3.2.1 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 in substantially the form set out in paragraph 3(ii) of Part C of Schedule 2 (*Conditions Precedent*), has also been delivered to the Intercreditor Agent;

3.2.2 the proposed Advance Date is a Business Day within the relevant Availability Period;

3.2.3 it specifies:

- (a) the amount and (in the case of Advances under the Term Loan Facilities) currency of the Advances to be made;
- (b) (in the case of Advances under the Term Loan Facilities) 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); and
- (d) (in the case of Advances under the Term Loan Facilities) the purpose for which such Advances shall be applied (which shall be, in the case of Advances under the Hotel Facility, to pay or refinance payment of Hotel Project Costs and, in the case of Advances under the Project Facility or any Additional Lender Facility, to pay or refinance payment of Project Costs which have, in each case, been incurred and paid or are due and payable, or which will or the Company reasonably expects might be incurred and be due and payable, prior to the date falling 30 days after the proposed Advance Date);

- 3.2.4 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 Hotel Facility, the US dollar equivalent of the amount requested, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs incurred and paid by the Company or which will or the Company reasonably expects might be incurred and be due and payable by it prior to the date falling 30 days after the proposed Advance Date; and
  - (c) the Revolving Credit Facility, the amount requested is either a minimum amount of HKD5,000,000 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
- 3.2.5 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) (in the case of Advances under the Term Loan Facilities) the proceeds of any Advance under the Hotel Facility shall be applied to pay or refinance payment of Hotel Project Costs;
  - (b) (in the case of Advances under the Term Loan Facilities) the US dollar equivalent amount of any Advance under the Hotel Facility, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs incurred and paid by the Company or which will or the Company reasonably expects might be incurred and be due and payable by it prior to the date falling 30 days after the proposed Advance Date;
  - (c) no Default (or, in the case of any Rollover Advance (as defined in the Revolving Credit Facility Agreement), Event of Default) is continuing or would result from the proposed Advances; and
  - (d) 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.

**4. AVAILABILITY PERIODS**

**4.1 Hotel Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Hotel Facility shall be made available from the Signing Date until the earliest of:

- 4.1.1 the date falling 90 days after the Construction Completion Date;
- 4.1.2 the cancellation of the Available Commitments of the Lenders thereunder pursuant to Clause 7 (*Special Drawdowns*);
- 4.1.3 the date upon which it has been fully drawn and the Available Commitments of the Lenders thereunder reduced to zero;
- 4.1.4 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*); and
- 4.1.5 10 January 2008.

**4.2 Project Facility Availability Period**

Subject to other terms of the Senior Finance Documents, (x) the Project Facility shall be made available from the Signing Date and each Additional Lender Facility from the date provided in the Additional Lender Facility Agreement therefor and (y) the Project Facility and each Additional Lender Facility shall be made available until the earliest of:

- 4.2.1 the date falling 90 days after the Construction Completion Date;
- 4.2.2 the cancellation of the Available Commitments of the Lenders thereunder pursuant to Clause 7 (*Special Drawdowns*);
- 4.2.3 the date upon which it has been fully drawn and the Available Commitments of the Lenders thereunder reduced to zero;
- 4.2.4 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*); and
- 4.2.5 10 January 2008.

**4.3 Revolving Credit Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Revolving Credit Facility shall be made available from the date of issue of the Project Certificate of Occupancy for the Original Project until the earliest of:

- (a) the Termination Date (as defined in the Revolving Credit 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.

6. **PRO RATA DRAWINGS**

Subject to Clause 7.2 (*Rebalancing between Debt, Equity and Net Operating Cashflow*), the Company shall ensure that:

- (a) where an Advance is requested under a Project Facility, Hotel Facility or Additional Lender Facility, an Advance, as a proportion of the Available Commitments under such Facility, in an amount *pro rata* with that requested has also been requested to be made on the same Advance Date under each of the equivalent Facilities of the other Term Loan Facilities; and
- (b) where an Advance is requested under one of the US dollar or HK dollar tranches of a Base Debt Facility or a Contingent Debt Facility with at least one US dollar tranche and one HK dollar tranche, an Advance, as a proportion of the Available Commitments in respect of such tranche, in a US dollar equivalent amount *pro rata* with that requested has also been requested to be made on the same Advance Date under the other HK dollar or US dollar tranche of such Base Debt Facility or Contingent Debt Facility.

7. **SPECIAL DRAWDOWNS**

7.1 **Final Completion Costs**

7.1.1 Following Substantial Completion of the Original Project and the Expansion, the Company may, notwithstanding Clause 3.1.2 (*Drawdown conditions*) and Clauses 3.2.3(d) and 3.2.4(a) (*Completion of an Advance Request*), deliver an Advance Request requesting an Advance under the Hotel Facility, the Project Facility and (where any Advance is proposed to be made under a Base Debt Facility) each Additional Lender Facility to be applied by the Company towards Final Completion Costs.

- 7.1.2 Subject to the other terms of this Agreement and the relevant Facility Agreement, such an Advance shall be made *provided* that:
- (a) any additional conditions to the making of such Advances specified in Part B of Schedule 2 (*Conditions Precedent*) have been satisfied in accordance with Clause 2.2 (*Conditions Precedent to each Advance*); and
  - (b) save for any Advances made pursuant to Clauses 7.2 (*Rebalancing between Debt, Equity and Net Operating Cashflow*), no further Advance may be made under the Hotel Facility, the Project Facility or any Additional Lender Facility following the making of such an Advance Request and any Available Commitment of the Lenders under each such Facility shall be cancelled accordingly.

**7.2 Rebalancing between Debt, Equity and Net Operating Cashflow**

7.2.1 Following Construction Completion and subject to compliance with any applicable Legal Requirements, the Company may, notwithstanding Clause 3.1.2 (*Drawdown Conditions*) and Clauses 3.2.3(d) and 3.2.4(a) (*Completion of an Advance Request*), deliver an Advance Request requesting an Advance under the Hotel Facility, the Project Facility and (where any Advance is proposed to be made under a Base Debt Facility) each Additional Lender Facility to be made on or before the last day of the Availability Period for such Facility and applied by the Company towards:

- (a) repayment of Equity; and/or
- (b) reimbursement of amounts of Project Revenues derived from Project operations which, in aggregate, do not exceed such amount of such Project Revenue which, in addition to the Net Operating Cashflow Amount (or, in the case of a completed Advance Request under a Base Debt Facility, the Base Net Operating Cashflow Amount) thereof, has been applied towards Project Costs which, save for the availability of such Project Revenue, could otherwise have been met from drawings under the Hotel Facility, the Project Facility or any Additional Lender Facility.

7.2.2 Subject to the other terms of this Agreement and the relevant Facility Agreement, such an Advance shall be made under this Clause 7.2 *provided* that:

- (a) where the Advance is requested under a Base Debt Facility, its amount is such that, as at the proposed Advance Date, the ratio of:
  - (i) the sum of the US dollar equivalents of all Advances which have or may be made under the Base Debt Facilities (including this Advance and any such Advance which may be made pursuant to any Advance Request delivered by the Company pursuant to Clause 7.1 (*Final Completion Costs*)); to
  - (ii) the sum of the US dollar equivalents of all Base Equity and amounts of Base Subordinated Funding advanced or subscribed under the Subordinated Funding Agreement less the amount of the Advance to be applied towards repayment of Equity,

would not exceed 68:32;

- (b) where the Advance is requested under a Contingent Debt Facility, its amount is such that, as at the proposed Advance Date, the ratio of:
- (i) the sum of the US dollar equivalent of all Advances which have or may be made under the Contingent Debt Facilities (including this Advance and any such Advance which may be made pursuant to any Advance Request delivered by the Company pursuant to Clause 7.1 (*Final Completion Costs*)); to
  - (ii) the sum of the US dollar equivalents of all Contingent Equity described in sub-paragraph (a) of the definition thereof paid up or advanced and amounts (if any) of Contingent Subordinated Funding advanced or subscribed under the Subordinated Funding Agreement less the amount of the Advance to be applied towards repayment of Equity,
- would not exceed 50:50;
- (c) for the purposes of an Advance under a Contingent Debt Facility, the Company need only satisfy the condition set out in paragraph 2 of sub-section II of Part B of Schedule 2 (*Conditions Precedent*) in relation to such amount of Contingent Equity as has actually been paid up or advanced (and used for the purposes of calculating the ratio referred to in paragraph (b) of this Clause 7.2.2) rather than the full amount of Contingent Equity contemplated by the definition thereof in Clause 1.1 (*Definitions*) and the terms of this Agreement and the relevant Facility Agreement shall apply accordingly;
- (d) where the Advance is requested under the Hotel Facility, its US dollar equivalent amount, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of all Hotel Project Costs paid by the Company; and
- (e) subject to Clause 7.1 (*Final Completion Costs*), no further Advance may be made under the Hotel Facility or the Project Facility following the making of such an Advance Request and any Available Commitment of the Lenders under each such Facility shall be cancelled accordingly.

## 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:

- (a) if prepaid prior to the Construction Completion Date (other than in the case of paragraph (b)(i) below), equal the balance of the principal amount owing to all Term Loan Facility Lenders and Additional Lenders (and each of the Term Loan Facilities (and any Available Commitments thereunder) shall be automatically cancelled); or
- (b) if prepaid:
  - (i) using only the proceeds of Shareholder Loans not forming part of Base Equity, Contingent Equity or any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents; or
  - (ii) following the Construction Completion Date, 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 and Additional 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.

## 8.3 Mandatory Prepayment

8.3.1 The Company shall prepay Advances outstanding under the Term Loan Facilities on the dates and in the amounts specified in Schedule 9 (*Mandatory Prepayment*).

8.3.2 Any amount prepaid under this Clause 8.3 and Schedule 9 (*Mandatory Prepayment*) shall be applied *pro rata* between the Advances outstanding under the Term Loan Facilities and then against the repayment instalments of those Advances in inverse order of maturity.

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 **Voluntary Cancellation**

Save as provided in Clause 8.5 (*Prepayment and Cancellation of Individual Lenders*) and Clause 14 (*Illegality*):

- (a) the Company may only cancel the whole or any part (being a minimum amount of USD10,000,000 or its equivalent) of the Available Commitments under the Hotel Facility, the Project Facility or any Additional Lender Facility after the Construction Completion Date in accordance with the terms of the relevant Facility Agreement and the other provisions of this Clause 8 and if:
  - (i) it gives not less than fifteen days' irrevocable notice of cancellation to the Intercreditor Agent; and
  - (ii) the Available Commitments under each US dollar and HK dollar Facility are cancelled *pro rata* to their US dollar equivalent amounts; and
- (b) the Company may only cancel the whole or any part (being a minimum amount of HKD10,000,000) of the Available Commitments under the Revolving Credit Facility Agreement on not less than fifteen days' prior irrevocable written notice to the Intercreditor Agent and the Revolving Credit Facility Lenders and, prior to the third anniversary of the Signing Date, with the prior written consent of the Intercreditor 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.

#### 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 sub-paragraph 2(h) of Part B of Schedule 5 (*Covenants*) or the amendment or waiver of paragraph 2 of Part B of Schedule 5 (*Covenants*),

then, the Company may, subject to the other provisions of this Clause 8 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 Commitments under the relevant Facility Agreement,
- provided* that no Forecast Funding Shortfall (determined without taking account of any amount of Contingent Equity or any amount of the Contingent Debt Facilities) shall result.

## 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 If, following any prepayment pursuant to this Clause 8, the US dollar equivalent of the aggregate of the Notional Amounts of the Hedging Agreements is more than 125% of the US dollar equivalent of the aggregate of the Advances outstanding under the Term Loan Facilities following such prepayment, the Company shall reduce each such Notional Amount *pro rata* so that their US dollar equivalent is, in aggregate, not less than 50% and not more than 125% of the US dollar equivalent of the aggregate of such Advances (and, if the Term Loan Facilities are prepaid in full, the Company shall, subject to Schedule 8 (*Hedging Arrangements*), unwind all remaining transactions under the Hedging Agreements).

## 8.7 Replacement of Lender

If any Lender:

- (a) claims any amounts from the Company under Clauses 11.2, 11.3 or 12 hereof;
- (b) fails to make its portion of any Advance to be made by it on the relevant Advance Date; or
- (c) withholds its consent in any of the circumstances contemplated in Clause 8.5(d),

(an “**Affected Lender**”), the Company may (after paying all amounts then due under Clauses 11.2, 11.3 and 12 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, an entity on the Approved List 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 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 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.

## 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

Interest on each Advance shall be due on each 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.
- 9.3.2 Subject to this Clause 9, the duration of each Interest Period for each Advance under a Facility shall be one, two or three months, in each case as the Company may, by not less than ten Business Days’ prior notice to the Facility Agent for such Facility (or, as the case may be, each Additional Facility Lender and the Revolving Credit Facility Lenders), 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 Hotel Facility, the Project Facility or an Additional Lender Facility); or
- (b) the Revolving Credit Facility Termination Date (in the case of any Interest Period relating to an Advance under the 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, 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.

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 Hotel Facility Agreement) for successive Interest Periods, each of a duration selected by the relevant Facility Agent, Additional Lenders or Revolving Credit Lenders (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

10.2.1 If a Market Disruption Event occurs in relation to an Advance under a Facility for any Interest Period, the relevant Facility Agent or, as the case may be, Additional Lender or Revolving Credit Facility Lender, 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.

10.2.2 For the purpose of this Clause 10.2, "**Market Disruption Event**" means:

- (a) 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;
- (b) 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.

10.2.3 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, any Additional Lenders, the Revolving Credit Facility Lenders and the Company accordingly.

10.2.4 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

10.3.1 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.

10.3.2 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

11.2.1 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.

11.2.2 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.

11.2.3 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.

11.2.4 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.

11.2.5 After making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall, if so requested in writing by the Intercreditor Agent, 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

11.3.1 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.

11.3.2 Sub-clause 11.3.1 above shall not apply:

- (a) 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
- (b) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*).

11.3.3 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.

11.3.4 A Senior Secured Creditor shall, on receiving a payment from the Company under this Clause 11.3, notify the Intercreditor Agent.

11.3.5 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

12.1.1 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:

- (a) the introduction of or change in (or in the interpretation, administration or application of) any law or regulation after the Signing Date; or
- (b) 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.

12.1.2 In this Agreement “**Increased Costs**” means:

- (a) 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);
- (b) an additional or increased cost; or
- (c) 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.

#### 12.2 Increased cost claims

12.2.1 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.

12.2.2 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:

12.3.1 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*);

12.3.2 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

12.3.3 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:

13.1.1 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

13.1.2 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:

13.2.1 the occurrence of any Event of Default;

13.2.2 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);

13.2.3 an Advance (or part of an Advance) not being prepaid in accordance with a notice of prepayment given by the Company; and

13.2.4 any claim concerning either Project and 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:

13.3.1 investigating any event which it reasonably believes is a Default; or

13.3.2 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:

14.1.1 that Lender shall promptly notify the Company through the Intercreditor Agent and the relevant Facility Agent upon becoming aware of that event; and

14.1.2 by the latest date necessary to ensure compliance with the relevant law or regulation:

- (a) if the relevant Facility Agent, Additional Lender or Revolving Credit Facility Lender 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**

15.1.1 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.

15.1.2 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**

15.2.1 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*).

15.2.2 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:

- (a) this Agreement, the other Senior Finance Documents and any other documents referred to herein or therein; and
- (b) any other Senior Finance Documents executed after the Signing Date,

in accordance with, in the case of any fees, costs and expenses of the Technical Adviser, Insurance Adviser and legal advisers appointed on or prior to the Signing Date, the appointment or engagement letters (if any) executed by the Company on or prior to the Signing Date.

**16.3 Amendment costs**

If the Company 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**

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 on the Expansion Signing Date and the CP Satisfaction Date and is deemed to be repeated by the Company on each subsequent Advance Date with reference to the facts and circumstances then existing.

**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 Signing Date until the Senior Secured Indebtedness has been fully discharged.

**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:

19.2.1 declare that the Available Commitments under any of the Facility Agreements be cancelled or suspended, whereupon they shall be cancelled or suspended;

- 19.2.2 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;
- 19.2.3 declare that all or part of the Advances be payable on demand, whereupon they shall immediately become payable on demand by the Intercreditor Agent;
- 19.2.4 notify the Security Agent that an Event of Default has occurred and is continuing and instruct the Security Agent to issue an Enforcement Notice;
- 19.2.5 following the issue of an Enforcement Notice, require the Security Agent to require payment of any Contingent Equity Commitment remaining on the date of such notice in accordance with the Wynn Resorts Support Agreement, whereupon such payment shall be made in accordance with such provisions;
- 19.2.6 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 Wynn Resorts Support Agreement and the Shareholder Guarantees (subject to the expiration of any cure periods contained therein), whereupon any such action shall be taken;
- 19.2.7 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;
- 19.2.8 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;
- 19.2.9 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 11.3 (*Default*) of Schedule 6 (*Accounts*); and/or
- 19.2.10 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 a Wong 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 a Wong Event (as defined in the Wong Share Pledge) 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 Wong 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:

- (a) another Lender or an Affiliate of a Lender;
- (b) any commercial bank;

- (c) an entity on the Approved List; or
- (d) 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 of such assignment or transfer shall be borne by the relevant Lender or assignee or Transferee except for any transfer in connection with the syndication of the Facilities the costs of which (as set forth in Clause 21.7 (*Assignment and Transfer Fees*)) 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 Hotel Facility, the Project Facility or any Additional Lender Facility shall be in a minimum amount of USD5,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility; or
- (b) the Revolving Credit Facility shall be in a minimum amount of HKD5,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility.

## 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 Hotel Facility Lender, Project 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 "Hotel Facility Lender", "Project 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.

## 21.6 Transfers by Lenders

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 “Hotel Facility Lender”, “Project 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 USD1,500.

#### 21.8 Disclosure of Information

Any Senior Secured Creditor may disclose to any 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, the Projects 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 an original 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*).

## 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), (j), (k) and (l) 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:

- (a) the Senior Secured Creditors appoints the Intercreditor Agent;
- (b) the Hotel Facility Lenders appoints the Hotel Facility Agent; and
- (c) the Project Facility Lenders appoints the Project Facility Agent,

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

23.2.1 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.

23.2.2 No Agent shall in any respect be the agent of the Company by virtue of this Agreement.

23.2.3 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 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 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:

23.6.1 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;
- 23.6.2 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;
- 23.6.3 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;
- 23.6.4 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;
- 23.6.5 rely upon any communication or document believed by it to be genuine;
- 23.6.6 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;
- 23.6.7 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;
- 23.6.8 refrain from acting where to do so would put it in breach of an applicable Legal Requirement;
- 23.6.9 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
- 23.6.10 (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, Additional Lender, Revolving Credit Facility Lender 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:

23.8.1 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;

23.8.2 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;

23.8.3 be bound to disclose to any other Person any information relating to any Obligor, any party to a 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

23.8.4 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.

### 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 the Projects.
- 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 Projects.
- 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 the Projects 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 its entitlement to the Senior Secured Indebtedness (or, in the case of each Lender, if no Advances have been made, in the proportion borne by its share of the aggregate undrawn Available Commitments of all Lenders to the aggregate undrawn Available Commitments of all Lenders) for the time being (or, if all Advances have been repaid or all Available Commitments reduced to zero, immediately prior to the repayment thereof or, as the case may be, such reduction), 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 the 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 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 sub-clause 23.15.1 above.

#### **24. CONDUCT OF BUSINESS BY THE SENIOR SECURED CREDITORS**

No provision of the Senior Finance Documents shall:

24.1.1 interfere with the right of any Senior Secured Creditor to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

24.1.2 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

24.1.3 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:

25.1.1 the Recovering Senior Secured Creditor shall, within 5 Business Days, notify details of the receipt or recovery, to the Intercreditor Agent;

25.1.2 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

25.1.3 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.

### 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**

25.3.1 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.

25.3.2 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:

25.4.1 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

25.4.2 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, 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**

**26.1.1 Prior to an Event of Default**

Unless and until an Event of Default has occurred and is continuing:

- (a) 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 (or, in the case of an Additional Lender or Revolving Credit Facility Lender, to such Additional Lender or Revolving Credit Facility Lender) under that Facility Agreement for the account of that Lender, in the manner stipulated in the relevant Facility Agreement; and
- (b) 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 (or, in the case of an Additional Lender or Revolving Credit Facility Lender, by such Additional Lender or Revolving Credit Facility Lender directly).

#### 26.1.2 **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*):

- (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 Hotel Facility Lender or a Project Facility Lender, to the relevant Facility Agent for the account of that Lender.

#### 26.2 **Payments by an Agent**

26.2.1 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.

26.2.2 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**

26.4.1 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.

26.4.2 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 Obligor**

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**

26.6.1 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).

26.6.2 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 Mr Wong Chi Seng, his liability shall be limited to his 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:

29.2.1 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 Amendment Agreement, identified with its name on the signing pages thereto; and

29.2.2 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**

29.3.1 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.

29.3.2 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).

29.3.3 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 **English language**

29.6.1 Any notice given under or in connection with any Senior Finance Document must be in English.

29.6.2 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**

33.1.1 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.

33.1.2 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, the Revolving Credit Facility Lenders, each Additional Lender (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, as appropriate, the Revolving Capital Facility Lenders, each Additional Lender 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**

33.5.1 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.

33.5.2 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.

33.5.3 If the Intercreditor Agent has actual knowledge, or has received notice, of a Default which has occurred, it shall notify each Facility Agent, each Revolving Credit Facility Lender, each Additional Lender 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 Clause 26.1.2 (*Payments under the Senior Finance Documents*)) in the following order:

- (i) 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;
- (ii) 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;
  - (iii) 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;
  - (iv) fourth, in payment *pro rata* of all amounts paid by the Hotel Facility Lenders under clause 15.3 (*Indemnity to Hotel Facility Agent*) of the Hotel Facility Agreement or the Project Facility Lenders under clause 15.3 (*Indemnity to Project Facility Agent*) of the Project Facility Agreement but which have not been reimbursed by the Company;
  - (v) 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;
  - (vi) sixth, in payment *pro rata* of all accrued and unpaid fees owing to the Agents under the Senior Finance Documents;
  - (vii) seventh, in payment *pro rata* of all accrued and unpaid fees and commissions due to the Lenders under the Senior Finance Documents;
  - (viii) 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;
  - (ix) ninth, in payment *pro rata* of all principal instalments due under the Facility Agreements;
  - (x) tenth, in payment *pro rata* of all other amounts owing to the Senior Secured Creditors due and payable under the Senior Finance Documents; and
  - (xi) 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

Each Senior Secured Creditor party hereto represents and warrants to the other Senior Secured Creditors 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 to Clause 34.4 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 and Clause 34.4 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**
- 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), (j), (k) and (l) of the definition of Fundamental Term, each Hedging Counterparty).
- 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.

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 shall be governed by English law.

38. **JURISDICTION**

38.1 **Jurisdiction of English courts**

38.1.1 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**”).

38.1.2 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.

38.1.3 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:

38.2.1 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

38.2.2 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 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; or
- (h) in connection with the exercise of any remedy hereunder or under any other Senior Finance Document.

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 or any Obligor, 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.

**SCHEDULE 1**  
**THE LENDERS AND HEDGING COUNTERPARTIES**

**Part A**

**Hotel Facility Lenders**

Bank of China Limited Macau Branch  
Aareal Bank AG  
Bayerische Landesbank, Hong Kong Branch  
Industrial and Commercial Bank of China (Asia) Limited  
The Bank of East Asia, Limited

**Part B**

**Project Facility Lenders**

Bank of America, N.A.  
Deutsche Bank AG, Hong Kong Branch  
Société Générale, Hong Kong Branch  
Aozora Bank, Ltd.  
Banco Nacional Ultramarino, S.A.  
WestLB AG, Hong Kong Branch  
DBS Bank Ltd., Hong Kong Branch  
The Royal Bank of Scotland plc  
United Overseas Bank Limited  
Commerzbank Aktiengesellschaft, Hong Kong Branch  
Allied Irish Banks, p.l.c.  
Standard Chartered First Bank Korea Limited  
The Bank of Nova Scotia  
Bayerische Hypo- und Vereinsbank AG, Hong Kong Branch  
HSH Nordbank AG, Hong Kong Branch  
Banco Comercial de Macau, S.A.

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Bank of Scotland

Banco Espírito Santo do Oriente, S.A.

Crédit Industriel et Commercial, Singapore Branch

Far Eastern International Bank

Hana Bank Hong Kong Branch

Nordkap Bank AG

**Part C**

**Revolving Credit Facility Lenders**

Banco Nacional Ultramarino, S.A.

Banco Comercial de Macau, S.A.

Banco Delta Asia S.A.R.L.

**Part D**

**Hedging Counterparties**

Banc of America Securities Asia Limited

Deutsche Bank AG

Société Générale

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**Part A**

**Conditions Precedent to the CP Satisfaction Date**

**1. Project Documents**

(a) Receipt by the Intercreditor Agent and the Technical Adviser of:

- (i) a list setting out the title, date, parties and subject matter of each Project Document entered into as of the CP Satisfaction Date with a total contract price payable by the Company (or expected aggregate amount to be paid by the Company in the case of “cost plus” contracts) or which may otherwise involve liabilities, actual or contingent, in each case in an amount of less than USD5,000,000 or its equivalent; and
- (ii) a copy of any other Project Document and each Affiliate Agreement entered into as of the CP satisfaction Date duly executed by all parties thereto,

each certified by a Responsible Officer of the Company to be true, complete and up-to-date, the Project Documents and Affiliate Agreements to be in full force and effect, the Project Documents are consistent with the Project Budget, the Project Schedule and the Plans and Specifications and, in the case of each Affiliate Agreement, the transactions contemplated therein comply with the requirements of paragraph 10 of Part B of Schedule 5 (*Covenants*).

- (b) (i) Each Major Project Document has been duly authorised, executed and delivered by the parties thereto and duly filed, recorded, stamped and registered as necessary; and
- (ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the CP Satisfaction Date) have been satisfied or waived in accordance with their respective terms and each such Major Project Document is in full force and effect accordingly.
- (c) The Notice to Proceed and the Prime Contractor’s Performance Bonds (in an aggregate amount of not less than USD45,722,399) have been duly issued in accordance with the terms of the Construction Contract.

**2. Senior Finance Documents**

(a) Receipt by the Intercreditor Agent of an original of each of the following Senior Finance Documents duly executed by the parties thereto:

- (i) each Facility Agreement;
- (ii) the Common Terms Agreement;

- (iii) each Security Document (in the case of any Operating Account referred to in paragraphs (b), (c) or (d) of the definition thereof or any Reinsurance, required to be entered into prior to the CP Satisfaction Date and, in the case of the Wong Consent, the Intercreditor Agent shall accept a notarised copy of such document in lieu of the original in satisfaction of the requirements in respect thereof under this paragraph 2(a)(iii));
  - (iv) any other Senior Finance Documents (other than any Ancillary Finance Document) entered into prior to the CP Satisfaction Date; and
  - (v) any other document entered into which the Intercreditor Agent and the Company agree prior to the CP Satisfaction Date to designate as a Senior Finance Document.
- (b) Each of the Ancillary Finance Documents has been duly executed by the parties thereto.
- (c) (i) Save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, each Senior Finance Document referred to in this paragraph 2 has been duly authorised, executed and delivered by such of the Obligors, the Performance Bond Provider and the other Major Project Participants as are party thereto and duly filed, notified, recorded, stamped and registered as necessary;
- (ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the CP Satisfaction Date) have been satisfied or waived in accordance with their respective terms and each such Senior Finance Document (save as provided in this sub-paragraph (c)) is in full force and effect accordingly; and
- (iii) none of such of the Obligors, the Performance Bond Provider or the other Major Project Participants as is party to any such Senior Finance Document is or, but for the passage of time and/or giving of notice will be, in breach of any obligation thereunder.

3. **Advisers' Reports and Certificates**

Receipt by the Intercreditor Agent of the following reports and other documents and, in the case of each report, confirmed by the relevant adviser to be the final report prior to the CP Satisfaction Date:

- (a) the revised Technical Adviser's report in relation to the Projects (including confirmation that the Projects constitute Category C projects under the Equator Principles);
- (b) the revised Insurance Adviser's report in relation to the Insurances;



- (c) the revised Market Adviser's report in relation to the Projects; and
- (d) the revised Financial Model in relation to the Projects.

4. **Approved List**

Receipt by the Intercreditor Agent of a copy of the agreement between the GCLAs and the Company approving the Approved List.

5. **Due establishment, authority and certification**

- (a) In relation to the Company, receipt by the Intercreditor Agent of a certificate in substantially the form set out in Part C (*Form of Company's Due Establishment CP Satisfaction Date Certificate*) of this Schedule 2 signed by a Responsible Officer of the Company and which:
  - (i) attaches a copy of the Company's Governing Documents; and
  - (ii) attaches a board resolution approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by the Company pursuant to any Transaction Documents.
- (b) In relation to each of the Wynn Obligors and the other Major Project Participants (other than the Macau SAR and the Persons referred to in subparagraph 5(c) below), receipt by the Intercreditor Agent of a certificate signed by a Responsible Officer of each such Person in substantially the form set out in Part D (*Form of Major Project Participant's CP Satisfaction Date Certificate*) of this Schedule 2 attaching copies of:
  - (i) its Governing Documents; and
  - (ii) a board resolution approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by it pursuant thereto.
- (c) In relation to the issuer of the Prime Contractor's Performance Bond and Banco Nacional Ultramarino, S.A. in its capacity as the Performance Bond Provider, party to the Performance Bond Facility Agreement and Second Ranking Finance Party (as defined in the Deed of Appointment and Priority), receipt by the Intercreditor Agent of evidence (which may comprise a copy of the relevant portion of such Person's signature book or equivalent) confirming such Person's approval of the execution, delivery and performance of the Transaction Documents to which it is party and authorisation of the Person or Persons who have signed such Transaction Documents on its behalf to do so.

6. **Project Documents and Permits**

Receipt by the Intercreditor Agent of a certificate, in substantially the form set out in Part G (*Form of Company's CP Satisfaction Date Certificate*) of this Schedule 2 (the "**Company's CP Satisfaction Date Certificate**") signed by a Responsible Officer of the Company and which, amongst other things:

- (a) certifies that copies of documents delivered in satisfaction of other conditions precedent in this Part A remain, save to the extent of any subsequent amendments made in accordance with the Senior Finance Documents, true, complete and up-to-date copies in full force and effect as at the CP Satisfaction Date;
- (b) attaches copies of any such amendments referred to in sub-paragraph (a) above and certifies that such copies are true, complete and up-to-date and in full force and effect as at the CP Satisfaction Date; and
- (c) confirms that:
  - (i) all Permits described in Part A of Schedule 12 (*Permits*) shall have been issued and be in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions (that are required to be satisfied by the CP Satisfaction Date) that could reasonably be expected to materially adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Projects or otherwise impose adverse conditions on either Project or the financing contemplated under the Senior Finance Documents and all applicable appeal periods with respect thereto shall have expired;
  - (ii) with respect to any of the Permits described in Part B of Schedule 12 (*Permits*), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) the Company is not aware of any facts or circumstances which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required; and
  - (iii) all other Permits have been obtained or effected to the extent they are required as of the date of the certificate and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required at such date will not be obtained when they are required,

and, in the case of the Permits described in Part A of Schedule 12 (*Permits*), attaching a copy of each such Permit (other than the Permit referred to in paragraph 8(iv) thereof, which it is acknowledged is comprised in the consent acknowledged by the Macau SAR Government in paragraph 3 of the Gaming Concession Consent Agreement).

7. **[Not used]**

**8. Security**

Receipt by the Intercreditor Agent of evidence that:

- (a) save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, each Security Document has been 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; and
- (b) the Securities Account has been established in accordance with the Wynn Resorts Support Agreement and is fully funded as provided therein.

**9. Insurance**

- (a) Receipt by the Intercreditor Agent of a certificate addressed to it from the Insurance Adviser in substantially the form set out in Part E (*Form of Insurance Adviser's CP Satisfaction Date Certificate*) of this Schedule 2 certifying that all Construction Period Insurances required by the Senior Finance Documents to be in effect at the CP Satisfaction Date are in full force and effect and all premia (if any) due and payable as at the CP Satisfaction Date have been paid and the Secured Creditors have been named as co-insureds under those insurances in accordance with Schedule 7 (*Insurance*).
- (b) Receipt by the Intercreditor Agent of certified copies of all insurance policies, updates, cover notes or insurance slips then available in respect of Insurances then required to be maintained by the Company.
- (c) Receipt by the Intercreditor Agent of a Reinsurance Broker's Letter of Undertaking from each of the brokers referred to in paragraph 2.2 of Schedule 7 (*Insurance*) through whom Reinsurances have been effected.
- (d) Receipt by the Intercreditor Agent of confirmation from the Licensor that:
  - (i) the Insurances set out in Schedule 7 (*Insurance*) satisfy the insurance requirements set out in Section 8.01 of the IP Agreement; and
  - (ii) the insurers with whom such Insurances are effected are acceptable to the Licensor.

**10. Accounts**

Each of the Accounts specified in paragraph 1.1 of Schedule 6 (*Accounts*) has been established.

**11. Financials**

Receipt by the Intercreditor Agent of:

- (a) pro forma statement of the Company's assets and liabilities as at a date not more than one month prior to the CP Satisfaction Date; and
- (b) the most recent quarterly and annual financial statements of the type and in respect of the Persons specified in paragraph 1 of Part A of Schedule 5 (*Covenants*), together with certificates from a Responsible Officer of each such Person certifying such financial statements and stating that no material adverse change in the assets, liabilities, operations or financial condition of each such Person has occurred since the dates of the respective financial statements, except as otherwise provided in such certificate.

**12. Process agents**

Where such appointment is required under any Senior Finance Document, process agent acceptance of its appointment by the Company and each of such of the other Obligors, the Performance Bond Provider and the other Major Project Participants as is party to such Senior Finance Document for the acceptance of legal proceedings.

**13. Specimen signatures**

Receipt by the Intercreditor Agent of specimen signatures of all Responsible Officers of the Company who shall be issuing Advance Requests.

**14. Legal opinions**

Receipt by the Intercreditor Agent of legal opinions from:

- (a) Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors;
- (b) Mr Alexandre Correia da Silva, Macanese legal adviser to the Company;
- (c) Lovells, English legal advisers to the Company in relation to the Major Project Documents governed by English law and referred to in subparagraphs (c) and (d) of the definition thereof;
- (d) Lionel Sawyer & Collins, Nevada legal adviser to the Senior Secured Creditors;
- (e) Schreck Brignone, Nevada legal adviser to Wynn Resorts;
- (f) Mann and Partners, Isle of Man legal adviser to the Senior Secured Creditors;
- (g) Clifford Chance, Hong Kong SAR legal advisers to the Senior Secured Creditors;
- (h) Clifford Chance, English legal advisers to the Senior Secured Creditors;
- (i) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to Leighton Contractors (Asia) Limited;
- (j) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to China State Construction Engineering (Hong Kong) Limited;

- (k) Ms Elisa Costa, Macanese legal adviser to China Construction Engineering (Macau) Company Limited;
- (l) Mallesons Stephen Jaques, Australian legal advisers to Leighton Holdings Limited;
- (m) Mallesons Stephen Jaques, Hong Kong SAR legal advisers to China Overseas Holdings Limited;
- (n) Skadden, Arps, Slate, Meagher & Flom LLP, New York legal advisers to the Company;
- (o) Mr Leonel A. Alves, Macanese legal adviser to Banco Nacional Ultramarino, S.A.; and
- (p) Mr Leonel A. Alves, Macanese legal adviser to Companhia de Seguros de Macau, S.A.,

or, save in the case of sub-paragraphs (a), (b), (g), (h), (n), (o) and (p), such other lawyers or law firms as may be reasonably acceptable to the Intercreditor Agent.

**15. 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 A; and
- (b) all fees, costs and expenses due to the Secured Creditors (including all amounts payable pursuant to any Fee Letter) and their advisers under the Senior Finance Documents on or before the CP Satisfaction Date,

have been paid or shall be paid out of the proceeds of the Initial Advance (to the extent that such amounts have been duly invoiced).

**16. Performance Bond**

Receipt by the Intercreditor Agent of evidence that the Concession Contract Performance Bond has been issued under the Performance Bond Facility as required by Article 61 of the Concession Contract.

**17. Concession Contract**

(a) Receipt by the Intercreditor Agent of evidence that:

- (i) the capital requirement under Article 15 of the Concession Contract has been complied with;
- (ii) the procedural requirements under Article 16 of the Concession Contract relevant to the creation of security over shares have been complied with;

- (iii) the Company has notified the Macau SAR regarding the Facilities and the Security granted in favour of the Secured Creditors and produced copies of the Senior Finance Documents to the Macau SAR pursuant to Articles 34(2) and (3) of the Concession Contract;
  - (iv) expenditure of the total Project Costs referred to in the Project Budget which will be included in the calculation of the investment amount of MOP 4 billion will cause the Company to satisfy the requirement under the Concession Contract of expending MOP 4 billion within seven years after the date of the Concession Contract;
  - (v) legislation has been enacted by the Macau SAR which provides for casino operators such as the Company to be the grantors of credit to casino patrons;
  - (vi) the letter agreements dated 1 May 2002 between the Company and Banco Nacional Ultramasino and the Company and the Macau SAR in relation to the termination of the Concession Contract are of no force or effect; and
  - (vii) each area in which any operation of casino games of chance or other forms of gaming will be carried out following the opening of the Original Project has been classified by the Macau SAR as a casino or gaming zone in accordance with article 9 of the Concession Contract.
- (b) Receipt by the Intercreditor Agent of copies of all documents submitted to the Macau SAR as required under Article 21 of the Concession Contract and evidence reasonably satisfactory to the Intercreditor Agent that approval of the Company's delegation of management authority (including the appointment of the executive director, the scope of power of the executive director and term of authorisation) has been granted by the Macau SAR pursuant to Article 21 of the Concession Contract.
- (c) Receipt by the Intercreditor Agent of a letter from Macau SAR in relation to the granting of extension of time for completion of the Projects from 31 December 2006.

**18. Land and Land Concession Contract**

Receipt by the Intercreditor Agent of evidence that:

- (a) the Land Concession Contract is registered with the Macau Real Estate Agency;
- (b) the Land Concession Contract has been published in the Official Bulletin; and
- (c) the amount payable to Sociedade de Empreendimentos Nam Van S.A.R.L. for the surrendering by Sociedade de Investimento Imobiliario Hang Keng Van, S.A.R.L., Sociedade de Investimento Imobiliario Lok Keng Van, S.A.R.L. and Sociedade de Investimento Imobiliario Hei Keng Van, S.A.R.L. of their respective interests in the land registered with the Macau Real Estate Registry

with registration numbers 22322, 22324 and 22325 does not exceed MOP 140,000,000.

**19. Auditors**

Receipt by the Intercreditor Agent of evidence that the Company has appointed the Auditors and the Auditors have accepted such appointment.

**20. Continued Appointment of Advisers**

The Insurance Adviser and the Technical Adviser have been appointed to act after the Signing Date in accordance with a scope of work as agreed by the Company and the Intercreditor Agent.

**21. No Material Adverse Effect**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that, as at the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.

**22. Projections**

Receipt by the Intercreditor Agent of Projections for the Company for the period from 1 July 2007 to 31 December 2008 and which:

- (a) demonstrate compliance with paragraph 1 of Part B of Schedule 5 (*Covenants*);
- (b) otherwise comply with the requirements of paragraph 2(c) of Part A of Schedule 5 (*Covenants*).

**23. Litigation**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company's CP Satisfaction Date Certificate, from the Company confirming that no action, suit, proceeding or investigation of any kind shall have been instituted or, to the Company's knowledge, threatened, including actions or proceedings of or before any Governmental Authority, to which the Company, either Project or, to the knowledge of the Company, any other Obligor, the Performance Bond Provider or other Major Project Participant, is a party or is subject, or by which any of them or any of their properties or either Project are bound, in each case, that could reasonably be expected to have a Material Adverse Effect, nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order shall have been issued and no hearing to cause an injunction or other restraining order to be issued shall be pending or noticed with respect to any action, suit or proceeding if the same reasonably could be expected to have a Material Adverse Effect.

**24. Project Budget**

Receipt by the Intercreditor Agent at or prior to the Expansion Signing Date of a budget in the form of Schedule 13 (*Form of Project Budget*) which:

- (a) includes such other information and supporting data as any of the Senior Secured Creditors or the Technical Adviser may reasonably require; and
- (b) demonstrates, without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities, no Forecast Funding Shortfall.

**25. Project Schedule**

Receipt by the Intercreditor Agent at or prior to the Expansion Signing Date of a schedule for construction and completion of the Projects in the Agreed Form which demonstrates that Substantial Completion will occur and the Opening Conditions specified in paragraph (a) of the definition thereof will have been satisfied on or before the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

**26. Schedule of Values**

Receipt by the Intercreditor Agent of the “Expansion Project Schedule of Values” submitted and approved in accordance with section 5.1 of the Construction Contract and the “Original Project Schedule of Approved Values” (each as defined in the Construction Contract).

**27. Representations and Warranties**

Receipt by the Intercreditor Agent of a certificate, in substantially the form of the Company’s CP Satisfaction Date Certificate, from the Company confirming that the representations and warranties of:

- (a) the Company, each Wynn Obligor and the Licensor set forth in Schedule 4 (*Representations and Warranties*) or in any of the other Transaction Documents is true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date); and
- (b) to the Company’s knowledge, the Performance Bond Provider, any Obligor and each other Major Project Participant (in each case other than the Company, any Wynn Obligor or the Licensor) set forth in any of the Transaction Documents is true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date), unless the failure of any such



representation and warranty referred to in this sub-paragraph (b) to be true and correct could not reasonably be expected to have a Material Adverse Effect.

**28. Plans and Specifications**

The Company shall have delivered to the Technical Adviser or (on such terms as the Technical Adviser may reasonably require) made available to it in Hong Kong or Macau all plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of the Projects.

**29. PASA and IP Agreement**

- (a) The PASA and PASA Direct Agreement have been entered into with Wynn Design & Development, LLC and the Intercreditor Agent has received such legal opinions, in form and substance reasonably satisfactory to it, concerning the entry by Wynn Design & Development, LLC into the PASA and PASA Direct Agreement, the efficacy thereof and such other matters as it may reasonably require.
- (b) The IP Agreement and IP Direct Agreement have been entered into with Wynn Resorts and Wynn Resorts Holdings, LLC as Licensor and the Intercreditor Agent has received such legal opinions, in form and substance reasonably satisfactory to it, concerning the entry by Wynn Resorts and Wynn Resorts Holdings, LLC into the IP Agreement and the IP Direct Agreement, the efficacy thereof and such other matters as it may reasonably require.
- (c) The Licensor has acceded to the Sponsors' Subordination Deed in accordance with the terms thereof.

**30. Shareholder Reorganisation**

- (a) Receipt by the Intercreditor Agent of a Substantial Shareholder's Undertaking in form and substance satisfactory to it from each Substantial Shareholder (if any) as at the CP Satisfaction Date.
- (b) Receipt by the Intercreditor Agent of a Relevant Party's Undertaking in form and substance satisfactory to it from each Relevant Party (if any) as at the CP Satisfaction Date.
- (c) Receipt by the Intercreditor Agent of evidence that, as at the CP Satisfaction Date, all shares in Wynn Holdings not legally and beneficially owned by Wynn International as at the Signing Date are either legally and beneficially owned by Wynn International or their original owners (direct and indirect) as at the Signing Date.

**Part B**

**(I) Conditions Precedent to each Advance under the Term Loan Facilities**

**1. No Default**

No Default shall have occurred and be continuing.

**2. Representations and Warranties**

The representations and warranties contained in Schedule 4 (*Representations and Warranties*) which are repeated by the Company pursuant to Clause 17.2 (*Timing*) are true and correct in all material respects with reference to the facts and circumstances existing on the Advance Date.

**3. No Forecast Funding Shortfall; Project Schedule**

None of the Project Budget (or any update thereof), the Project Schedule (or any update thereof), the Projections (or any update thereof) or any other report, certificate or other document required to be delivered to the Intercreditor Agent pursuant to Part A or this Part B of this Schedule 2 indicate:

- (a) a Forecast Funding Shortfall (determined, in the case of the Initial Advance under the Term Loan Facilities, without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities) has occurred and is continuing or could reasonably be expected to result from such Advance; or
- (b) that Substantial Completion will not be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006 (in the case of the Initial Advance under the Term Loan Facilities)
	28 February 2007 (in the case of each subsequent Advance)
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

4. **Advance Request and Certificate**

Receipt by the Intercreditor Agent and the relevant Facility Agent and Additional Lender (if any) of an Advance Request containing all attachments, exhibits and certificates required thereby, all appropriately completed and duly executed by a Responsible Officer of the Company, including:

- (a) in the case of the Initial Advance under the Term Loan Facilities, a statement of all payments made in respect of Project Costs prior to the date of the Advance Request broken down by Line Item and supported, in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request;
- (b) a statement of the specific purposes to which each Advance shall be applied, including:
  - (i) whether payment (or refinancing of payment) for Hotel Project Costs or other Project Costs, whether for variations to Project Works or otherwise permitted pursuant to paragraph 15 of Part B of Schedule 5 (*Covenants*) and, where for refinancing of payment the original source of funds for such payment; and
  - (ii) a break down by Line Item of each such category of Project Costs supported:
    - (A) in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request; and
    - (B) in the case of any progress payment claimed pursuant to the Construction Contract, to the reasonable satisfaction of the Intercreditor Agent, by the relevant approved "Application for Progress Payment" and "Contractor's Certificate" (each as defined in the Construction Contract) and supporting documentary evidence delivered by the Prime Contractor in accordance with article V of the Construction Contract attached to the Advance Request;
- (c) insofar as any previous Advance was requested for the purpose of payments which, at the time of its Advance Date, were not yet payable, a statement of such payments made since the last Advance Request supported, in the case of any payment exceeding USD1,000,000 or its equivalent, to the reasonable satisfaction of the Intercreditor Agent, by invoices, receipts and other documentary evidence attached to the Advance Request;
- (d) certification that each Advance is required for the purpose specified and that, where such purpose comprises payment (or refinancing of payment) for Project Costs, there are no amounts standing to the credit of (or required to be deposited to) any of the Accounts or any amount of Project Revenues expected to be available to meet such Project Costs;
- (e) certification that:
  - (i) the Company has no reason to believe that the current Project Budget, the current Projections or the current Project Schedule (being, in the case of

the Initial Advance under the Term Loan Facilities, the Project Schedule delivered by the Company pursuant to paragraph 25 of Part A of this Schedule 2) is not accurate; and

- (ii) none of the current Project Budget, the current Projections or the current Project Schedule indicate:
- (A) a Forecast Funding Shortfall (determined, in the case of the Initial Advance under the Term Loan Facilities, without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities) has occurred and is continuing or could reasonably be expected to result from such Advance; or
  - (B) that Substantial Completion will not be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006 (in the case of the Initial Advance under the Term Loan Facilities)
	28 February 2007 (in the case of each subsequent Advance)
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

and attaching any update thereof; and

- (f) certification that, since the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.

5. **Adviser's Certificates**

- (a) Receipt by the Intercreditor Agent by not later than 3:00 p.m. on the fifth Business Day prior to the proposed Advance Date of a certificate from the Technical Adviser in substantially the form set out in Part F (*Form of Technical Advisor's Advance Certificate*) of this Schedule 2 (the "**Technical Adviser's Advance Certificate**") certifying in connection with the Advance Request and any amendment thereto made pursuant to Clause 3.1 (*Drawdown Conditions*) that the Technical Adviser has no reason to believe that:
- (i) the current Project Budget is not accurate in all material respects or that it does not fairly represent the Remaining Project Costs; or

- (ii) the current Project Schedule (being, in the case of the Initial Advance under the Term Loan Facilities, the Project Schedule delivered by the Company pursuant to paragraph 25 of Part A of this Schedule 2) is not accurate in all material respects or that Substantial Completion will not be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006 (in the case of the Initial Advance under the Term Loan Facilities) 28 February 2007 (in the case of each subsequent Advance)
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

- (b) Receipt by the Intercreditor Agent by not later than 3:00 p.m. on the fifth Business Day prior to the proposed Advance Date of a certificate from the Technical Adviser in substantially the form of the Technical Adviser's Advance Certificate certifying in connection with the Advance Request and any amendment thereto made pursuant to Clause 3.1 (*Drawdown Conditions*) that, to the best of its knowledge:
- (i) the Advances requested by the Company under the Term Loan Facilities are, save to the extent they are to be applied in accordance with Clause 7.1 (*Final Completion Costs*) or Clause 7.2 (*Rebalancing between Debt, Equity and Net Operating Cashflow*), required prior to the date falling 30 days after the proposed Advance Date to make payments in accordance with the Project Budget or to refinance such payments previously made; and
- (ii) certifications and statements made by the Company in the Advance Request (as referred to in Part F (*Form of Technical Adviser's Advance Certificate*) of this Schedule 2) and all attachments thereto are correct in all material respects.

6. **Recent Reports, Financial Statements and Other Information**

- (a) Receipt by the Intercreditor Agent of each of the reports, financial statements and other information due pursuant to paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) on or before the date of the Advance Request.
- (b) Receipt by the Intercreditor Agent of the Technical Adviser's Monthly Report due on or before the date of the Advance Request.

7. **Hedging**

- (a) Receipt by the Intercreditor Agent of a copy (certified as being true and correct by a Responsible Officer) of each Hedging Agreement (and each confirmation thereunder) required to be entered into in accordance with the Hedging Arrangements.
- (b) The Company shall have delivered notice in respect of each Hedging Agreement to the counter-party thereto and the Security Agent shall have received an acknowledgement from each such counter-party, each such notice and acknowledgement being in the form required by clause 4 of the Debenture.

8. **Fees and Expenses**

The Company shall have paid or arranged for payment out of the requested Advance of all fees, expenses and other charges then due and payable by it under the Senior Finance Documents or under any agreements between the Company and any of the Advisers (to the extent that such amounts have been duly invoiced).

9. **Project Documents and Subcontracts**

The Company shall have delivered to the Intercreditor Agent and the Technical Adviser promptly after mutual execution and delivery thereof:

- (a) a list setting out the title, date, parties and subject matter of each Project Document with a total contract price payable by the Company (or expected aggregate amount to be paid by the Company in the case of “cost plus” contracts) or which may otherwise involve liabilities, actual or contingent, in each case in an amount of less than USD5,000,000 or its equivalent; and
- (b) a copy of:
  - (i) each other Project Document;
  - (ii) any Project Document listed pursuant to subparagraph (a) above and requested in writing by the Intercreditor Agent or the Technical Adviser; and
  - (iii) any Subcontract requested by the Technical Adviser pursuant to paragraph 5.1 of Part A of Schedule 5 (*Covenants*).

The Company shall have certified that the list and each copy is true, correct and up to date, such Project Documents are consistent with the Project Budget, the Project Schedule and the Plans and Specifications and the Technical Adviser shall have certified (in substantially the form of the Technical Adviser’s Advance Certificate received by the Intercreditor Agent in accordance with paragraph 5 (*Adviser’s Certificate*) of this sub-section I) that such Project Documents are consistent in all material respects with the Project Budget, the Projections, the Project Schedule and the Plans and Specifications.

**10. Amended Construction License**

In the case of any Advance with a proposed Advance Date falling after 31 December 2005, receipt by the Intercreditor Agent of evidence that:

- (a) the Macau SAR Department of Public Works confirmation referred to in paragraph 5 of Part B of Schedule 12 (*Permits*); and
- (b) the amended construction licence referred to in paragraph 4 of Part B of Schedule 12 (*Permits*),

have each been obtained by the Company.

**11. Equity**

In the case only of the Initial Advance under the Term Loan Facilities, receipt by the Intercreditor Agent of evidence that:

- (a) the full amount of Base Equity has been paid up or advanced to the Company; and
- (b) the Base Subordinated Funding has been advanced in full to the Company.

**(II) Conditions Precedent to each Advance under the Contingent Debt Facilities**

In addition to the conditions set out in sub-section I of this Part B, prior to the date of making the Initial Advance under the Contingent Debt Facilities:

**1. Base Debt Facilities**

Receipt by the Intercreditor Agent of certification from the Company that the full amount of each Base Debt Facility has been utilised.

**2. Contingent Equity**

Receipt by the Intercreditor Agent of certification from the Company that the full amount of Contingent Equity specified in paragraphs (a) and (b) of the definition thereof has been paid up or advanced to the Company.

**(III) Conditions Precedent to Advances in respect of Final Completion Costs**

In addition to all the conditions set out in sub-section I and (if applicable) sub-section II of this Part B, prior to the making of an Advance under Clause 7.1 (*Final Completion Costs*):

**Technical Adviser Confirmation**

Receipt by the Intercreditor Agent of certification from the Technical Adviser in substantially the form of the Technical Adviser's Advance Certificate that:

- (a) Substantial Completion has been achieved in respect of the Original Project and the Expansion; and

(b) the Technical Adviser agrees with the estimate of Final Completion Costs provided to the Intercreditor Agent.

**(IV) Conditions Precedent to each Advance under the Revolving Credit Facility**

As set out in the Revolving Credit Facility Agreement.



**Part C**

**Form of Company's Due Establishment CP Satisfaction Date Certificate**

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to 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 (the "**Common Terms Agreement**"). 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 certificate is provided for the purposes of paragraph 5(a) (*Due establishment and authority*) and paragraph 13 (*Specimen signatures*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify, as at the date of this certificate, that:
  - (i) attached hereto as Annex 1 is a true and complete copy of the Governing Documents of the Company together with all amendments thereto;
  - (ii) attached hereto as Annex 2 is a true and complete copy of resolutions duly adopted by the Board of Directors of the Company at a meeting on [*date*], at which a quorum was present and acting throughout, which resolutions have duly approved the execution, delivery and performance of the Transaction Documents to which the Company is a party and the terms and conditions thereof, duly authorised [*names*] to sign such Transaction Documents and any document to be delivered by the Company pursuant to any Transaction Documents (including Advance Requests), and such resolutions have not been revoked, modified, amended or rescinded and are in full force and effect. Except as attached hereto as Annex 2, no resolutions have been adopted by the Board of Directors of the Company in relation to the execution, delivery or performance of any of the Transaction Documents to which the Company is a party; and

(iii) attached hereto as Annex 3 are the specimen signatures of all Responsible Officers of the Company who shall be issuing Advance Requests.

Yours faithfully,

---

Name:  
Responsible Officer  
for and on behalf of  
**Wynn Resorts (Macau) S.A.**

**Attachments:**

- Annex 1 - Governing Documents of the Company
- Annex 2 - Board resolutions of the Company
- Annex 3 - Specimen signatures of Responsible Officers

**Part D**

**Form of Major Project Participant's CP Satisfaction Date Certificate**

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to 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 (the "**Common Terms Agreement**"). 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. We hereby certify that:
  - (i) attached hereto as Annex 1 is a true and complete copy of the Governing Documents of [*Major Project Participant*] together with all amendments thereto as of the date of this certificate; and
  - (ii) attached hereto as Annex 2 is a true and complete copy of the resolutions duly adopted by our Board of Directors at a meeting on [*date*], at which a quorum was present and acting throughout, which resolutions have duly approved the execution, delivery and performance of the Transaction Documents to which we are a party and the terms and conditions thereof, duly authorised [*names*] to sign such Transaction Documents and have not been revoked, modified, amended or rescinded and are in full force and effect.

Yours faithfully,

\_\_\_\_\_  
Name:  
for and on behalf of  
[*Major Project Participant*]

**Part E**

**Form of Insurance Adviser's CP Satisfaction Date Certificate**

To: [ ] as Intercreditor Agent

Date: [ ]

1. We refer to 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 (the "**Common Terms Agreement**"). 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 certificate is provided for the purpose of paragraph 9(a) (*Insurance*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify that, as at the date of this certificate, all Construction Period Insurances required by the Senior Finance Documents to be in effect are in full force and effect and all premia (if any) due and payable as at such date have been paid and the Secured Creditors have been named as co-insureds under those insurances in accordance with Schedule 7 (*Insurance*) of the Common Terms Agreement.

Yours faithfully,

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Name:  
for and on behalf of  
[*Insurance Adviser*]

**Part F**

**Form of Technical Adviser's Advance Certificate**

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to 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 (the "**Common Terms Agreement**"). 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 certificate is provided for the purposes of paragraph 5 (*Adviser's Certificates*) and paragraph 9 (*Project Documents and Subcontracts*) of sub-section I of Part B of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement and relates to the Advance Request [and the amendment thereto, each]<sup>1</sup> dated on or about the date of this certificate.
3. We hereby certify, as at the date of this certificate, that:
  - (i) we have no reason to believe that the current Project Budget is not accurate in all material respects or that it does not fairly represent the Remaining Project Costs;
  - (ii) we have no reason to believe that the current Project Schedule is not accurate in all material respects or that Substantial Completion will not be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006 (in the case of the Initial Advance under the Term Loan Facilities) 28 February 2007 (in the case of each subsequent Advance)
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

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<sup>1</sup> Delete if no amendment made.

- (iii) to the best of our knowledge, the Advances requested by the Company are, save to the extent they are to be applied in accordance with Clause 7.1 (*Final Completion Costs*) or Clause 7.2 (*Rebalancing between Debt, Equity and Net Operating Cashflow*) of the Common Terms Agreement, required prior to the date falling 30 days after the proposed Advance Date to make payments in accordance with the Project Budget or to refinance such payments previously made;
- (iv) to the best of our knowledge, all certifications and statements made by the Company in paragraphs 4(ii), 4(iv), 4(vii), 4(viii)(b), 4(x), 4(xi), 5 and 6 of the Advance Request to which this certificate relates, and all attachments relevant thereto, are correct in all material respects; [and]
- (v) the Project Documents [executed and delivered since the date of our previous certificate on *[insert date]*]<sup>2</sup> are consistent in all material respects with the Project Budget and, to the extent relevant thereto, the Projections, the Project Schedule and the Plans and Specifications[; and]
- (vi) [Substantial Completion has been achieved in respect of the Original Project and the Expansion and we agree with the estimate of Final Completion Costs provided to the Intercreditor Agent.]<sup>3</sup>

Yours faithfully,

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Name:

for and on behalf of  
[*Technical Adviser*]

<sup>2</sup> Not required in the case of the Initial Advance under the Term Loan Facilities.

<sup>3</sup> In the case of Advances in respect of Final Completion Costs.

**Part G**

**Form of Company's CP Satisfaction Date Certificate**

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

1. We refer to 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 (the "**Common Terms Agreement**"). 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 certificate is provided for the purposes of paragraph 6 (*Permits*), paragraph 21 (*No Material Adverse Effect*), paragraph 23 (*Litigation*) and paragraph 27 (*Representations and Warranties*) of Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement.
3. We hereby certify, as at the date of this certificate, that:
  - (i) copies of all documents referred to in Part A of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement and delivered by us to the Intercreditor Agent on or prior to the date of this certificate are and remain, save (in the case of any such documents delivered prior to the date of this certificate) to the extent of any amendments made subsequent to such delivery in accordance with the Senior Finance Documents, true, complete and up-to-date copies of such documents in full force and effect as at the date of this certificate;
  - (ii) attached hereto as Annex 1 are true, complete and up-to-date copies of the amendments referred to in sub-paragraph (i) above, each of which is and remains in full force and effect;
  - (iii) attached hereto as Annex 2 are all Permits described in Part A of Schedule 12 (*Permits*) of the Common Terms Agreement which have been issued and are in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions (that are required to be satisfied by the CP Satisfaction Date) that could reasonably be expected to materially adversely modify any Permit, to revoke any Permit, to restrain or prevent the construction or operation of the Projects or otherwise impose adverse conditions on either Project or the financing contemplated under the Senior Finance Documents and all applicable appeal periods with respect thereto have expired;
  - (iv) with respect to any of the Permits described in Part B of Schedule 12 (*Permits*), (i) each such Permit is of a type that is routinely granted on application and compliance with the conditions for issuance and (ii) no facts or circumstances

exist which indicate that any such Permit will not be timely obtainable without undue expense or delay by the Company or the applicable Person, respectively, prior to the time that it becomes required;

- (v) all other Permits have been obtained or effected to the extent they are required as of the date hereof and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required as of the date of this certificate will not be obtained when they are required;
- (vi) no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur;
- (vii) no action, suit, proceeding or investigation of any kind has been instituted or, to the Company's knowledge, threatened, including actions or proceedings of or before any Governmental Authority, to which the Company, either Project or, to the knowledge of the Company, any other Obligor or Major Project Participant, is a party or is subject, or by which any of them or any of their properties or either Project are bound, in each case, that could reasonably be expected to have a Material Adverse Effect, nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation and no injunction or other restraining order has been issued and no hearing to cause an injunction or other restraining order to be issued is pending nor been notified with respect to any action, suit or proceeding to the extent the same reasonably could be expected to have a Material Adverse Effect;
- (viii) the representations and warranties of the Company, each Wynn Obligor and the Licensor set forth in Schedule 4 (*Representations and Warranties*) of the Common Terms Agreement or in any of the other Transaction Documents are true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date); and
- (ix) to the Company's knowledge, the representations and warranties of the Performance Bond Provider and each other Major Project Participant (in each case other than the Company, any Wynn Obligor or the Licensor) set forth in any of the Transaction Documents are true and correct in all material respects as if made on such date (except that any representation and warranty that relates expressly to an earlier date shall be deemed made only as of such earlier date) unless the failure of any such representation and warranty to be true and correct could not reasonably be expected to have a Material Adverse Effect.

Yours faithfully,

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Name:

Responsible Officer  
for and on behalf of

**Wynn Resorts (Macau) S.A.**



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**Attachments:**

Annex 1 - Amendments to Project Documents

Annex 2 - Permits described in Part A of Schedule 12 (*Permits*)

SCHEDULE 3

FORM OF ADVANCE REQUEST

To: [ ] as Intercreditor Agent  
[ ] as Hotel Facility Agent  
[ ] as Project Facility Agent  
[ ] as Additional Lender

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*] (the “**Proposed Advance Date**”) to be applied towards the following purposes:  
[USD/HKD] [*amount*] under [the [Tranche A/Tranche B/Tranche C/Tranche D] Facility of the [Hotel/Projects/Additional Lender] Facility to be applied towards [*specify purpose and break down Project Costs according to Line Item*]
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, the Project Costs to be paid (or in respect of which the payment therefor is to be refinanced) from the proceeds of each Advance have been incurred and paid or are due and payable, or will or the Company reasonably expects might be incurred and be due and payable, prior to the date falling 30 days after the Proposed Advance Date and

there are no amounts standing to the credit of (or required to be deposited to) any of the Accounts or any amount of Project Revenue otherwise expected to be available to meet such Project Costs (or such refinancing);

- (iii) proceeds of the above Advances requested under the [Hotel/Project/Additional Lender]<sup>4</sup> Facility shall be applied in the amounts specified towards [Hotel Project/Project Costs/comprising variations to Project Works permitted pursuant to paragraph 15 of Part B of Schedule 5 (Covenants)/repayment of Equity/Net Operating Cashflow in accordance with Clause 7.2 (*Rebalancing between Debt, Equity and Net Operating Cashflow*) of the Common Terms Agreement];
- (iv) the amount of the above Advances requested under the Hotel Facility, when aggregated with the amounts of all other Advances under the Hotel Facility, is no greater than the aggregate amount of all Hotel Project Costs incurred and paid or which will or the Company reasonably expects might be incurred and be due and payable by the Company on or before the date falling 30 days after the Proposed Advance Date;
- (v) each condition specified in Clause 2.2 (*Conditions Precedent to each Advance*) of the Common Terms Agreement is satisfied on the date of this Advance Request;
- (vi) no Forecast Funding Shortfall [(determined without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities)]<sup>5</sup> has occurred and is continuing or could reasonably be expected to result from the making of the above Advances;
- (vii) we have no reason to believe that the Project Budget is not accurate or that the Project Schedule is not accurate;
- (viii) neither the Project Budget nor the Project Schedule indicate:
  - (a) a Forecast Funding Shortfall [(determined without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities)]<sup>6</sup>; or

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<sup>4</sup> Repeat as required for each Facility.

<sup>5</sup> Only required for the Initial Advance under the Term Loan Facilities.

<sup>6</sup> Only required for the Initial Advance under the Term Loan Facilities.

(b) that Substantial Completion will not be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006 (in the case of the Initial Advance under the Term Loan Facilities)
	28 February 2007 (in the case of each subsequent Advance)
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

- (ix) since the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur;
- (x) [the following payments have been made in respect of Project Costs: *[break down according to Line Item and attach supporting documents]*].<sup>7</sup>
- (xi) since the last Advance Request, the following amounts have been paid in respect of payments for which an Advance has previously been requested but which were not yet payable at the time of its Advance Date:

<u>Advance Request No.</u>	<u>Payment Description</u>	<u>Amount</u>
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(xii) [the full amount of Base Equity has been paid or advanced to the Company and the Base Subordinated Funding has been advanced in full to the Company].<sup>8</sup>

5. We attach, as required by paragraph 4 sub-section I of Part B of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement, documents substantiating the Project Costs and payments referred to in paragraph 3 and sub-paragraph [4(x)<sup>9</sup> /4(xi)<sup>10</sup>] above.
6. [We attach an updated [Project Budget] [and] [Project Schedule].]<sup>11</sup>
7. 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.<sup>12</sup>
8. The above Advances shall have a [first] Interest Period ending on [date].

<sup>7</sup> Not required for Advances subsequent to the Initial Advance under the Term Loan Facilities.

<sup>8</sup> Not required for Advances subsequent to the Initial Advance under the Term Loan Facilities.

<sup>9</sup> Not required for Advances subsequent to the Initial Advance under the Term Loan Facilities.

<sup>10</sup> Not required for the Initial Advance under the Term Loan Facilities.

<sup>11</sup> As required.

<sup>12</sup> Each receipt must be numbered in series, the number corresponding to the number in the heading of the relevant Advance Request.

9. The [proceeds/specified amounts] of the above Advances should be credited to, respectively, the following Accounts:  
[ specify relevant Disbursement Account and amount<sup>13</sup>]
10. 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,

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Name:

<sup>14</sup>Responsible Officer

for and on behalf of

**Wynn Resorts (Macau) S.A.**

Attachments: [list]

- <sup>13</sup> Specify the Securities Account in the case of any Advance pursuant to Clause 7.2.1(a) (*Rebalancing between Debt, Equity and Net Operating Cashflow*) and an Operating Account in the case of any Advance pursuant to Clause 7.2.1(b) (*Rebalancing between Debt, Equity and Net Operating Cashflow*).
- <sup>14</sup> Each Advance Request must be signed by a Responsible Officer of the Company whose specimen signature has been delivered to the Intercreditor Agent pursuant to Clause 3.2.1 (*Completion of an Advance Request*).

**SCHEDULE 4**

**REPRESENTATIONS AND WARRANTIES**

**1. Organization**

Each of the Wynn Obligor and the Company is duly organized, incorporated, validly existing and (if applicable) in good standing under the laws of the jurisdiction of its organization 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 the Projects;
- (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;

save, in relation to Wynn Resorts in respect of sub-paragraphs (a), (b), (c) and (d) only, to the extent any lack thereof could not reasonably be expected to have a Material Adverse Effect.

**2. Authorization; No Conflict**

2.1 Each of the Wynn Obligor and the Company 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 Wynn Obligor and the Company 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 Wynn Obligor or the Company or under any security or agreement or instrument to which any Wynn Obligor or the Company 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 Save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to

the Assignment of Rights, no consent or authorization or filing 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, filings, registrations and notices described in Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*) (which consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or made and are in full force and effect) or, in the case of any Transaction Documents entered into after the date of the Initial Advance under the Term Loan Facilities, as have been obtained or made and are in full force and effect at the time this representation is deemed to be made.

**3. Legality, Validity and Enforceability**

- 3.1 Each of the Transaction Documents to which any of the Wynn Obligor or the Company 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 Wynn Obligor or the Company is a party has been amended or modified except in accordance with this Agreement.
- 3.3 The Company has not entered into any additional contracts in contravention of the terms of any Senior Finance Document.

**4. Compliance with Law and Permits**

Each Wynn Obligor and the Company is in compliance in all material respects with all material Legal Requirements (including all material Environmental Laws) and Permits (save, in the case of Wynn Resorts, any non-compliance that could not reasonably be expected to have a Material Adverse Effect) and no notices of any material violation of any Permit made or issued by or with a Governmental Authority relating to any of the Projects have been issued, entered or received by any such Obligor (and which violation is continuing).

**5. Permits**

- 5.1 As of the Expansion Signing Date, there are no Permits of which the Company is aware or any material Permits, in each case, made or issued by or with a Governmental Authority that are required or will become required under existing Legal Requirements for the ownership, development, construction or financing of either Project, other than the Permits described in Schedule 12 (*Permits*).
- 5.2 All Permits have been obtained or effected to the extent they are required at the time this representation is deemed to be made and, as far as the Company is aware, no reasonable basis exists for it to believe that the Permits which are not required at such time shall not be obtained when they are required.

6. **Litigation**

There are no pending or, to the Company's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any Governmental Authority, to which any Wynn Obligor or the Company is a party or is subject, or by which any of them or any of their Properties (including, without limitation, revenue) or either of the Projects is bound that, individually or collectively, could reasonably be expected to have a Material Adverse Effect nor is the Company aware of any reasonable basis for any such action, suit, proceeding or investigation.

7. **Financial Statements**

The financial statements of the Company and the Wynn 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 (on a consolidated basis in the case of Wynn Resorts) of the entities described in such financial statements as of the respective dates thereof and the results of operations and cash flows (on a consolidated basis in the case of Wynn Resorts) 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 CP Satisfaction Date, save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights:

- (a) the security interests granted or purported to be granted to the Senior Secured Creditors pursuant to the Security Documents in the Project Security (i) 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 (ii) have, and, with respect to such subsequently acquired Properties, will have been perfected 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 CP Satisfaction Date, save in respect of the authorisation by the Macau SAR required to be given in accordance with the Land Concession Consent Agreement in relation to the Land Security Assignment and the notice required to be given to the Macau SAR in relation to the Assignment of Rights, 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 Creditors pursuant to any of the Security Documents, or (b) the exercise by the Security Agent, or any of the other Secured Creditors 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 set forth in Schedule 2 (*Conditions Precedent*) and Schedule 12 (*Permits*).
- 8.3 As of the CP Satisfaction 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*) and Schedule 12 (*Permits*), 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 Company, the Wynn 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 the Company or a Wynn Obligor) could reasonably be expected to have a Material Adverse Effect.

#### 10. **Taxes**

- 10.1 Each of the Wynn Obligors (other than Wynn Resorts) and the Company has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it in any jurisdiction and all such tax and informational returns are correct and

complete in all material respects. Each of the Wynn Obligor (other than Wynn Resorts) and the Company 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 Wynn Obligor (other than Wynn Resorts) or the Company has incurred any material tax liability in connection with any of the Projects 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 Obligor (other than Wynn Resorts) or the Company other than Liens permitted pursuant to paragraph 3(a) of Part B of Schedule 5 (*Covenants*) hereto.

11. **Business, Debt, Etc.**

The Company has not conducted any business other than a Permitted Business. The Company has no place of business outside the Macau SAR or as otherwise permitted pursuant to paragraph 14.2 of Part B of Schedule 5 (*Covenants*). The Company has no outstanding Financial Indebtedness other than Permitted Financial Indebtedness.

12. **Environmental Laws**

- 12.1 The Company 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 material Environmental Claim has been made which has not been fully discharged, released, satisfied or withdrawn.
- 12.3 So far as the Company is aware:
- (a) the Site does not contain any Hazardous Substances whose presence on the Site could reasonably be expected to affect the Company or the Projects in a material and adverse manner; and
  - (b) there are no antiquities or obstructions on the Site which could reasonably be considered likely to prevent or impede the carrying out of either Project in any material respect.

13. **Utilities**

All material utility services (including, without limitation, gas, water and electrical interconnection) necessary for the Projects are or will be available at the Site as and when required.

**14. No Forecast Funding Shortfall**

As of each Advance Date, no Forecast Funding Shortfall (determined in the case of the Initial Advance under the Term Loan Facilities without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities) has occurred and is continuing or could reasonably be expected to result from any Advance proposed to be made thereon.

**15. Sufficiency of Interests and Project Documents**

- 15.1 The Company 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 good title to, or a valid license or leasehold interest in, all its other Property, and, other than as provided by the Transaction Documents, none of its Property is subject to any claims, liabilities, obligations, charges or restrictions of any kind, nature or description (other than claims, liabilities, obligations, charges or restrictions that individually or in the aggregate could not reasonably be expected to materially interfere with the business or Property of the Company), or to any Lien except for Permitted Liens. None of the Pledged Stock is subject to any Lien except for Permitted Liens.
- 15.2 The Intercreditor Agent has received a true, complete and correct copy of each of the Major Project Documents in effect or required to be in effect as of the date this representation is made or deemed to be made (including all exhibits, schedules, disclosure letters, modifications and amendments referred to therein or delivered or made pursuant thereto, if any). Each Major Project Document is in full force and effect, enforceable against the Persons party thereto in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.
- 15.3 All conditions precedent to the obligations of the respective parties (other than the Company) under the Major Project Documents have been satisfied or waived, except for such conditions precedent which by their terms cannot be met until a later stage in the construction or operation of the Projects, and the Company has no reason to believe that any such condition precedent which could reasonably be expected to have a Material Adverse Effect cannot be satisfied on or prior to the appropriate stage in the development, construction or operation of the Projects.

**16. Intellectual Property**

The Company owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. To the Company's knowledge, no claim has been asserted or is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Company know of any valid basis for any such claim, except with respect to Intellectual Property (other than any Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name), as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect. 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, which infringement, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

**17. Project Budget; Projections**

**17.1 The Project Budget:**

- (a) is, to the Company's knowledge, based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (b) is consistent with the provisions of the Transaction Documents in all material respects;
- (c) has been and will (in the case of any update) be prepared in good faith and with due care;
- (d) sets forth, for each Line Item, the total costs anticipated to be incurred to achieve Construction Completion;
- (e) fairly represents the Company's expectation as to the matters covered thereby as of its date or the date of its most recent update; and
- (f) demonstrates no Forecast Funding Shortfall (determined, as of any date prior to the date of the Initial Advance under the Term Loan Facilities, without taking account of any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities).

**17.2 As of the CP Satisfaction Date, the Projections:**

- (a) are based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (b) are consistent with the provisions of the Transaction Documents in all material respects (including paragraph 1 of Part B and paragraph 2(c) of Part A of Schedule 5 (*Covenants*));
- (c) set forth all material costs and expenses anticipated to be incurred; and
- (d) represent the Company's views as to costs and expenses anticipated to be incurred in the manner contemplated by the Transaction Documents.

**18. Fees and Enforcement**

Other than amounts that have been paid in full or will have been paid in full by the CP Satisfaction 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.

19. **ERISA**

Either (a) there are no Plans or Multiemployer Plans for the Company or any member of the Controlled Group or (b) (i) the Company and each Commonly Controlled Entity have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each Plan and for contributions to any Multiemployer Plan; (ii) each Plan is in compliance in all material respects with the currently applicable provisions of ERISA and the Code; (iii) neither the Company nor any Commonly Controlled Entity has incurred any liability to the PBGC or a Plan under Title IV of ERISA (other than liability or contributions for premiums due in the ordinary course). Assuming that the credit extended hereunder does not involve the assets of any employee benefit plan subject to Title I of ERISA sponsored, monitored or contributed by for the Company or any Commonly Controlled Entity, neither the execution of the Transaction Documents nor the consummation of the transactions contemplated thereby will involve a “prohibited transaction” with respect to any Plans within the meaning of section 406 of ERISA or section 4975 of the Code which is not exempt under section 408 of ERISA or under section 4975(d) of the Code.

20. **Subsidiaries and Beneficial Interest**

20.1 *The Company*

- (a) As of the date of the Wong Share Pledge, the Expansion Signing Date and the CP Satisfaction Date, Mr Wong Chi Seng 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 date of the Company Share Pledge, the Expansion Signing Date and the CP Satisfaction 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 date of the Company Share Pledge, the Expansion Signing Date and the CP Satisfaction 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.

20.2 *Wynn HK*

As of the date of the Wynn HK Share Charge, the Expansion Signing Date and the CP Satisfaction 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.

20.3 *Wynn Holdings*

As of the Expansion Signing Date and the CP Satisfaction Date, Wynn International legally and beneficially owns 100% of Wynn Holdings.

20.4 *Wynn International*

As of the date of the Wynn International Share Charge, the Expansion Signing Date and the CP Satisfaction Date, Wynn Asia, a company incorporated in the State of Nevada, legally and beneficially owns 100% of the total issued share capital of Wynn International.

20.5 *Wynn Asia*

As of the Expansion Signing Date and the CP Satisfaction Date, Wynn Resorts, a company incorporated in the State of Nevada, legally and beneficially owns 100% of the total issued share capital of Wynn Asia.

20.6 Save as provided by the Security Documents or the Wong Option Agreement, 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 Wynn Obligor (other than Wynn Resorts) or the Company. None of the Wynn Obligors (other than Wynn Resorts) or the Company have issued, or authorized the issuance of, any Disqualified Stock.

21. **Labour Disputes and Acts of God**

21.1 Neither the business nor the Properties of the Company, nor, to the knowledge of the Company, any other Major Project Participant, is affected by any fire, explosion, accident, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty or other event of force majeure, that could reasonably be expected to have a Material Adverse Effect.

21.2 There are no strikes, lockouts, stoppages, slowdowns or other labour disputes against the Company pending or, to the knowledge of the Company, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of the Company have not been in violation of any applicable Legal Requirement dealing with such matters that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect. All payments due from the Company on account of employee health and welfare insurance that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect if not paid have been paid or accrued as a liability on the books of the Company.

22. **Liens**

Except for Permitted Liens, none of the Wynn Obligors (other than Wynn Resorts) or the Company 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

Wynn Obligors (other than Wynn Resorts) or the Company 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.

23. **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 Wynn Obligors (other than Wynn Resorts) and the Company 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.

24. **Project Schedule**

The Project Schedule:

- (a) accurately specifies in summary form the work that the Company proposes to complete in each calendar quarter from the CP Satisfaction Date through Final Completion of the Projects, all of which the Company expects to be achieved;
- (b) is, to the Company's knowledge, based on assumptions the Company believes to be reasonable as to all legal and factual matters material to the estimates set forth therein;
- (c) is consistent with the provisions of the Transaction Documents in all material respects;
- (d) has been and will (in the case of any update) be prepared in good faith and with due care;
- (e) fairly represents the Company's expectation as to the matters covered thereby as of its date or the date of its most recent update; and
- (f) as of the Expansion Signing Date, the CP Satisfaction Date and each Advance Date under the Term Loan Facilities, demonstrates that Substantial Completion will be achieved and the Opening Conditions specified in paragraph (a) of the definition thereof satisfied by the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006 (in the case of the Initial Advance under the Term Loan Facilities)
	28 February 2007 (in the case of each subsequent Advance)
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008

25. **Location of Accounts and Records**

The Company's books of accounts and records are located at the Company's principal place of business in the Macau SAR.

26. **Solvency**

Each Wynn Obligor (other than, after the Sponsor Support Release Date, Wynn Resorts) and the Company 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.

27. **Plans and Specifications**

The Plans and Specifications:

- (a) are, to the Company's knowledge as of the CP Satisfaction Date, based on assumptions that the Company believes to be reasonable as to all legal and factual matters material thereto;
- (b) are, and except to the extent permitted under paragraph 15 of Part B of Schedule 5 (*Covenants*) will be from time to time, consistent with the provisions of the Transaction Documents;
- (c) have been prepared in good faith with due care; and
- (d) are accurate in all material respects and fairly represent the Company's expectations as to the matters covered thereby.

28. **No subsidiaries**

Save as approved by the Intercreditor Agent (such approval not to be unreasonably withheld), the Company has no subsidiaries and does not legally or beneficially own any Capital Stock in any Person.

29. **Pari Passu**

The payment obligations under the Senior Finance Documents of each of the Wynn Obligors (other than, after the Sponsor Support Release Date, Wynn Resorts) and the Company 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.



30. **Insurance**

The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged and in any event in accordance with Schedule 7 (*Insurance*); and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a cost that could not reasonably be expected to have a Material Adverse Effect (other than as a result of general market conditions).

31. **Fiscal Year**

The fiscal year of each of the Obligors ends on 31 December of each calendar year.

32. **Accuracy of Information, etc.**

As of the Expansion Signing Date, or, in the case of the Information Memorandums, the respective dates thereof, no statement or information contained in each Information Memorandum or any other document, certificate or written statement furnished to any Secured Creditor, by or on behalf of any Wynn Obligor, the Company or the PASA Agent 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 (other than the Information Memorandums), read as a whole with all such documents, certificates and written statements furnished on or prior to the Expansion 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 Expansion Signing Date, or, in the case of the Information Memorandums, the dates 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 Company 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 Expansion Signing Date, there are no facts known to any Wynn Obligor, the Company or the PASA Agent 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, in the Information Memorandums 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.

33. **Site and Site Easements**

33.1 The Site, the material Site Easements and the current use thereof comply in all material respects with all applicable Legal Requirements and with all Insurance Requirements.

33.2 No Taking has been commenced or, to the Company's knowledge, is contemplated with respect to all or any portion of the Site or the Site Easements or for the relocation of

roadways providing access thereto except, in each case, as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect.

- 33.3 There are no current, pending or, to the knowledge of the Company, proposed special or other assessments for public improvements or otherwise affecting the Site or the Site Easements, nor are there any contemplated improvements thereto that may result in such special or other assessments, in any case that could reasonably be expected to result in a material liability to the Company.
- 33.4 There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting the Site or the material Site Easements (other than those set forth in the Senior Finance Documents and the Land Concession Contract or arising by mandatory operation of law).
- 33.5 Except as could not, individually or collectively, reasonably be expected to have a Material Adverse Effect, no Project building or structure or any appurtenance thereto or equipment thereon, or the use, operation or maintenance thereof, violates any restrictive covenant or encroaches on any easement or on any property owned by others.

34. **Affiliate Agreements**

The Intercreditor Agent has received a true, complete and correct copy of each of the Affiliate Agreements in effect as of the date this representation is made or deemed to be made.

**SCHEDULE 5**  
**COVENANTS**

**Part A - Affirmative Covenants**

The Company shall:

1. **Financial Statements** - Furnish to the Intercreditor Agent and, in the case of the Wynn Resorts' annual report referred to in sub-paragraph (a) below, each Facility Agent and each Lender:
  - (a) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' annual report on Form 10-K (or successor form thereto) with respect to each Fiscal Year and (ii) 90 days after the end of each Fiscal Year, a copy of:
    - (i) the audited balance sheets (on a consolidated basis in the case of Wynn Resorts) of:
      - (A) Wynn Resorts; and
      - (B) the Company,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
    - (ii) the unaudited balance sheet, of:
      - (A) Wynn Asia;
      - (B) Wynn International; and
      - (C) Wynn HK,as at the end of such Fiscal Year and the related unaudited statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparable form the figures for the previous Fiscal Year; and
  - (b) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of Wynn Resorts' quarterly report on Form 10-Q (or successor form thereto) with respect to each of the first three Fiscal Quarters of each Fiscal Year and (ii) 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the unaudited (on a consolidated basis in the case of Wynn Resorts) balance sheets of:
    - (A) Wynn Resorts;
    - (B) Wynn Asia;

- (C) Wynn International;
- (D) Wynn HK; and
- (E) the Company,

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.

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 shall be 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 relevant Obligor 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 relevant Obligor stating that, to the best of each such Responsible Officer's knowledge, the Obligor during such period has observed or performed all of its material covenants and other agreements, and satisfied every material condition contained in the Senior Finance Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no actual knowledge of any Default except as specified in such certificate or in the equivalent certificate for such period issued pursuant to this sub-paragraph (a)(ii) by a Responsible Officer of another Obligor;
  - (iii) in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Company with the provisions of this Agreement as of the last day of the applicable Fiscal Quarter or Fiscal Year, as the case may be;
  - (iv) in the case of Wynn Asia, until the Fiscal Quarter following the date upon which the full amount of Base Equity has been paid up or advanced to the Company, a copy of its bank statements for the preceding Fiscal Quarter, certified as being true and complete by a Responsible Officer of Wynn Asia; and

- (v) in the case of the Company:
- (1) a list of each of its accounts;
  - (2) a copy of the bank statements for each such account for the preceding Fiscal Quarter; and
  - (3) a certificate of a Responsible Officer of the Company setting out the amount(s) and details of any further Subordinated Debt or Shareholder Loans (including, in each case, all terms and conditions thereof) made available to the Company during the preceding Fiscal Quarter;
- (b) for each calendar month during the period up to and including the first calendar month by which Substantial Completion has been achieved and the Opening Conditions specified in paragraph (a) of the definition thereof have been satisfied in respect of the Original Project and the Expansion and for the month in which the Final Completion Date occurs, deliver to the Facility Agents, the Technical Adviser and the Intercreditor Agent, within 25 days following the end of the relevant calendar month, a status report (the “**Monthly Construction Period Report**”) in form and substance reasonably acceptable to the Intercreditor Agent and including information on each of the items set out in Schedule 18 (*Monthly Construction Period Report*) and such other information which any Facility Agent or the Intercreditor Agent may reasonably request, including information and reports reasonably requested by the Technical Adviser and attaching:
- (i) an updated Project Budget;
  - (ii) an updated Project Schedule; and
  - (iii) all progress reports provided by the Prime Contractor pursuant to the Construction Contract (including each Monthly Construction Progress Report) since (in the case of the second and subsequent Monthly Construction Period Reports) the last Monthly Construction Period Report;
- (c) as soon as available, and in any event no later than the Original Project Opening Date and 30 days prior to the beginning of each Fiscal Year thereafter, detailed projections (each, together with the projections provided pursuant to paragraph 22 of Part A of Schedule 2 (*Conditions Precedent*), the “**Projections**”) of the Company for such Fiscal Year (or portion thereof from the Original Project Opening Date through the end of 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 detailed assumptions supporting such Projections 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;
- (d) within 45 days after the end of each Fiscal Quarter after the Original Project Opening Date, a narrative discussion and analysis (the “**Quarterly Operating Period Report**”) in form and substance reasonably acceptable to the Intercreditor Agent of the financial condition and results of operations of the Company for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year (or if the then current Fiscal Year is the Fiscal Year in which the Original Project Opening Date has occurred, from the Original Project Opening Date) to the end of such Fiscal Quarter, as compared to the portion of the Projections covering such periods and to the comparable periods of the previous Fiscal Year;
  - (e) promptly, and in any event within ten Business Days after any Major Project Document or Affiliate Agreement is terminated (save upon expiration in accordance with its terms) or amended or any new Major Project Document or Affiliate Agreement is entered into, or upon becoming aware of any material default by any Person or the occurrence of any event under a Major Project Document or Affiliate 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 or Affiliate Agreement (including, in the case of the latter, a certificate from a Responsible Officer confirming the transactions contemplated therein comply with the requirements of paragraph 10 of Part B of Schedule 5 (*Covenants*)) and, with respect to any such terminations or material defaults, an explanation of any actions being taken by the Company with respect thereto;
  - (f) 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 Schedule 7 (*Insurance*) have been implemented and are being complied with;
  - (g) within twenty days after the end of each Fiscal Quarter of the Company, a schedule of all Proceedings instigated or threatened in writing involving an alleged liability of, or claims against or affecting, the Company, Wynn HK, Wynn International or Wynn Asia equal to or greater than USD5,000,000 or its equivalent, and promptly after request by the Intercreditor Agent, such other information as may be reasonably requested by the Intercreditor Agent to enable the Intercreditor Agent and its counsel to evaluate any of such Proceedings;
  - (h) a copy of each written notice which is given under or pursuant to the Concession Contract or the Land Concession Contract by the Macau SAR to the Company promptly upon receipt of such notice;

- (i) at the same time as the giving of any written notice under or pursuant to the Concession Contract or the Land Concession Contract by the Company to the Macau SAR, a copy of such notice; and
  - (j) promptly, such additional financial and other information as the Intercreditor Agent may from time to time reasonably request.
3. **Permits** - Deliver to the Intercreditor Agent and (in the case of Permits made or issued by or with a Governmental Authority) the Technical Adviser promptly, but in no event later than 20 days after the receipt thereof by the Company, copies of:
- (a) all material Permits (including those specified in Part B of Schedule 12 (*Permits*)) that are obtained or entered into by the Company after the Signing Date; and
  - (b) any material amendment, supplement or other modification to any such Permit received by the Company after the Signing Date.
4. **Plans and Specifications** - Provide to the Technical Adviser copies of, and maintain at the Site, a complete set of the Plans and Specifications.
5. **Technical Adviser**
- 5.1 Cooperate and cause the Prime Contractor and the PASA Agent to cooperate with the Technical Adviser in the performance of the Technical Adviser's duties. Without limiting the generality of the foregoing, the Company shall and shall cause the Prime Contractor to:
- (a) communicate with and promptly provide all invoices, documents, plans and other information reasonably requested by the Technical Adviser relating to the work;
  - (b) provide the Technical Adviser with access to the Site and, subject to required safety precautions and reasonable site management restrictions, the construction areas; and
  - (c) solely in the case of the PASA Agent, provide the Technical Adviser with reasonable working space and access to telephone, copying and telecopying equipment at the Site (or such other location in reasonable proximity to the Site as the Projects near completion),
- and the Company shall take reasonable measures to otherwise facilitate the Technical Adviser's review of the construction of the Projects and preparation of the certificates and reports required hereunder. The Company shall also maintain in Hong Kong or Macau a complete set and, promptly upon written request, provide the Technical Adviser with reasonable access to and copies of, each first tier Subcontract entered into by the Prime Contractor (or any other Contractor who is party to a Project Document entered into with the Company that is not subject to a fixed price) with a contract price (or expected aggregate amount to be paid in the case of "cost plus" contracts) in excess of USD500,000 or its equivalent.

- 5.2 In addition to any other consultation required under this Agreement, following the end of each quarter, upon the request of the Intercreditor Agent, consult with any such Person regarding any adverse event or condition identified in any report prepared by the Technical Adviser.
6. **Management Letters** - Deliver to the Intercreditor Agent a copy of any "management letter" or other similar communication received by the Company from the Auditors in relation to the Company's financial, accounting and other systems, management or accounts.
7. **Governmental and Environmental Reports** - Deliver to the Intercreditor Agent and the Technical Adviser copies of all material reports required to be filed by the Company with any Governmental Authority in connection with the construction of the Projects.
8. **Payment of Obligations** - To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate (under the circumstances) proceedings and reserves in conformity with applicable GAAP with respect thereto have been provided on the books of the Company.
9. **Conduct of Business and Maintenance of Existence, etc.**
- (a) Preserve, renew and keep in full force and effect its corporate or limited liability company existence and remain a Subsidiary of Wynn Resorts;
  - (b) 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. **Maintenance of Property; Leases; Insurance**
- 10.1 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 Maintain all material rights of way, easements, grants, privileges, licenses, certificates, and Permits necessary for the intended use of the Site and the Site Easements, except any such item the loss of which, individually or in the aggregate, could not reasonably be expected to materially and adversely affect or interfere with the Permitted Businesses or Property of the Company.
- 10.3 Comply with the terms of each lease or other grant of rights in respect of land, including easement grants, so as to not permit any material uncured default on its part to exist thereunder, except, in each case, where non-compliance therewith could not reasonably be expected to materially and adversely affect or interfere with the Permitted Businesses or Property of the Company.



- 10.4 At all times maintain in full force and effect the insurance policies listed in and otherwise comply with Schedule 7 (*Insurance*).
- 10.5 Preserve and protect the Liens created pursuant to the Security Documents and, if any Lien (other than Permitted Liens) is asserted against any of the Project Security, promptly give the Intercreditor Agent a detailed written notice of such Lien and pay the underlying claim in full or take such other action so as to cause it to be released or bonded over in a manner reasonably satisfactory to the Intercreditor Agent.
11. **Inspection of Property; Books and Records; Discussions**
- (a) Keep proper books of records and account in which full, true and correct entries in conformity with applicable GAAP and all Legal Requirements.
  - (b) Subject to any Macau Gaming Laws restricting such actions and, where no Event of Default has occurred which is continuing, prior reasonable request and notice, procure that each of the Agents or their respective nominees and the Technical Adviser (each a “**Relevant Person**”) be allowed reasonable rights of inspection and access during normal business hours to the Site Facilities, the Projects, the Auditors and other Company officers, the Company’s accounting books and records and any other documents relating to the Projects as they may reasonably require, and so as not unreasonably to interfere with the operations of the Company or any Major Project Participant and to take copies of any documents inspected. Any information and documents made available for inspection by a Relevant Person pursuant to this paragraph shall be made available subject to customary confidentiality undertakings being executed by such Relevant Person.
  - (c) 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(e) of this Part B, any notice of termination (other than expiration in accordance with the terms thereof), default or any Termination Event 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, and (ii) any Environmental Claim pending or, to the Company’s knowledge, threatened against the Company or, to the Company’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 the Projects, the Site or the Site Easements which could reasonably be expected to have a Material Adverse Effect;

- (d) any change in the Responsible Officers of the Company, and such notice shall include a certified specimen signature of any new officer so appointed and, if requested by any Facility Agent or the Intercreditor Agent, evidence of the authority of such new Responsible Officer;
- (e) any proposed material change in (i) the nature or scope of either Project or (ii) the business or operations of the Company;
- (f) any notice of any material schedule delay delivered under the Construction Contract and all remedial plans by the Prime Contractor and updates thereof;
- (g) any "Substantial Completion" or "Final Completion" certificates or notices thereof delivered under any Major Project Documents (including any Certificate of Substantial Completion, Certificate of Final Completion or any notices of Substantial Completion or Final Completion);
- (h) any (i) default or event of default (or alleged default) under any Contractual Obligation of the Company or (ii) litigation, investigation or proceeding which may exist at any time between the Company and any Governmental Authority, that in either case, could reasonably be expected to have a Material Adverse Effect;
- (i) upon any officer of the Company 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 Property of the Company (collectively, "**Proceedings**") not previously disclosed in writing by the Company to the Lenders 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, in each case together with such other information as the Intercreditor Agent may reasonably require;
- (j) the following events, as soon as possible and in any event within 30 days after the Company knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a material failure to make any required contribution to a Plan, the creation of any Lien in favour of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC, the Company, any Wynn Obligor or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan;

- (k) any event, occurrence or circumstance which reasonably could be expected to give rise to a Forecast Funding Shortfall or render the Company incapable of, or prevent the Company from:
- (i) achieving Substantial Completion and satisfying the Opening Conditions specified in paragraph (a) of the definition thereof on or before the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:

Original Project	31 December 2006 (in the case of any such event, occurrence or circumstance arising on or prior to the date of the Initial Advance under the Term Loan Facilities)
	28 February 2007 (in the case of any such event, occurrence or circumstance arising after the date of the Initial Advance under the Term Loan Facilities)
Area 4	18 August 2007
Area 5	10 November 2007
Expansion	10 January 2008; or
  - (ii) meeting any material obligation of the Company under the Construction Contract or the other Major Project Documents as and when required thereunder; 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 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 Inform the Intercreditor Agent promptly on becoming aware of any, or any anticipated, release, emission, discharge or disposal of any matter that might reasonably be expected to form the basis for any Environmental Claim.
- 13.2 Comply 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 Environmental Claims to the Intercreditor Agent.

13.4 Deliver to the Intercreditor Agent:

- (a) any notice that any Governmental Authority may condition approval of, or any application for, any Permit held by the Company on terms and conditions that are materially burdensome to the Company, or to the operation of any of its businesses or any Property owned, leased or otherwise operated by the Company in each case in a manner not previously contemplated; and
- (b) 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 into any other Swap Agreement or derivative transaction unless:

- (a) the Company is in compliance with the Hedging Arrangements;
- (b) to the extent any such arrangement is entered into prior to the Construction Completion Date, it is contemplated by, and the costs thereof properly reflected in, the Project Budget; and
- (c) unless such arrangement is with a Lender which has executed a duly completed Hedging Counterparty's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by 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 is on the same terms as those comprised in the Hedging Arrangements, the counter-party thereto has no Lien or any right to share in any Lien over any Property of the Company.

15. **Additional Collateral, Discharge of Liens, etc.**

15.1 With respect to any Property (other than any Property which the Intercreditor Agent is reasonably satisfied is neither comprised in either Project nor necessary or desirable to ensure the full benefit of each Project to the Company) acquired by the Company after the 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 to the Intercreditor Agent such amendments to the Security Documents or 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 (other than any Property which the Intercreditor Agent is reasonably satisfied is neither comprised in either Project nor necessary or desirable to ensure the full benefit of each Project to the Company) acquired after the Signing Date consists of land or other Property with respect to which a recording or registration in the real property records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within 30 days following the date of such acquisition):

- (i) execute and deliver 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 grants to the Senior Secured Creditors a Lien on such Property subject only to Permitted Liens; and
- (ii) execute and/or deliver 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.

15.2 Notwithstanding anything to the contrary in this paragraph 15, sub-paragraph 15.1 shall not apply to any Property created or acquired after the 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.

**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 all other amounts received by it are utilised, and all of its accounts are established and funded, in accordance with the provisions of Schedule 6 (*Accounts*) and as otherwise provided by this Agreement and that it otherwise complies with Schedule 6 (*Accounts*).

**17. Compliance with Laws, Project Documents, etc.; Permits**

17.1 Comply in all material respects with all material Legal Requirements and its Governing Documents.

- 17.2 Comply, duly and promptly, in all material respects with its material obligations and enforce all of its material rights under all Project Documents, except in the case of Project Documents (other than the Major Project Documents) where the failure to comply could not reasonably be expected to have a Material Adverse Effect.
- 17.3 From time to time obtain, maintain, retain, observe, keep in full force and effect and comply 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 Make amendments, in form and substance reasonably acceptable to the Intercreditor Agent, to the Land Concession Contract and the description of land and land usage set out therein to the extent required to reflect the Project Works and the intended use of the Projects, once Substantial Completion of both the Original Project and the Expansion has been achieved.
18. **Pari Passu Ranking** - Procure that the obligations of the Company and each Wynn Obligor (other than, after the Sponsor Support Release Date, Wynn Resorts) 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 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 for such governmental consent, approval, notification, registration or authorisation.
20. **Diligent Construction of the Project** - The Company shall take or cause to be taken all action, make or cause to be made all contracts and do or cause to be done all things necessary to construct the Projects diligently in accordance with the Construction Contract, the Plans and Specifications, the Project Schedule, the Project Budget and the other Transaction Documents.
21. **Retainage Amounts** - Withhold from each Contractor party to a Major Project Document such retainage from any payment to be made to such Contractor as is permitted by such Major Project Document.

22. **Preserving Project Security** - Undertake and cause the Wynn Obligor 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 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. **Classification of Casino Area and Registration of Land**
- (a) Carry out definitive registration with the Macau Real Estate Registry of the horizontal property comprised in any area of the Original Project or the Expansion 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 the Projects upon obtaining all Permits required from the Macau SAR for such registration to be made and which Permits shall be obtained by the Company as soon as possible upon Substantial Completion of both the Original Project and the Expansion;
  - (b) obtain classification as a casino or gaming zone by the Macau SAR of any area of the Expansion in which any operation of casino games of chance or other forms of gaming will be carried out in accordance with Article 9 of the Concession Contract; and
  - (c) carry out definitive registration with the Macau Real Estate Registry in respect of the land (referred to in the Land Concession Contract) comprised in the Original Project as soon as practicable upon Substantial Completion thereof and the land comprised in the Expansion as soon as practicable upon Substantial Completion thereof.
24. **Termination of Concession Contract** - Notify the Intercreditor Agent promptly upon receiving:
- (a) notice of any consultations with the Macau SAR as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement in relation to any termination of the Concession Contract;

- (b) notice of any consultations with the Macau SAR as contemplated by paragraph C1 of the Land Concession Consent Agreement in relation to any termination or rescission of the Land Concession Contract;
  - (c) notice of any negotiations with the Macau SAR pursuant to article 83 of the Concession Contract;
  - (d) any notice from the Macau SAR pursuant to clause 3 of article 80 of the Concession Contract; or
  - (e) 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.



## Part B- Negative Covenants

The Company shall not directly or indirectly:

### 1. Financial Condition Covenants

- (a) *Leverage Ratio* - Permit the Leverage Ratio of the Company as at the last day of any period of four full consecutive Fiscal Quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first Fiscal Quarter which begins after the Construction Completion Date) ending on any Quarterly Date set forth below to exceed the ratio set forth below opposite such Quarterly Date:

<u>Quarterly Date</u>	<u>Leverage Ratio</u>
First, Second and Third Quarterly Dates	5.00
Fourth and Fifth Quarterly Dates	4.00
Sixth and Seventh Quarterly Dates	3.00
Eighth Quarterly Date and each Quarterly Date thereafter	2.50

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.

- (b) *Debt Service Cover Ratio* - Permit the Debt Service Cover Ratio of the Company for any period of four full consecutive Fiscal Quarters ending on any Quarterly Date set forth below (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first Fiscal Quarter which begins after the Construction Completion Date) to be less than the ratio set forth below opposite such Quarterly Date:

<u>Quarterly Date</u>	<u>Debt Service Cover Ratio</u>
First, Second and Third Quarterly Dates	1.05
Fourth Quarterly Date and each Quarterly Date thereafter	1.15

- (c) *Maintenance of Net Worth* - Permit the Net Worth of the Company at any Quarterly Date to be less than the Minimum Net Worth for that Quarterly Date.

- (d) *Interest Coverage Ratio* - Permit the Interest Coverage Ratio of the Company for any period of four full consecutive Fiscal Quarters (or such shorter period ending on any Quarterly Date set forth below and beginning on the first day of the first Fiscal Quarter which begins after the Construction Completion Date) ending on any Quarterly Date set forth below to be less than the ratio set forth below opposite such Quarterly Date:

<u>Quarterly Date</u>	<u>Interest Coverage Ratio</u>
First, Second and Third Quarterly Dates	2.50
Fourth, Fifth, Sixth and Seventh Quarterly Dates	3.00
Eighth Quarterly Date and each Quarterly Date thereafter	4.00

2. **Limitation on Financial Indebtedness**

Create, incur, assume or suffer to exist any Financial Indebtedness, except:

- (a) Financial Indebtedness of the Company created under any Senior Finance Document, the Performance Bond Facility or the Subordinated Funding Agreement or in respect of Base Equity or Contingent Equity or any Shareholder Loan or Guarantee Obligations represented by the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract;
- (b) Financial Indebtedness of the Company (including Capital Lease Obligations) secured by Liens permitted by paragraph 3 (k) of this Part B in an aggregate principal amount not to exceed USD5,000,000 or its equivalent at any one time outstanding;
- (c) Financial Indebtedness of the Company to employees of the Company (or their estates) incurred in connection with any repurchase of employee stock options or stock upon death, disability or termination of such employee in accordance with employment agreements or option plans or agreements, *provided* that (i) such Financial Indebtedness will not exceed USD2,000,000 or its equivalent in any Fiscal Year and USD6,000,000 or its equivalent during the term of the Senior Finance Documents and (ii) such Financial Indebtedness shall be unsecured and subordinated on terms and conditions reasonably satisfactory to the Intercreditor Agent, subject to such covenants and events of default as may be reasonably acceptable to the Intercreditor Agent and expressly provide that payments thereon shall be required only to the extent not restricted by any Senior Finance Document;
- (d) on or prior to the Construction Completion Date, Guarantee Obligations represented by performance bonds, guaranties, commercial or standby letters of credit (other than the Concession Contract Performance Bond), bankers' acceptances or similar instruments issued by a Person for the benefit of a trade creditor of the Company, in an aggregate amount not to exceed USD25,000,000 or its equivalent at any time outstanding so long as:
- (i) such Financial Indebtedness is incurred in the ordinary course of business; and
- (ii) the obligations of the Company supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (A) consist solely of payment obligations with respect to costs incurred in accordance with the Project Budget which would otherwise be

permitted to be paid by the Company pursuant to this Agreement and (B) if secured, are secured solely by Liens permitted by paragraph 3 (l) of this Part B;

- (e) after the Construction Completion Date, Guarantee Obligations represented by performance bonds, guaranties, commercial or standby letters of credit (other than the Concession Contract Performance Bond), bankers' acceptances or similar instruments issued by a Person for the benefit of a trade creditor of the Company, in an aggregate amount not to exceed USD10,000,000 or its equivalent at any time outstanding so long as:
- (i) such Financial Indebtedness is incurred in the ordinary course of business; and
  - (ii) the obligations of the Company supported by such performance bonds, guaranties, trade letters of credit, bankers' acceptances or similar instruments (A) do not consist of payment obligations with respect to Project Costs and (B) if secured, are secured solely by Liens permitted by paragraph 3 (m) of this Part B;
- (f) Financial Indebtedness of the Company:
- (i) in an aggregate principal amount not to exceed USD35,000,000 or its equivalent;
  - (ii) on terms no more favourable to the creditor than those to which the Term Loan Facilities are subject;
  - (iii) neither arranged nor sought to be arranged at any time prior to 1 January 2005; and
  - (iv) *provided* (x) the 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 sub-paragraph 2(f) have also been satisfied, such creditor shall become a party hereto as an Additional Lender and the 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 the 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 *provided* that an aggregate amount of:

- (v) Equity (in addition to Base Equity, Contingent Equity, the Subordinated Funding and any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents); or
- (vi) in substitution therefor, other moneys retained by the Company which would otherwise be available to make Restricted Payments (and which shall not thereafter be applied by the Company in the making of any Restricted Payment or other payment permitted pursuant to paragraph 6.1 of this Part B),  
not less than the amount by which the aggregate principal amount of all such Financial Indebtedness exceeds USD20,000,000 or its equivalent is advanced, paid up or so retained as a condition to the incurring of such Financial Indebtedness;
- (g) Financial Indebtedness of the Company 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) will occur; and
- (h) other Financial Indebtedness approved in writing by the Intercreditor Agent,  
(together, "**Permitted Financial Indebtedness**").

3. **Limitation on Liens**

Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

- (a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained on the books of the Company 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 through an allocation in the Project Budget in the case where any such reserves are maintained prior to the Construction Completion Date);

- (d) deposits by or on behalf of the Company 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;
- (f) Liens created pursuant to the Security Documents;
- (g) licenses of patents, trademarks and other intellectual property rights granted by the Company in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of the Company;
- (h) any attachment or judgment Lien not constituting an Event of Default;
- (i) 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;
- (j) 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;
- (k) Liens securing Financial Indebtedness of the Company incurred pursuant to paragraph 2(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;
  - (iii) the principal amount of Financial Indebtedness secured thereby is not increased; and
  - (iv) the Property financed by such Financial Indebtedness is not of a type that will become affixed to the Site or the other Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of either Project;
- (l) Liens on cash disbursed pursuant to the Term Loan Facilities Agreements and deposited with, or held for the account of, the Company securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under paragraph 2(d) of this Part B, granted in favour of the issuers of such

performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as:

- (i) any cash disbursed to secure such reimbursement obligations is invested (if at all) in Permitted Investments only (to the extent the Company has the right to direct the investment thereof) and is segregated from the Company'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 is not less than the amount of Financial Indebtedness secured thereby and in any event 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);
- (m) Liens on cash deposited with, or held for the account of, the Company securing reimbursement obligations under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments permitted under paragraph 2(e) of this Part B or the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract, 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 has the right to direct the investment thereof) and is segregated from the Company'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) until the date of the Initial Advance under the Term Loan Facilities, the cash deposit pledged by the Company in favour of the Performance Bond Provider pursuant to the Performance Bond Facility Agreement;
- (o) without prejudice to Schedule 6 (*Accounts*), Liens arising by reason of any netting or set-off arrangements entered into by the Company 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;
- (p) Liens arising under title transfer or retention of title arrangements entered into by the Company 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
- (q) other Liens approved in writing by the Intercreditor Agent.

4. **Limitation on Fundamental Changes**

Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except that the Company may dispose of any of its Property in accordance with paragraph 5 of this Part B.

5. **Limitation on Disposition of Property**

Dispose of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any Capital Stock to any Person, except:

- (a) the Disposition for fair market value in the ordinary course of business of obsolete or worn out Property or Property no longer used or useful in the business of the Company *provided* that either:
  - (i) such Disposition could not reasonably be expected to materially adversely affect either Project or any of the Project Security; or
  - (ii) with respect to Property Disposed of by reason of its obsolescence or worn out condition, prior to or promptly following such Disposition any such Property shall be replaced (if replacement is in fact necessary or desirable) with other Property of substantially equal or greater utility and similar use and either (A) a value at least substantially equal to that of the replaced Property when first acquired or (B) substantially equal or greater quality and, if applicable, prestige and calibre as the replaced Property when first acquired and free from any Lien of any other Person (subject to Permitted Liens) and the Company shall promptly subject such replacement property to the Lien of the Security Documents in favour of the Secured Parties of at least the same priority as Property so replaced, *provided* further that, in the case of any Asset Sale permitted pursuant to this sub-paragraph 5(a)(ii):
    - (A) the Company may deliver a Reinvestment Notice in respect thereof;
    - (B) any remaining Net Cash Proceeds of such Asset Sale (and any Reinvestment Prepayment Amount) are applied towards prepayment of the Advances under the Term Loan Facilities in accordance with paragraph 3 of Schedule 9 (*Mandatory Prepayment*); and
    - (C) the aggregate amount of Net Cash Proceeds of Asset Sales that may be excluded from the foregoing prepayment requirement pursuant to a Reinvestment Notice delivered under sub-paragraph (A) shall not exceed USD10,000,000 or its equivalent in any Fiscal Year;

- (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 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;
- (d) in addition to other Dispositions allowed under this paragraph 5, Dispositions of Property having a fair market value not in excess of USD5,000,000 or its equivalent in the aggregate in any Fiscal Year following the Construction Completion Date; *provided* that (i) the consideration received for such Property shall be in an amount at least equal to the fair market value thereof; and (ii) the sole consideration received shall be cash;
- (e) subject to compliance with paragraph 23 of this Part B, the Company may enter into any leases or licences with respect to any space on or within the Site Facilities;
- (f) the incurrence of Liens permitted under paragraph 3 of this Part B;
- (g) any Event of Eminent Domain *provided* that the requirements of Schedule 9 (*Mandatory Prepayment*) are complied with in connection therewith;
- (h) subject to compliance with paragraph 17 of this Part B, the Company may enter into Subconcessions; or
- (i) 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 for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of the Company (including any Equity), 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;
- (b) enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "**Derivatives Counterparty**") obligating the Company to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock;



- (c) make any repayment of, or pay any interest on or other amount in respect of, the Subordinated Funding, the Performance Bond Facility or any other Subordinated Debt (including any Equity); or
  - (d) make any payment of IP Fees other than Approved IP Fees,
- (collectively, “**Restricted Payments**”) except, to the extent constituting Restricted Payments, the Company may:
- (i) pay dividends, distributions or other payments if permitted under paragraphs 6.2 or 17(d) of this Part B or, subject to any applicable Legal Requirements, from the proceeds of any Advance made pursuant to Clause 7.2 (*Rebalancing between Debt, Equity and Net Operating Cashflow*);
  - (ii) make payments permitted in accordance with the Deed of Appointment and Priority;
  - (iii) pay Approved IP Fees and amounts other than IP Fees payable, in each case, under the IP Agreement to the Licensor and permitted pursuant to paragraph 20 of this Part B; and
  - (iv) take actions permitted pursuant to paragraph 10 of this Part B.
- 6.2 At any time after the Sponsor Support Release Date, the Company may declare and/or pay at the times set out in paragraph 6.3 of this Part B by way of dividend or other distribution or other payment (including IP Fees in excess of Approved IP Fees), subject to compliance with applicable Legal Requirements:
- (a) 50% of the Excess Cash Flow remaining after (1) prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*) and (2) each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*) provided that all of the following conditions have been satisfied:
    - (i) no Event of Default has occurred and is continuing;
    - (ii) the ratio of Senior Debt as at the end of the most recently ended Fiscal Year to EBITDA of the Company for such Fiscal Year (*provided that such Fiscal Year is or begins after the Fiscal Year in which the Construction Completion Date occurs*) is less than 3:1;
    - (iii) the ratio of Senior Debt as at the end of each of the four consecutive Fiscal Quarters of the Company immediately preceding the payment or making of such dividend or other distribution to Cumulative EBITDA for such Fiscal Quarter is less than 4:1 (*provided that each of such Fiscal Quarters begins on or after the Expansion Opening Date*), where “**Cumulative EBITDA**” for a Fiscal Quarter of the Company (the “**Tested Quarter**”) shall be the sum of EBITDA of the Company for each of the four most recent Fiscal Quarters commencing after the Expansion Opening Date *provided that if the period between the Expansion Opening*

- Date and the last day of a Tested Quarter consists of less than four consecutive Fiscal Quarters of the Company commencing after the Expansion Opening Date, Cumulative EBITDA for such Tested Quarter shall be the EBITDA of the Company for the aggregate Fiscal Quarter periods which have elapsed since the Expansion Opening Date, calculated on an annualised basis;
- (iv) Debt Service Cover Ratio for the most recently ended Fiscal Year is at least 1.5:1 *provided* that such Fiscal Year is or begins after the financial year in which the Construction Completion Date occurs; and
  - (v) each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*); and
- (b) 100% of the Excess Cash Flow remaining after (1) prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*) and (2) each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*) *provided* that all of the following conditions have been satisfied:
- (i) no Event of Default has occurred and is continuing;
  - (ii) the ratio of Senior Debt as at the end of the most recently ended Fiscal Year to EBITDA of the Company for such Fiscal Year (*provided* that such Fiscal Year is or begins after the Fiscal Year in which the Construction Completion Date occurs) is less than less than 2:1;
  - (iii) the ratio of Senior Debt as at the end of each of the four consecutive Fiscal Quarters of the Company immediately preceding the payment or making of such dividend or other distribution to Cumulative EBITDA for such Fiscal Quarter is less than 4:1 (*provided* that each of such Fiscal Quarter begins on or after the Expansion Opening Date), where “**Cumulative EBITDA**” for a Fiscal Quarter of the Company (the “**Tested Quarter**”) shall be the sum of EBITDA of the Company for each of the four most recent Fiscal Quarters commencing after the Expansion Opening Date *provided* that if the period between the Expansion Opening Date and the last day of a Tested Quarter consists of less than four consecutive Fiscal Quarters of the Company commencing after the Expansion Opening Date, Cumulative EBITDA for such Tested Quarter shall be the EBITDA of the Company for the aggregate Fiscal Quarter periods which have elapsed since the Construction Completion Date, calculated on an annualised basis;
  - (iv) Debt Service Cover Ratio of the Company for the most recently ended Fiscal Year is at least 1.5:1 *provided* that such Fiscal Year is or begins after the financial year in which the Construction Completion Date occurs; and

(v) each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*).

- 6.3 Any payment or making of dividends or other distribution under paragraph 6.2 of this Part B shall be made in April of each calendar year (or such earlier date after the Intercreditor Agent is satisfied that all of the above conditions have been satisfied after receipt of the annual audited financial statements of the Company for such calendar year and the Compliance Certificate delivered together with such financial statements) and on or after the date of any prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*) provided that if the condition referred to in paragraph 6.2(a)(ii), (a)(iv), (b)(ii) or, as the case may be, (b)(iv) of this Part B is not satisfied at such time, such payment may be made at any time in such calendar year after the satisfaction of the condition referred to in paragraph 6.2(a)(ii), (a)(iv), (b)(ii) or, as the case may be, (b)(iv) of this Part B provided that all other conditions remain satisfied at the time of such payment.
- 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. **Limitation on Capital Expenditures**

Make, commit to make or incur Capital Expenditures except:

- (a) for the purposes of the Projects and:
- (i) in Fiscal Year 2005, as contemplated by the Project Budget; and
  - (ii) in Fiscal Year 2006, in an aggregate amount not exceeding USD12,500,000 or its equivalent and in each subsequent Fiscal Year, in an aggregate amount not exceeding USD45,000,000 or its equivalent; or
- (b) to the extent such Capital Expenditures are made from the proceeds of any Financial Indebtedness incurred pursuant to paragraph 2(f) of this Part B, any Contingent Equity utilised pursuant to paragraph 15.2.1(B)(ii) of this Part B, any Advance made under the Contingent Debt Facilities pursuant to paragraph 15.2.1(B)(iv) of this Part B, any Subconcession premia utilised pursuant to paragraphs 17(d)(i)(B), 17(d)(ii) or 17(e) of this Part B or any Equity (in addition to Base Equity, Contingent Equity, the Subordinated Funding and any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents) or any other moneys which would otherwise be available to make Restricted Payments (including such moneys referred to in sub-paragraph (v) of paragraph 2(f) of this Part B).

Notwithstanding any other provision hereof, the Company shall not make, commit to make or incur any Capital Expenditures where a Forecast Funding Shortfall has occurred and is continuing or would result therefrom.

**8. Limitation on Investments**

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) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of the Project casino and gaming operations consistent with ordinary course gaming operations) *provided* that such extensions are in compliance with all Legal Requirements (including any applicable Legal Requirements concerning money lending in any jurisdiction in which any of the accounts referred to in paragraph 4.2 of Schedule 6 (*Accounts*) is situate);
- (b) Permitted Investments;
- (c) loans and advances to employees of the Company 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;
- (d) 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; and
- (e) 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 in an aggregate amount (valued at cost) not to exceed USD10,000,000 or its equivalent at any one time outstanding.

**9. Limitation on Optional Payments and Modifications of Governing Documents**

- (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any 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 the prepayment of (i) Financial Indebtedness incurred under the Senior Finance Documents in accordance with the terms of the Senior Finance Documents or (ii) Permitted Financial Indebtedness; or
- (b) amend or modify, or permit the amendment or modification of its Governing Documents in any manner adverse to any of the Secured Creditors.

10. **Limitation on Transactions with Affiliates**

Enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate of the Company unless such transaction is:

- (a) (i) a genuine commercial transaction on terms that are not less favourable to the Company 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;
- (ii) the aggregate of the expenditures by the Company involved in all such transactions does not exceed USD15,000,000 or its equivalent in any Fiscal Year, excluding the reimbursement of bona fide, actual out-of-pocket expenses incurred by a third party for the purposes of the Projects (details of which reimbursements shall be certified to the Intercreditor Agent by a Responsible Officer no less frequently than quarterly); and
- (iii) in the case of any transaction, or series of related transactions involving expenditures by the Company in excess of USD5,000,000 or its equivalent, the Company has delivered to the Intercreditor Agent an opinion as to the fairness to the Company at the time the transaction was entered into from a financial point of view and the other matters referred to in this sub-paragraph (a) issued by an independent financial advisor reasonably satisfactory to the Intercreditor Agent,

*provided* that, in no such case shall such a transaction or series of related transactions consist of, contain, or provide for the payment of any profit or similar component benefiting an Affiliate of the Company, all payments under such transactions to represent only the payment or reimbursement of actual costs and expenses, except transactions where the Company is the recipient of such payments;

- (b) a Disposition permitted pursuant to paragraph 5 of this Part B (*provided* that the requirements of sub-paragraph (a) above shall apply to leases, licences and Subconcessions permitted pursuant to paragraphs 5(e) and 5(h) of this Part B and Dispositions permitted pursuant to paragraph 5(b) of this Part B), an Investment permitted pursuant to paragraph 8 of this Part B, a Restricted Payment permitted pursuant to paragraph 6 of this Part B or a receipt of Equity required or permitted to be subscribed or advanced pursuant to the terms hereof;
- (c) subject to paragraph 20 of this Part B, expressly contemplated by the Project Administration Services Agreement or the IP Agreement and *provided* that any amendments, modifications or supplements thereto shall comply with sub-paragraph (a) above; or
- (d) expressly contemplated by the Project Budget delivered to the Intercreditor Agent pursuant to paragraph 24 of Part A of Schedule 2 (*Conditions Precedent*).

**11. Limitation on Sales and Leasebacks**

Save as permitted pursuant to paragraph 5 of this Part B, enter into any arrangement with any Person providing for the leasing by the Company as lessee of Property which has been or is to be sold or transferred by the Company 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.

**12. Limitation on Changes in Fiscal Periods**

Permit the Fiscal Year of the Company to end on a day other than December 31 or change the Company's method of determining Fiscal Quarters.

**13. Limitation on Negative Pledge Clauses**

Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of the Company to create, incur, assume or suffer to exist any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations 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); and
- (d) as required by applicable Legal Requirements.

**14. Limitation on Lines of Business**

14.1 Enter into any business activities, whether directly or indirectly, other than Permitted Businesses.

14.2 Establish any representative office or other place of business in a jurisdiction outside the Macau SAR unless 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 and Land Concession Contract**

Notwithstanding any other provision of this paragraph 15, agree to any amendment to or termination of, or assign, transfer, cancel or waive any of its rights under the Concession Contract or the Land Concession Contract without obtaining the prior written consent of the Intercreditor Agent.

15.2 **Permits and Other Contracts**

15.2.1 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:

- (a) any Permit, the effect of which could reasonably be expected to have a Material Adverse Effect;
- (b) (i) the Prime Contractor's Completion Guarantee or the Prime Contractor's Performance Bond; or  
(ii) any other Payment and Performance Bond (*provided* that the Company may amend, modify, terminate, supplement or waive any provision under (or provide a consent under) any such document if such amendment, modification, termination, supplement, waiver or consent could not reasonably be expected to have a Material Adverse Effect); or
- (c) (i) any other Major Project Document *provided* that the Company may:
  - (1) agree to increase the Subordinated Funding by such amount as, together with all Financing Costs estimated to accrue or be payable in respect thereto up until the Expansion Opening Date, does not exceed USD23,000,000; and
  - (2) save in respect of any such action which the Intercreditor Agent notifies to the Company as requiring its prior written consent, agree to immaterial amendments or modifications thereto or grant immaterial consents, waive timely performance or observance of an immaterial obligation, exercise an immaterial discretion or remedy, make an immaterial election or compromise or settle an immaterial claim thereunder, so long as, in each case, such action is in the ordinary course of business and consistent with customary commercial practices and could not reasonably be expected to:
    - (x) impair or otherwise adversely affect any of the rights, benefits or interests of the Company or any Senior Secured Creditor under or in respect of any Transaction Document or, in the case of any Senior Secured Creditor, any of the Project Security; or
    - (y) give rise to a Material Adverse Effect; or
- (ii) any other Project Document or other contract unless it could not reasonably be expected to have a Material Adverse Effect,

without in each case obtaining the Intercreditor Agent's prior written consent (which consent shall not be unreasonably withheld). Notwithstanding any of the foregoing, the

Company may only take or, as the case may be, permit or consent to the taking of, any such action under or in respect of, or otherwise agree to any variation to the Project Works or the Plans and Specifications or any other variation to the Construction Contract without the prior written consent of the Intercreditor Agent where:

- (A) (1) the actions or variations do not involve any extension of the Guaranteed Dates of Substantial Completion for the Original Project or the Expansion (in each case, beyond that effective prior to the variations);
- (2) (x) save where the costs arising from such action or variation are funded pursuant to paragraph 15.2.1(B)(iii) or paragraph 15.2.1(B)(iv) of this Part B (in which case, the conditions set out in sub-paragraph (3) thereof shall apply), no Forecast Funding Shortfall (without taking into account any amount of Net Operating Cashflow in excess of the Base Net Operating Cashflow Amount, any amount of Contingent Equity, any amount of Contingent Subordinated Funding or any amount of the Contingent Debt Facilities) has occurred and is continuing or would result therefrom; and
- (y) no Material Adverse Effect could reasonably be expected to result therefrom,
- and, except where such actions or variations satisfy the requirements specified in sub-paragraph (c)(i)(2) above, the Intercreditor Agent has received a certificate from the Company signed by a Responsible Officer certifying that the conditions set out in this sub-paragraph (2) have been satisfied; and
- (3) in respect of each such action or variation involving costs in excess of USD2,000,000 or its equivalent:
- (x) the Technical Adviser has certified to the Intercreditor Agent that the actions or variations could not reasonably be expected to:
- (aa) delay the achievement of Substantial Completion and the satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof beyond the following dates in respect of the Original Project, the Expansion and each phase of the Expansion specified:
- |                  |  |
|------------------|--|
| Original Project | 31 December 2006 (in the case of any such event, occurrence or circumstance arising on or prior to the date of the Initial Advance under the Term Loan Facilities) |
|------------------|--|



28 February 2007 (in the case of any such event, occurrence or circumstance arising after the date of the Initial Advance under the Term Loan Facilities)

Area 4 18 August 2007

Area 5 10 November 2007

Expansion 10 January 2008; or

(bb) have any material adverse impact on the construction of either Project or the performance of the obligations of the Prime Contractor under the Construction Contract; and

(y) the Insurance Adviser has certified to the Intercreditor Agent that the actions or variations could not reasonably be expected to result in a material adverse modification, cancellation or termination of any Insurance or otherwise have any material adverse impact on the rights or benefits of any Senior Secured Creditor in respect thereto; and

(B) to the extent any such action or variation may cause Project Costs to increase to an amount in excess of Base Project Costs, the Company shall procure the funding of the costs arising from the action or variation from the proceeds of:

(i) additional Equity (other than any Base Equity, the Subordinated Funding or any Contingent Equity) and deposit the proceeds of such additional Equity in the Capital Contributions Account to be held, subject to the other terms of this Agreement, pending application towards such costs;

(ii) Financial Indebtedness incurred pursuant to paragraph 2(f) of this Part B *provided that*:

(1) the Company may also apply the proceeds of such Financial Indebtedness towards the refinancing of Equity utilized pursuant to sub-paragraph (i) above;

(2) the aggregate amount of all such Financial Indebtedness incurred for the purpose of funding the costs arising from this or any other such action or variation or refinancing Equity pursuant to sub-paragraph (1) above, together with, in each case, all Financing Costs estimated to accrue or be payable in respect thereto up until the Expansion Opening Date, shall not exceed USD25,000,000 or its equivalent; and

(3) any outstanding Equity utilized pursuant to sub-paragraph (i) (other than any such Equity refinanced pursuant to sub-paragraph (1)) shall, notwithstanding the terms thereof, count towards the

satisfaction of the condition specified in paragraph 2(f)(v) of this Part B in respect of such Financial Indebtedness;

(iii) unutilised Contingent Equity *provided that*:

- (1) the Original Project Opening Date has been achieved and the Original Project has been fully open for business to the general public since at least 1 September 2006;
- (2) the Technical Adviser has certified to the Intercreditor Agent that the action or variation or such utilisation of Contingent Equity could not reasonably be expected to delay the achievement of Substantial Completion and the satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof beyond the following dates in respect of the Expansion and each phase of the Expansion specified:

Area 4	18 March 2007
Area 5	10 June 2007
Expansion	10 July 2007;

- (3) no Forecast Funding Shortfall (without taking into account the amount of Contingent Equity proposed to be utilised or any amount of Contingent Subordinated Funding) has occurred and is continuing or would result therefrom; and
  - (4) the amount proposed to be utilised, when aggregated with any other amounts of Contingent Equity or Advances under the Contingent Debt Facilities applied or proposed to be applied towards such actions or variations, does not exceed USD15,000,000 (or its equivalent) or, if proposed to be used at least three months after Original Project Substantial Completion and cumulative EBITDA for the preceding three months is not less than that originally forecast in the revised Financial Model delivered pursuant to paragraph 3 of Part A of Schedule 2 (*Conditions Precedent*), USD30,000,000 (or its equivalent); or
- (iv) an Advance under the Contingent Debt Facilities *provided that*:
- (1) the Original Project Opening Date has been achieved and the Original Project has been fully open for business to the general public since at least 1 September 2006;

- (2) the Technical Adviser has certified to the Intercreditor Agent that the action or variation or such utilisation of Contingent Equity could not reasonably be expected to delay the achievement of Substantial Completion and the satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof beyond the following dates in respect of the Expansion and each phase of the Expansion specified:

Area 4	18 March 2007
Area 5	10 June 2007
Expansion	10 July 2007;

- (3) no Forecast Funding Shortfall (without taking into account the amount proposed to be drawn or any amount of Contingent Subordinated Funding) has occurred and is continuing or would result therefrom; and
- (4) the amount proposed to be utilised, when aggregated with any other amounts of Contingent Equity or Advances under the Contingent Debt Facilities applied or proposed to be applied towards such actions or variations, does not exceed USD15,000,000 (or its equivalent) or, if proposed to be used at least three months after Original Project Substantial Completion and cumulative EBITDA for the preceding three months is not less than that originally forecast in the revised Financial Model delivered pursuant to paragraph 3 of Part A of Schedule 2 (*Conditions Precedent*), USD30,000,000 (or its equivalent); or

- (v) Subconcession premia in accordance with paragraph 17 of this Part B.

The Company shall not issue any certificate or other evidence contemplated by clause 7.4 of the Construction Contract Direct Agreement concerning the satisfaction of any of the provisions of this paragraph 15.2 unless such provisions have been satisfied.

- 15.2.2 Accept, agree or determine the achievement of or waive any requirement in respect of (or be deemed to have done any of the foregoing) or issue, accept, or be deemed to have confirmed any certificate or notice of “Original Project Substantial Completion”, “Expansion Project Substantial Completion”, “Original Project Final Completion” or “Expansion Project Final Completion” in respect of all or any part of the Original Project or the Expansion under article 12 of the Construction Contract without the written approval of the Intercreditor Agent (such approval not to be unreasonably withheld or, without prejudice to any other provision of this Agreement, delayed).
- 15.2.3 Reduce the level of Retainage Amounts withheld pursuant to section 5.6 of the Construction Contract or paragraph 21 of Part A of this Schedule 5 except in accordance with the Construction Contract.
- 15.2.4 Fail to withhold a sum equal to 100% of the costs reasonably estimated by the Company (and confirmed by the Technical Adviser) as necessary to complete “Original Project Punch List Items” or, as the case may be, “Expansion Project Punch List Items” (as defined in the Construction Contract) as Retainage Amounts pursuant to section 5.7 of the Construction Contract unless such retention is not permitted under applicable laws.
- 15.2.5 Accept any non-conforming “Work” (as defined in the Construction Contract) of a material nature unless the Company shall have complied with the requirements of paragraph 15.2.1 of this Part B.

- 15.2.6(a) Approve the initial “Original Project Schedule of Values” or “Expansion Project Schedule of Values” (each as defined in the Construction Contract) or any change, modification or supplement thereto pursuant to section 5.1 of the Construction Contract, without, in each case, the consent of the Technical Adviser, such consent not to be unreasonably withheld or (b) fail to direct the Prime Contractor to adjust the “Expansion Project Schedule of Values” as contemplated in section 5.1 of the Construction Contract as and when reasonably required by the Technical Adviser.
- 15.2.7 Accept or agree to any increase in the “Original Project Contractor’s Fee” or the “Expansion Project Contractor’s Fee” (as defined in the Construction Contract) for any reason, except to the extent required pursuant to section 18.5 of the Construction Contract following compliance with paragraph 15.2.1 of this Part B or such increase is paid from the proceeds of additional Equity (other than Base Equity, Contingent Equity, the Subordinated Funding or any other Equity required to be paid or advanced in accordance with the terms hereof).

**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 any direct or indirect 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 the Projects (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 the Projects 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 the Upfront Premium 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, dividended 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, 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 the Projects in any manner that could result in such use becoming a non-conforming use under any applicable land use law, rule or regulation.

**20. Restrictions on Payments of IP Fees**

Make any payment to the Licensor under the IP Agreement save that the Company may pay:

- (a) Approved IP Fees *provided* that (i) the Debt Service Accounts are fully funded in accordance with Schedule 6 (*Accounts*); (ii) amounts payable to the Performance Bond Provider permitted by Clause 5.2 of the Deed of Appointment and Priority have been paid; and (iii) amounts payable to the Subordinated Funding Provider pursuant to Clause 6.2 of the Deed of Appointment and Priority have been paid;
- (b) IP Fees other than Approved IP Fees in accordance with paragraph 6 (*Restricted Payments*) of this Part B;
- (c) any amount by way of reimbursement under the IP Agreement *provided* that such payment satisfies the requirements of paragraph 10(a) (*Limitation on Transactions with Affiliates*) of this Part B; and
- (d) any other sums under the IP Agreement out of monies remaining in the Company after each of the Reserve Accounts is fully funded in accordance with Schedule 6 (*Accounts*) and any prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*) has been made,

*provided* that, save in respect of any reimbursement made pursuant to sub-paragraph (c), the Company may not make any such payment until after the last day of the first full Fiscal Quarter of the Company beginning on or after the Construction Completion Date.

**21. Amendment to Transaction Documents**

Enter into any agreement (other than the Senior Finance Documents) restricting its ability to amend any of the Transaction Documents.

**22. No Other Powers of Attorney**

Execute or deliver 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.

**23. Limitation on Leases and Licences**

Enter into any lease or licence with respect to any space on or within the Site Facilities unless:

- (a) no Enforcement Notice has been issued;
- (b) such lease or licence is a genuine commercial transaction on arm's length terms;
- (c) no gaming operations may be conducted on any space that is subject to such lease or licence other than in accordance with the Concession Contract and all other applicable Legal Requirements and subject to compliance by the Company with paragraph 26 of this Part B,

and *provided* always that the security interests granted in favour of the Lenders under any of the Security Documents are not materially and adversely affected.

**24. Concession Contract Inventory of Properties**

Include in any inventory or any update thereof required pursuant to article 44 of the Concession Contract any item which is not specified in Schedule 16 (*Concession Contract Inventory of Properties*) or reasonably incidental to the categories of items referred to therein or otherwise reasonably approved by the Intercreditor Agent.

**25. Casino and Gaming Zone Areas**

Designate any area (other than the horizontal property identified as comprising the casino in the Plans and Specifications as at the Signing Date) 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 30,000m<sup>2</sup> in respect of the Original Project and the Expansion and the Intercreditor Agent has received evidence that, in the event of the reversion of such area to the Macau SAR upon termination of the Concession Contract, such reversion would not materially affect the ongoing operation of the Hotel Project.

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 the IP Agreement 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.

## SCHEDULE 6

### ACCOUNTS

#### 1. Accounts

##### 1.1 Accounts

The Company shall, prior to submitting an Advance Request for the Initial Advance, establish with a bank acceptable to the Intercreditor Agent in the jurisdiction specified, on the terms and conditions set out in this Schedule 6, the Pledge over Onshore Accounts, the Capital Contributions Account Control Agreement and the Account Bank Notices and Acknowledgements and maintain in accordance with the requirements of this Schedule 6 and the Senior Finance Documents, the following bank accounts:

- (a) an account denominated in US dollars opened in Macau and designated "Hotel Facility USD Disbursement Account";
- (b) an account denominated in HK dollars opened in Macau and designated "Hotel Facility HKD Disbursement Account";
- (c) an account denominated in US dollars opened in Macau and designated "Project Facility USD Disbursement Account";
- (d) an account denominated in HK dollars opened in Macau and designated "Project Facility HKD Disbursement Account";
- (e) an account denominated in US dollars opened in Nevada and designated "Capital Contributions Account";
- (f) an account denominated in US dollars opened in Nevada and designated "US Operating Account";
- (g) an account denominated in US dollars opened in Macau and designated "USD Operating Account";
- (h) an account denominated in HK dollars opened in Macau and designated "HKD Operating Account";
- (i) an account denominated in Patacas opened in Macau and designated "MOP Operating Account";
- (j) an account denominated in US dollars opened in Macau and designated "USD Debt Service Account";
- (k) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Account";
- (l) an account denominated in US dollars opened in Macau and designated "USD Debt Service Reserve Account";
- (m) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Reserve Account";



- (n) an account denominated in Patacas opened in Macau and designated “Special Gaming Tax Account”;
- (o) 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”;
- (p) an account opened in Macau and designated “Upfront Premium Account”; and
- (q) an account denominated in HK dollars and an account denominated in Patacas each opened in Macau and designated “Construction Disbursement Account”.

The Company may open one or more additional operating accounts with one or more banks in the Hong Kong SAR *provided* that:

- (i) such bank is acceptable to the Intercreditor Agent;
- (ii) the Company has completed paragraph (a) of the definition of “HK Account” in the Charge over HK Accounts by inserting details of each such additional operating account and executed and delivered the Charge over HK Accounts to the Security Agent;
- (iii) the Security Agent has received the Account Bank Notices and Acknowledgements in respect of each such account executed by the relevant Account Bank; and
- (iv) the Intercreditor Agent has received a legal opinion, in form and substance reasonably satisfactory to it, concerning the efficacy of the Charge over HK Accounts and the Security created thereunder, the Account Bank Notices and Acknowledgements and such other matters as it may reasonably require,

and:

- (A) thereafter, the Company may nominate further operating accounts which it proposes to open with banks situated in the Hong Kong SAR for designation as “HK Accounts” pursuant to paragraph (c) of the definition thereof in the Charge over HK Accounts; and
- (B) at any time, the Company may nominate additional operating accounts which it proposes to open with banks situated in the Macau SAR for designation as “Onshore Accounts” pursuant to paragraph (c) of the definition thereof in the Pledge over Onshore Accounts,

and, subject to such banks being, in the case of each such nomination, acceptable to the Intercreditor Agent, the Security Agent shall so designate such nominated accounts and, subject to any other remaining requirements of the definition of “Operating Accounts” in Clause 1.1 being satisfied, each such account shall be an “Account” for the purposes of this Agreement.

1.2 **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 Company 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 the Company may reasonably request.

1.3 **Restrictions**

The Company shall maintain each Account 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 the Company 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.

1.4 **Credits to Accounts**

Save as otherwise provided in any of the Security Documents after enforcement thereof, the Company 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.

1.5 **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 Company and the relevant Account Bank, and the Company shall ensure that such interest is credited to such account at such time or times as may be agreed from time to time between the Company and the Account Bank or, failing agreement, in arrears on 31 December.

1.6 **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.

1.7 **Other Accounts**

The Company will not open or maintain any accounts other than the Accounts except with the prior approval of the Intercreditor Agent.

## 2. Disbursement Accounts

### 2.1 Deposits

2.1.1 The Company shall pay (and shall specify in the relevant Advance Request that) all proceeds of all:

- (a) Hotel Facility Advances which are denominated in US dollars to the Hotel Facility USD Disbursement Account;
- (b) Hotel Facility Advances which are denominated in HK dollars to the Hotel Facility HKD Disbursement Account;
- (c) Project Facility Advances or Additional Lender Facility Advances which are denominated in US dollars to the Project Facility USD Disbursement Account; and
- (d) Project Facility Advances or Additional Lender Facility Advances which are denominated in HK dollars to the Project Facility HKD Disbursement Account,

*provided that the proceeds of any Advance made pursuant to Clause 7.2.1(a) (Rebalancing between Debt, Equity and Net Operating Cashflow) shall be paid to the Securities Account and pursuant to Clause 7.2.1(b) (Rebalancing between Debt, Equity and Net Operating Cashflow) shall be paid into an Operating Account (and the relevant Advance Request shall specify accordingly).*

2.1.2 The Company shall on the last Business Day of each calendar month beginning with the calendar month in which the Original Project Opening Date occurs and ending with the calendar month in which the Construction Completion Date occurs, transfer from the Operating Accounts to the Construction Disbursement Accounts such amount of the balance thereof as is not required to meet Project operating expenses or to be credited to any other Account.

### 2.2 Withdrawals

2.2.1 The Company shall only be entitled to withdraw amounts from the Hotel Facility USD Disbursement Account and the Hotel Facility HKD Disbursement Account to pay Hotel Project Costs (and, where such Project Costs are to be paid from an Operating Account referred to in paragraph (a) of the definition thereof, transfer amounts for such payments to such Operating Account).

2.2.2 The Company shall only be entitled to withdraw amounts from the Project Facility USD Disbursement Account, the Project Facility HKD Disbursement Account and the Construction Disbursement Accounts to pay Project Costs (and, where such Project Costs are to be paid from an Operating Account referred to in paragraph (a) of the definition thereof, transfer amounts for such payments to such Operating Account).

### 2.2.3 **Closure**

- (a) Subject to paragraph (b) below, each of the Disbursement Accounts shall be closed by the Company within five Business Days of the last to occur of:
  - (i) the last day of the Hotel Facility Availability Period or, as the case may be, the Project Facility Availability Period; and
  - (ii) the day upon which the Intercreditor Agent (following consultation with the Technical Adviser) is satisfied that all Remaining Project Costs in respect of which any Advance has been made under Clause 7.1 (*Final Completion Costs*) have been fully paid and discharged.
- (b) The Construction Disbursement Accounts shall be closed by the Company within thirty days of the end of the calendar month in which the Final Completion Date occurs.
- (c) Any balance remaining on the Disbursement Accounts shall be applied by the Company to the Operating Accounts.

## 3. **Capital Contributions Account**

### 3.1 **Deposits**

The Company shall procure that all Equity proceeds are paid into the Capital Contributions Account.

### 3.2 **Withdrawals**

The Company shall only be entitled to withdraw amounts from the Capital Contributions Account:

- (a) prior to the Construction Completion Date, to pay Project Costs (and, where such Project Costs are to be paid from an Operating Account referred to in paragraph (a) of the definition thereof, transfer amounts for such payments to such Operating Account); and
- (b) after the Construction Completion Date:
  - (i) to the extent such amounts constitute proceeds of Base Equity, Contingent Equity, Subordinated Funding or, to the extent required under this Agreement to be subscribed or advanced to fund any Project Costs, any other Equity, to pay Project Costs (and, where such Project Costs are to be paid from an Operating Account referred to in paragraph (a) of the definition thereof, transfer amounts for such payments to such Operating Account); and
  - (ii) otherwise, once all Remaining Project Costs have been paid, in transfer to the Operating Accounts.

## 4. **Operating Accounts**

### 4.1 **Deposits**

Subject to paragraph 4.2 of this Schedule 6, the Company shall procure that:

- (a) the proceeds of all Revolving Credit Facility Advances; and

(b) all Project Revenues and other amounts received by it which, in either case, are not required to be credited to any other Account, are paid directly into the Operating Accounts.

#### 4.2 **Additional Operating Accounts**

Notwithstanding paragraph 4.1 of this Schedule 6:

- (a) amounts paid by or on behalf of patrons of the casino or gaming operations of the Company for the purposes of securing or application against any payments which may fall due from them to the Company; and
- (b) Project Revenues receivable from such amounts or otherwise derived from such operations, and received in any jurisdiction outside the Macau SAR, may be deposited into or held in an account maintained by an Affiliate of the Company in that jurisdiction which is not an Operating Account (each, an “**Affiliated Offshore Account**”) *provided*:
- (c) in the event that such amounts are deposited into or held in an account maintained by an Affiliate of the Company or commingled with moneys held for or payable to any Affiliate of the Company, such action is consistent with the usual business practices of Affiliates of the Company engaged in casino or gaming operations of the type undertaken by the Company and a copy of the agreement(s) relating to the receipt and payment of such amounts has been delivered to the Intercreditor Agent pursuant to sub-paragraph 2(e) of Part A of Schedule 5 (*Covenants*);
- (d) the Company takes all reasonable steps to enforce its rights under such agreements and, subject to sub-paragraph (e) below, to ensure all such amounts held for or payable to the Company (rather than a patron of the casino or gaming operations thereof) or otherwise comprising Project Revenues (together, for the purposes of this paragraph 4.2, the “**Company Funds**”), are withdrawn and deposited into an Operating Account in the Macau SAR or the Hong Kong SAR as soon as is reasonably practicable;
- (e) notwithstanding sub-paragraph (d) above, the Company may, consistent with prudent international business practice and the usual business practices of companies engaged in casino or gaming operations, maintain the Company Funds referred to therein in an Affiliated Offshore Account in the jurisdiction in which they were received *provided that*:
  - (i) upon the aggregate of all Company Funds standing to the credit of such accounts in such jurisdiction exceeding, in the case of:
    - (A) Taiwan, USD5,000,000;
    - (B) Japan, USD2,000,000; or
    - (C) any other jurisdiction, USD1,000,000,

or its equivalent, the Company shall, as soon as practicable thereafter, procure the withdrawal and deposit of an amount not less than such excess into, if such jurisdiction is the Hong Kong SAR, an existing Operating Account in that jurisdiction or the Macau SAR or, if such jurisdiction is not the Hong Kong SAR, an account opened by the Company in such jurisdiction in respect of which the following conditions have been satisfied (each such account, an “**Additional Operating Account**”):

- (1) the account is maintained with a bank reasonably acceptable to the Intercreditor Agent;
  - (2) the Security Agent has, on terms reasonably satisfactory to the Intercreditor Agent, been granted a first ranking Lien over the account, the credit balance and all rights, benefits and proceeds thereof for the payment and discharge of all of the Secured Obligations;
  - (3) the Security Agent has received such acknowledgements and undertakings concerning the account and the Lien from the bank with which the account is opened as the Intercreditor Agent may reasonably require, including acknowledgements and undertakings in substantially the same terms as those set out in the Account Bank Notices and Acknowledgements; and
  - (4) the Intercreditor Agent has, if requested by it, received a legal opinion, in form and substance reasonably satisfactory to it, concerning the efficacy of the Lien, the acknowledgements and undertakings and such other matters as it may reasonably require; and
- (ii) upon the aggregate of all Company Funds standing to the credit of such Affiliated Offshore Accounts and any Additional Operating Account in such jurisdiction exceeding, in the case of:
- (A) Taiwan, USD10,000,000;
  - (B) Japan, USD4,000,000; or
  - (C) any other jurisdiction, USD2,000,000,

or its equivalent, the Company shall, as soon as practicable thereafter, procure that an amount not less than such excess is withdrawn from such jurisdiction and deposited into an Operating Account in the Macau SAR or the Hong Kong SAR.

#### 4.3 **Withdrawals**

Subject to this Agreement and the other Senior Finance Documents, the Company shall be entitled to withdraw amounts from the Operating Accounts to meet Project Costs (as contemplated by paragraphs 2.2 and 3.2 of this Schedule 6), Project operating expenses,

to fund other Accounts and to make other payments permitted or required in accordance with this Agreement.

5. **Debt Service Accounts**

5.1 **Deposits**

5.1.1 The Company shall procure that the amount standing to the credit of the USD Debt Service Account and the HKD Debt Service Account:

- (a) two months prior to the next Repayment Date is not less than one-third of the aggregate amounts of Debt Service due by way of principal repayment in US dollars and HK dollars respectively under the Term Loan Facilities on such Repayment Date;
- (b) one month prior to such Repayment Date is not less than two-thirds of such amounts; and
- (c) as at such Repayment Date is equal to such amounts.

5.1.2 In the case of any Interest Payment Date under the Term Loan Facilities which falls at the end of a three month interest period, the Company shall procure that, in addition to any other amount required to be credited to such Accounts pursuant to this paragraph 5.1, the amount standing to the credit of the USD Debt Service Account and the HKD Debt Service Account:

- (a) two months prior to such Interest Payment Date is not less than one-third of the aggregate amounts of Debt Service estimated to be due by way of Financing Costs in US dollars and HK dollars respectively under the Term Loan Facilities on such Interest Payment Date;
- (b) one month prior to such Interest Payment Date is not less than two-thirds of such amounts; and
- (c) as at such Interest Payment Date is equal to such amounts.

5.1.3 Where such an Interest Payment Date falls at the end of an Interest Period which is greater than one month and less than three months, the Company shall procure that, in addition to any other amount required to be credited to such Accounts pursuant to this paragraph 5.1, the amount standing to the credit of the USD Debt Service Account and the HKD Debt Service Account:

- (i) one month prior to such Interest Payment Date is not less than half the aggregate amounts of Debt Service estimated to be due by way of Financing Costs in US dollars and HK dollars respectively under the Term Loan Facilities on such Interest Payment Date; and
- (ii) as at such Interest Payment Date is equal to such amounts.

5.1.4 Where such an Interest Payment Date falls at the end of an Interest Period which is one month or less, the Company shall procure that, in addition to any other amount required

to be credited to such Accounts pursuant to this paragraph 5.1, the amount standing to the credit of the USD Debt Service Account and the HKD Debt Service Account as at such Interest Payment Date is equal to the aggregate amounts of Debt Service due by way of Financing Costs in US dollars and HK dollars respectively under the Term Loan Facilities on such Interest Payment Date.

5.1.5 No amount required to be deposited into a Debt Service Account pursuant to Schedule 9 (*Mandatory Prepayment*) shall be taken into account when determining the amounts required to be deposited into the Debt Service Accounts pursuant to this paragraph 5.1.

5.2 **Withdrawals**

On each Repayment Date and Interest Payment Date, the Company shall make payment of the amounts of Debt Service due on such date under the Term Loan Facilities from the Debt Service Accounts.

6. **Special Gaming Tax Account**

6.1 **Deposits**

The Company shall, for each calendar month beginning on or after the Original Project Opening Date, pay into the Special Gaming Tax Account the amount of special gambling tax payable for such calendar month in accordance with article 50 of the Concession Contract and applicable Legal Requirements immediately prior to the date on which such tax is due and payable.

6.2 **Withdrawals**

Save as otherwise agreed by the Intercreditor Agent, the Company shall only be entitled to withdraw moneys from the Special Gaming Tax Account to pay special gambling tax as and when it falls due.

7. **Debt Service Reserve Account**

7.1 **Deposit**

Subject to the right of the Company to pay items with a higher priority in the payment waterfall referred to in paragraph 12 hereof and after ensuring that the Debt Service Accounts and the Special Gaming Tax Account are fully funded in accordance with the requirements of this Schedule 6 but prior to any prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*), any payment to the Licensor under the IP Agreement (other than Approved IP Fees or any other payment permitted pursuant to paragraph 20(c) (*Restrictions on Payments of IP Fees*) of Part B of Schedule 5 (*Covenants*)) or any Restricted Payment, the Company shall, on each Repayment Date, procure that the amount standing to the credit of the USD Debt Service Reserve Account and the HKD Debt Service Reserve Account is not less than the sum of the aggregate amounts of Debt Service due in US dollars and HK dollars respectively under the Term Loan Facilities over the period beginning immediately after such Repayment Date and including and ending on the later of the next two Repayment Dates. Where an Interest Period comes to



an end during such period, this amount shall be determined on the assumption that further interest continues to accrue in respect of the amount outstanding under the Term Loan Facilities to which such Interest Period related at the same rate as that applicable during such Interest Period and on the assumption that such accrued interest shall be due on the later of the next two such Repayment Dates.

## 7.2 **Withdrawals**

7.2.1 The Company may, to the extent that it has evidenced to the satisfaction of the Intercreditor Agent that amounts standing to the credit of the Debt Service Accounts or otherwise available to the Company are insufficient to make the relevant payment, pay to the Intercreditor Agent (or as it may direct) from the balance standing to the credit of either Debt Service Reserve Account, any amount of Debt Service due and payable by the Company under the Term Loan Facilities and which has not been paid.

7.2.2 The Company may, to the extent that it has evidenced to the satisfaction of the Intercreditor Agent that the amounts standing to the credit of the Debt Service Reserve Accounts exceed the balances required by this paragraph 7, transfer the amount of the excess to the Operating Accounts.

## 7.3 **Release**

The Company may withdraw any amount standing to the credit of the Debt Service Reserve Accounts for use and application at its discretion (including, subject to compliance with applicable Legal Requirements, to make Restricted Payments) *provided* that:

- (a) not less than ten Business Days' notice of the proposed withdrawal is provided to the Intercreditor Agent;
- (b) no Default has occurred which is continuing at the time of such notice or the proposed withdrawal; and
- (c) an irrevocable on demand letter of credit, in form and substance reasonably acceptable to the Intercreditor Agent, not requiring or involving any counter-indemnity by or other recourse to the Company and provided by a commercial bank with a long term credit rating from S&P of not less than "A" or from Moody's of not less than "A2" has been provided in favour of the Intercreditor Agent in respect of the amount proposed to be released. Immediately prior to the expiry of such letter of credit or at any time following a downgrade of its issuer to less than "A" from S&P or "A2" from Moody's then, unless the letter of credit is renewed (or replaced by a different issuer acceptable to the Intercreditor Agent), the Intercreditor Agent shall draw down the letter of credit in an amount equal to the amount required so that the amount standing to the credit of the Debt Service Reserve Accounts equals the amount required under this Schedule 6 and credit the proceeds to the Debt Service Reserve Accounts.

**8. Compensation Proceeds Account**

**8.1 Deposits**

The Company shall ensure that all Termination Proceeds, Eminent Domain Proceeds, Insurance Proceeds (other than Insurance Proceeds in respect of loss of revenue which are required to be paid directly to parties other than the Company under the terms of the relevant policy in Schedule 7 (*Insurance*) or which relate to any claim made thereunder but paid by the Company) and all other sums referred to in paragraph B 6 of the Gaming Concession Consent Agreement are paid immediately to the Compensation Proceeds Account.

**8.2 Withdrawals**

8.2.1 The Company may only make a withdrawal from the Compensation Proceeds Account if:

- (a) such request relates to moneys which the Company is obliged to apply in mandatory prepayment of the Term Loan Facilities or as otherwise provided pursuant to Clause 8.3 (*Mandatory Prepayment*) and Schedule 9 (*Mandatory Prepayment*); or
- (b) such request is made in accordance with paragraphs 8.2.2 or 8.2.3 hereof.

8.2.2 If there shall occur any damage or destruction of or with respect to the Projects with respect to which Insurance Proceeds for any single loss or series of related losses not in excess of USD20,000,000 or its equivalent are payable, such Insurance Proceeds may be withdrawn from the Compensation Proceeds Account in amounts from time to time necessary to make payments for work undertaken towards repair, restoration or reconstruction necessitated by such event(s), upon confirmation by the Intercreditor Agent that it has received documentation reasonably satisfactory to it supporting such requested payments.

8.2.3 Provided that the conditions set forth in paragraph 5 of Schedule 9 (*Mandatory Prepayment*) have been satisfied or waived by the Intercreditor Agent, or have been acknowledged by the Intercreditor Agent as having been satisfied, which acknowledgement shall not be unreasonably withheld, delayed or conditioned, if there shall occur any damage or destruction of or with respect to the Projects with respect to which Insurance Proceeds for any single loss or series of related losses of more than USD20,000,000 or its equivalent are payable, such Insurance Proceeds may be withdrawn from the Compensation Proceeds Account in amounts from time to time necessary to make payments for work undertaken towards repair, restoration or reconstruction necessitated by such event(s) upon confirmation by the Intercreditor Agent that it has received:

- (a) a certificate from the Company:
  - (i) describing in reasonable detail the nature of the repairs or restoration to be effected with such withdrawal and certifying that such repairs or

restoration are materially consistent with, and shall be undertaken in accordance with, the Repair Plan;

- (ii) stating the cost of such repairs or restoration (which shall be no less than the amount of Insurance Proceeds requested in such release) and that such requested release amount will be applied to the cost thereof;
  - (iii) stating that the aggregate amount requested in respect of such repairs or restoration (when added to any other Insurance Proceeds received by the Company or funds otherwise made available to the Projects in respect of such damage or destruction) does not exceed the cost of such repairs or restoration and that a sufficient amount of funds is or will be available to the Company to complete such repair or restoration; and
  - (iv) stating that neither a Default nor an Event of Default has occurred and is continuing other than a Default or an Event of Default resulting solely from such damage or destruction (*provided* that, in any event, no other Default or Event of Default shall have occurred and be continuing);
- (b) such documents, certificates and information of the type described in paragraph 5(g) of Schedule 9 (*Mandatory Prepayment*) as the Required Lenders may reasonably request; and
- (c) in the event such repairs or restorations relate to damage or destruction with respect to which Insurance Proceeds for any single loss or series of related losses in excess of USD20,000,000 or its equivalent are payable, all other documents, certificates and information with respect to such Insurance Proceeds, repair and/or restoration as the Intercreditor Agent may reasonably request as necessary or appropriate in connection with such repairs or restoration of the Projects or to preserve or protect the Senior Secured Creditors' interests hereunder and in the applicable Project Security.

9. **Upfront Premium Account**

9.1 **Deposits**

The Company shall ensure that the amount of any upfront premium or similar payment paid or received in respect of the grant or entry into any Subconcession is paid immediately to the Upfront Premium Account in accordance with paragraph 17 of Part B of Schedule 5 (*Covenants*).

9.2 **Withdrawals**

The Company may only make withdrawals from the Upfront Premium Account in accordance with paragraph 17 of Part B of Schedule 5 (*Covenants*).

**10. Permitted Investments**

**10.1 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 10.

**10.2 Procedure for Investment**

10.2.1 Unless held for the account of the Company 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.

10.2.2 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.

10.2.3 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 the Security Agent and, if any such document or other evidence comes into the possession or control of the Company, it shall procure that the same is delivered immediately to the Security Agent.

**10.3 Realisation**

10.3.1 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:

- (a) the Investment Proceeds and, prior to the Original Project Opening Date, the Investment Income are either:
  - (i) reinvested in further Permitted Investments; or
  - (ii) paid into the relevant Account from which the Permitted Investment derives; and
- (b) after the Original Project Opening Date, the Investment Income is paid to an Operating Account.

10.3.2 The Company shall give directions to the relevant Account Bank under paragraph 10.3.1 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.

#### 10.4 ***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.

#### 10.5 ***Accounts include Permitted Investments***

10.5.1 Subject to sub-paragraph 10.5.2 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 10.5, 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.

10.5.2 If the amount standing to the credit of any Account (excluding for this purpose any amount deemed to be included pursuant to sub-paragraph 10.5.1 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, 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, 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.

#### 10.6 ***Information***

Commencing with the quarter in which a Permitted Investment is first made on behalf of the Company, the Company shall, together with any other statement to be provided under this Schedule, deliver to the Security Agent 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.

#### 10.7 ***No Responsibility***

No Senior Secured Party will be responsible for any loss, cost or expense suffered by the Company 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 in acquiring, holding or disposing of any Permitted Investment.

## 11. General Account Provisions

### 11.1 Transfers/Withdrawals

Save as otherwise agreed in writing with the Intercreditor Agent, 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.

### 11.2 Application of Amounts

All amounts withdrawn or transferred from any Account by the Company 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.

### 11.3 Default

11.3.1 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 Company instructing the Account Bank not to act on the instructions or requests of the Company in relation to any sums at any such time standing to the credit of any of the Accounts and the Company 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 shall not be entitled to give or make any further such instructions or requests.

11.3.2 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 Company) 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 Company 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 Company's obligations under the Transaction Documents,

and, pursuant to the Charges over Accounts and the Account Bank Notices and Acknowledgements, the Company shall procure that the Account Bank so acts and makes such payments accordingly.

### 11.4 Review of Project Accounts

The Company irrevocably grants (solely for the purposes of its role as agent of the Senior Secured Creditors hereunder) the Security Agent or any of its appointed representatives access to review the books and records of the Accounts (and shall irrevocably authorise each Account Bank to disclose the same to the Security Agent and its appointed representatives) and irrevocably 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 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.

#### 11.5 **Statements**

The Company shall arrange 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) 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.

#### 11.6 **Waiver of Rights**

##### 11.6.1 **Waiver of rights by the Company**

Save as provided in this Agreement, the Company agrees not to exercise any right which it may have under any applicable law to direct the transfer of any amount standing to the credit of an Account to the Company or its order or to direct the transfer of any Permitted Investment to the Company or to its order.

##### 11.6.2 **Waiver of rights by Account Banks**

The Company shall procure 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 or (ii) paragraph 3(n) of Part B of Schedule 5 (*Covenants*)) 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.

11.7 **Closing of Accounts**

The Company may close the Accounts on or after the Release Date and instruct each Account Bank to transfer any credit balances on the Accounts maintained with it (subject to the retention of amounts by such Account Bank in respect of uncleared cheques of the Company) to the order of the Company or to such account(s) as the Company may designate.

12. **Order of Priority**

The Company shall observe the payment waterfall outlined in Schedule 17 (*Payment Waterfall*) when making payments into and withdrawals from the Accounts. In the event of any conflict between Schedule 17 (*Payment Waterfall*) and any other provisions of this Agreement (including this Schedule 6), the other provisions of this Agreement (including this Schedule 6) shall prevail.



**SCHEDULE 7**  
**INSURANCE**

References in this Schedule 7 to Clauses and Appendices refer to the Clauses and Appendices of this Schedule 7, unless the context otherwise requires.

**1. INSURANCES TO BE EFFECTED**

**1.1 Direct Insurances**

The Company shall effect:

1.1.1 the Construction Period Insurances as set out in Appendix 1 (*Construction Period Insurances*) on or before the issuance of the full Notice to Proceed (as defined in the Construction Contract) and shall maintain such Direct Insurances (including such additional Direct Insurances as may be required pursuant to paragraphs 1.2 and 4 of Appendix 1 (*Construction Period Insurances*)) from the issuance of such notice until the date upon which Substantial Completion of the Original Project and the Expansion has been achieved (or such later date as may be specified in Appendix 1 (*Construction Period Insurances*));

1.1.2 the Operation Period Insurances as set out in Appendix 2 (*Operation Period Insurances*) on or before the expiry of the Construction Period Insurances and the Substantial Completion or (if earlier) physical acceptance, use or occupancy by the Company of any part of the Projects and shall maintain such Direct Insurances from such time until the Release Date; and

1.1.3 all other Direct Insurances that may be required to be effected by the Company from time to time by any applicable law or under any contract to which it is a party and shall maintain such Direct Insurances until the Release Date,

in each case, in a form reasonably satisfactory to the Intercreditor Agent (after consultation with the Insurance Adviser).

**1.1 Reinsurance**

The Company shall, if required under Clause 2.1.1 (*Policies*), procure that facultative reinsurance of each Direct Insurance is purchased and maintained in full force and effect throughout the period that such Direct Insurance is required by this Schedule 7 to be maintained.

**1.2 Additional Insurances**

1.2.1 The Intercreditor Agent may at any time, having consulted with the Insurance Adviser and acting reasonably and taking into account the availability in the international market place of the following relevant item on reasonable commercial terms, require the Company to:

- (a) procure the amendment of any or all Insurances to cover increased risks and/or liabilities; and/or

(b) effect additional Insurances to cover risks and/or liabilities other than those specified in the scope of the Construction Period Insurances, the Operation Period Insurances and the other Direct Insurances as would from time to time be insured in accordance with standard industry practice by an owner and operator of a “five-star” first class Las Vegas - style luxury resort and casino carrying on the Permitted Businesses which does not self-insure (except in respect of deductibles required by insurers generally) and which is financed on a limited recourse basis, in such amounts and, in the case of additional Insurances, with such deductibles, in each case as the Intercreditor Agent may reasonably require, taking into account, among other things, the basis on which the Projects are financed and the interests of the Senior Secured Creditors under the Senior Finance Documents.

1.2.2 In the event that the Company fails to effect any Insurance required to be effected pursuant to Clause 1.3.1 above, the Intercreditor Agent may effect such Insurance and the Company shall indemnify the Intercreditor Agent for the direct costs and expenses incurred by it as a result of effecting such Insurance.

1.2.3 The Company may effect additional Insurances other than those required by Clause 1.1 (*Direct Insurances*), Clause 1.2 (*Reinsurance*) or the other sub-clauses of this Clause 1.3 *provided* that such Insurances do not prejudice the interests of the Company or the Senior Secured Creditors under or in respect of any Insurance effected pursuant to such clauses.

## 2. INSURANCE UNDERTAKINGS

### 2.1 Policies

The Company shall procure that:

2.1.1 each of the Direct Insurances is placed and maintained with one or more insurers authorised to operate in the Macau SAR (with not less than 95% of the coverage in respect of each such Direct Insurance provided by insurers rated at least A- by Standard & Poor’s Corporation or at least A by AM Best for their long term unsecured and unsubordinated debt or reinsured by insurers rated at least A- by Standard & Poor’s Corporation or at least A by AM Best for their long term unsecured and unsubordinated debt or, in each case, in respect of:

- (a) the Professional Indemnity Insurance referred to in paragraph 6 of Appendix 1 (*Construction Period Insurances*), rated at least BBB+ by Standard & Poor’s Corporation or B by AM Best; and
- (b) the Workers Compensation Insurance referred to in paragraph 6 of Appendix 1 (*Construction Period Insurances*), rated at least BBB by Standard & Poor’s Corporation or B- by AM Best),

and that none of the Direct Insurers (after Reinsurance) or Reinsurers shall (save in the case of the Excess Third Party Liability and the Difference in Conditions

Third Party Liability Insurances comprised in the placement referred to in paragraph 3 of Appendix 1 (*Construction Period Insurances*)) take more than a 33.33% share on any one insurance placement (and, for such purpose, each of paragraphs 1 to 7 in Appendix 1 (*Construction Period Insurances*) and paragraphs 1 to 6 in Appendix 2 (*Operation Period Insurances*) shall be regarded as an insurance placement) unless otherwise agreed by the Intercreditor Agent;

- 2.1.2 each of the Insurances is in a form and on terms acceptable to the Intercreditor Agent (including, without limitation, the level or period of any deductibles) consistent with the obligations of the Company under this Schedule 7;
- 2.1.3 each Construction Period Insurance and each Operation Period Insurance has endorsements in substantially the form set out in Part A of Appendix 3 (*Form of Endorsements for Direct Insurances*) (or, in the case of the Professional Indemnity Insurance referred to in paragraph 5 of Appendix 1 (*Construction Period Insurances*), the form set out in Part B of Appendix 3 (*Form of Endorsements for Direct Insurances*)) or in such other forms as the Intercreditor Agent (after consultation with the Insurance Adviser) reasonably approves in writing; and
- 2.1.4 each Reinsurance of each Construction Period Insurance and Operation Period Insurance has endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) or in such other forms as the Intercreditor Agent (after consultation with the Insurance Adviser) reasonably approves in writing.

## 2.2 General Undertakings

The Company shall:

- 2.2.1 pay or procure the payment of all premiums payable under each of the Insurances promptly as required under the Insurances and if requested by the Intercreditor Agent, promptly produce to the Intercreditor Agent copies of receipts or other evidence of payment satisfactory to the Intercreditor Agent;
- 2.2.2 indemnify the Intercreditor Agent and any Senior Secured Creditor against any premium or premiums paid by that Senior Secured Creditor for any of the Insurances;
- 2.2.3 promptly on receipt by the Company, deliver an original cover note and an original policy for each of the Insurances to the Intercreditor Agent;
- 2.2.4 at least fifteen days prior to the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or the expiry of the Construction Period Insurances, provide evidence reasonably satisfactory to the Intercreditor Agent (after consultation with the Insurance Adviser) that the Operation Period Insurances shall be in effect on and from the expiry of the Construction Period Insurances;

- 2.2.5 at least ten days prior to the expiry of any Insurance (and provided such Insurance is being renewed), provide to the Intercreditor Agent a certificate from the Company's insurance brokers (or, if the Company has no broker, Insurers) confirming the renewal of the policy relating to such Insurance, the renewal period, the amounts insured and any changes in terms or conditions;
- 2.2.6 take all action within its power to procure that nothing is at any time done or suffered to be done whereby any Insurance may be rendered void or voidable or may be suspended, impaired or defeated or any claim becomes uncollectable in full or in part, including, without limitation:
- (a) complying with all of the requirements imposed on it under the Insurances;
  - (b) taking all action within its power to procure that at all times all parties to the Insurances (other than the Company and the Senior Secured Creditors) comply with all of the requirements under the Insurances; and
  - (c) taking all action necessary to maintain the Insurances as valid and up-to-date insurances;
- 2.2.7 not make any misrepresentation of any material facts or fail to disclose any material facts in respect of the Insurances which may have an adverse impact on the Insurances;
- 2.2.8 comply with each Direct Insurer's, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer's risk management requirements set out in the policy documents for each Insurance;
- 2.2.9 promptly make and diligently pursue claims under the Insurances;
- 2.2.10 notify the Intercreditor Agent promptly upon becoming aware of any claim made under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 (or its equivalent in other currencies) and of any occurrence which the Company considers could reasonably be expected to entitle it to submit a claim under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 or its equivalent in other currencies;
- 2.2.11 in the event of any claim made under any of the Insurances where the actual or estimated totality of the amount of that claim exceeds USD500,000 (or its equivalent in other currencies) (not taking into account any relevant deductible for this purpose), provide a report to the Intercreditor Agent (and, if possible, procure a report from the Company's insurance broker to the Intercreditor Agent) which shall include a description of the loss;
- 2.2.12 notify the Intercreditor Agent immediately upon receipt of any proceeds in relation to any claims in excess of USD500,000 under the Direct Insurances;

- 2.2.13 ensure so far as reasonably possible that no Insurance can be terminated by the Direct Insurer, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer for any reason (including failure to pay the premium or any other amount) unless the Intercreditor Agent and the Company receive at least thirty days' written notice (or such lesser period, if any, as may be specified from time to time by Direct Insurers, and, where reinsurance is placed by the Company's insurance brokers, Reinsurers in the case of war risks and kindred perils);
- 2.2.14 without prejudice to sub-clause 2.2.13 above, notify the Intercreditor Agent if any Direct Insurer, and, where reinsurance is placed by the Company's insurance brokers, Reinsurer cancels or gives notice of cancellation of any of the Insurances promptly on receipt of such notice;
- 2.2.15 notify the Intercreditor Agent of any act or omission or of any event which would reasonably be foreseen as invalidating or rendering unenforceable in whole or in part any of the Insurances;
- 2.2.16 notify the Intercreditor Agent promptly on becoming aware of any written proposal to make any material variation to any terms of any of the Insurances by any party to it;
- 2.2.17 not rescind, terminate or cancel any of the Insurances (unless replaced by a policy with the same coverage and otherwise meeting the requirements of this Schedule 7) nor agree to any variation to any of the material terms of the Insurances unless it obtains the prior written agreement of the Intercreditor Agent, which permission shall not be unreasonably withheld;
- 2.2.18 give the Intercreditor Agent and the Insurance Adviser such information about the Insurances (or as to any matter relevant to the Insurances) as the Intercreditor Agent reasonably requests from time to time; and
- 2.2.19 procure the delivery to the Intercreditor Agent by each of the insurance brokers (acceptable to the Intercreditor Agent (after consultation with the Insurance Adviser)) through whom (if any) at any time any of the (i) Direct Insurances are effected of an Insurance Broker's Letter of Undertaking and (ii) Reinsurances are effected of a Reinsurance Broker's Letter of Undertaking.

### 2.3 **Assignment of Insurances**

- 2.3.1 The Company shall, in accordance with the Assignment of Insurances, grant assignments in favour of the Security Agent on behalf of the Secured Parties over all of its rights, title and interest in the Direct Insurances (other than any public liability, third party liability, workers compensation or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company) held by it from time to time.
- 2.3.2 The Company shall give notice to each of the Direct Insurers (other than with respect to any public liability, third party liability, workers compensation, legal liability or any other insurances the proceeds of which are payable to employees

of the Company) who are Macau Direct Insurers (as defined in the Assignment of Insurances) in the form of the Form of Notice of Assignment of Onshore Insurance Policy set out in the schedule to the Assignment of Insurances and shall procure an acknowledgement from each such Direct Insurer in the form of the Form of Acknowledgement from Macau Direct Insurer set out in the schedule to the Assignment of Insurances or such other form reasonably acceptable to the Security Agent.

#### **2.4 Assignment of Reinsurances**

2.4.1 The Company shall procure 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 under Clause 1.2 (*Reinsurance*) 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). 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).

2.4.2 The Company shall procure 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.

### **3. FAILURE TO COMPLY WITH PROVISIONS OF INSURANCES**

#### **3.1 Notice of Non-Compliance**

The Company shall notify the Intercreditor Agent as promptly as practicable if the Company has at any time failed to comply with this Schedule 7, explaining in reasonable detail the failure, whether the Company reasonably believes it can be remedied and, if so, how and by when.

#### **3.2 Annual Compliance Certificate**

The Company shall, at the same time as delivery of its annual audited accounts pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) to the Common Terms Agreement but, in any event, not less frequently than once every 12 months after the Signing Date, deliver to the Intercreditor Agent a certificate confirming its compliance with this Schedule 7 or, if there is any non-compliance with this Schedule 7, explaining, in reasonable detail, the non-compliance, whether the Company reasonably believes it can be remedied and, if so, how and by when.

### 3.3 Action by Intercreditor Agent

If at any time and for any reason any Insurance required hereunder is not in full force and effect or if the Company fails to comply with any other provision of this Schedule 7, then, without prejudice to the rights of any of the Senior Secured Creditors under any Senior Finance Document, the Intercreditor Agent may (after consultation with the Insurance Adviser) thereupon on behalf of itself and the other Senior Secured Creditors, or at any time while the same is continuing, procure on behalf of itself and the other Senior Secured Creditors that Insurance at the Company's expense is maintained such that full compliance with this Schedule 7 is restored. If that Insurance cannot be procured by the Intercreditor Agent, the Company shall (without prejudice to any other obligations of the Company under this Schedule 7 or any of the Senior Finance Documents) take or procure the taking of all reasonable steps to eliminate or minimise uninsured hazards as required by the Intercreditor Agent in writing (after consultation with the Insurance Adviser).

### 3.4 Continuing Obligations

Any notification by the Company of its failure to comply with this Schedule 7 shall not prejudice the rights of the Senior Secured Creditors under the Senior Finance Documents.

## 4. MARKET AVAILABILITY

Notwithstanding the foregoing provisions of this Schedule 7, the Company shall not be in breach of its obligations under this Schedule 7 if any Operation Period Insurances (other than insurances which the Company is required to maintain under applicable Legal Requirements) required to be entered into or maintained by the Company in the terms required under this Schedule 7 are not available to the Company or, as the case may be, the Prime Contractor in the international insurance market place on reasonable commercial terms. Without prejudice to any other terms that may be commercially reasonable, for the purposes of this paragraph 4, such commercial terms shall be reasonable if the premium payable in respect of the sum required to be insured under such Operation Period Insurance pursuant to Appendix 2 to this Schedule 7 (or, where no such sum is referred to, the limit of indemnity or limit of liability specified therein) is not more than 125% of the amount derived by multiplying the rate set out opposite such Insurance in Appendix 7 (*Operation Period Insurance Costs*) by such sum or in respect of all Operation Period Insurances (including such Operation Period Insurance) is not more than 125% of the total of such amounts derived for each Operation Period Insurance.

## 5. INSURANCE PROCEEDS

### 5.1 Conduct of Claims - Company

Subject to Clause 5.3 (*Conduct of Claims - Default*) below, the Company has the sole conduct of all claims under the Insurances arising from any one loss (for which purpose, two or more claims made in respect of the same, or reasonably related, circumstances are taken to relate to one loss) where the actual or estimated totality of that loss is less than

or equal to USD5,000,000 (or its equivalent in other currencies). For any loss where the actual or estimated totality of claims arising is more than USD5,000,000 (or its equivalent in other currencies), the Company shall not negotiate, compromise or settle any claim without the prior consent of the Intercreditor Agent (after consultation with the Insurance Adviser) (not to be unreasonably withheld).

## 5.2 Application of Proceeds

The Company shall ensure that:

5.2.1 subject to sub-clause 5.2.4 below and prior to the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance relating to physical damage or loss:

- (a) to the extent not required for the purpose of mandatory prepayment pursuant to Schedule 9 (*Mandatory Prepayment*), shall be applied towards the repair or restoration of the damaged Project Facilities in accordance with Schedule 6 (*Accounts*); or
- (b) to the extent required for the purpose of mandatory prepayment pursuant to Schedule 9 (*Mandatory Prepayment*), shall be applied towards mandatory prepayment in accordance with Clause 8.4 (*Mandatory Prepayment*);

5.2.2 subject to sub-clause 5.2.4 below and prior to the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance relating to loss of revenue or business interruption shall be applied in accordance with Schedule 9 (*Mandatory Prepayment*);

5.2.3 subject to sub-clause 5.2.4 below and following the delivery of an Enforcement Notice, all proceeds of any claim under any Insurance shall be applied as directed by the Security Agent; and

5.2.4 all proceeds of any public liability, third party liability, workers compensation or legal liability insurance, or directors and officers insurance or any other insurances the proceeds of which are payable to employees of the Company, shall be applied to its intended purpose.

## 5.3 Conduct of Claims - Default

Notwithstanding any other provisions of this Clause 5, if an Enforcement Notice has been delivered, then the Security Agent in consultation with the Insurance Adviser shall have sole conduct of all claims under the Insurances.

## 5.4 Insolvency of Direct Insurers

For the purpose of conduct of claims and application of proceeds under any Reinsurance taken out by a Direct Insurer, references to delivery of an Enforcement Notice in this Clause 5 shall include delivery of the notice referred to in Clause 2.2.1 (*Enforcement of Assignment*) of the Assignment of Reinsurances to such Direct Insurer following an "Insolvency Event" (as defined in the Assignment of Reinsurances).



**APPENDIX 1**

**INSURANCES**

**CONSTRUCTION PERIOD INSURANCES**

**1. Construction All Risks Insurance**

**1.1 Insured**

The Company and the following Co-Insureds:

- (1) the Prime Contractor and/or all other Contractors and Subcontractors of any tier and/or suppliers and/or others engaged to provide goods and services in connection with the Projects;
  - (2) in respect of activities on or about the Site only - architects, surveyors, engineers and other professional consultants (including the Advisers); and
  - (3) the Secured Parties,
- each for their respective rights and interests.

**1.2 Insured Property**

The permanent and temporary works, equipment, services, materials, plant (other than constructional plant, tools and equipment belonging to or the responsibility of the Contractors or Subcontractors of any tier), machinery, stocks, spares, temporary buildings (if any) and all other property used or for use in connection with the Projects which the Company owns or for which it is responsible (excluding such other property comprising operation period furniture, fittings and equipment in respect of which separate Insurances, on substantially the same terms as the Construction All Risks Insurance required hereunder and/or otherwise reasonably acceptable to the Intercreditor Agent (after consultation with the Insurance Adviser), have been placed prior to the Company acquiring ownership thereof or being responsible therefor).

**1.3 Coverage**

All risks of physical loss or damage which are normally insurable.

**1.4 Sum Insured**

An amount equivalent to the full reinstatement or replacement value of the Insured Property plus Removal of Debris plus Professional Fees.

**1.5 Territorial Limits**

Anywhere within Macau SAR.

**1.6 Period of Insurance**

For the full period of the Original Project and the Expansion up to the later of Original Project Substantial Completion and Expansion Substantial Completion plus the first 12

months of the later of the “Original Project Defects Liability Period” and the “Expansion Project Defects Liability Period” (each as defined in the Construction Contract).

#### 1.7 **Permitted Exclusions**

To include:

- War, Civil War etc.
- Nuclear Risks
- Wear and Tear
- Unexplained shortage
- Consequential financial losses
- Terrorism
- DE3 type defective design, workmanship and materials exclusion
- Mold

#### 1.8 **Required Extensions and Conditions**

- Professional Fees Clause
- Debris Removal Clause
- 72 Hour Clause
- Free Issue Materials Clause
- Automatic Increase Clause (110 per cent.)
- Extra Charges (20 per cent.)
- Strikes, Riot and Civil Commotion
- Local/Public Authorities and Clause
- Munitions of War Clause
- Extended Maintenance
- Automatic Reinstatement of Sum Insured
- Plans and Documents
- Inland Transit/Offsite Storage and Offsite Fabrication
- Advance Payments Clause

- Marine 50/50 Clause
- General Waiver of Subrogation
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
- Primary Insurance Clause
- Assignment of Insurance

## 1.9 **Maximum Deductible**

Not to exceed:

- USD100,000 each and every loss in respect of damage due to Acts of God/Theft/Fire/Maintenance Period/Consequences of Defective Design, Material and Workmanship (DE3)
- 20% of the loss amount each and every loss subject to a minimum deductible of USD100,000 in respect of Water Damage
- USD250,000 each and every loss in respect of Defective Design, Material and Workmanship (DE5)
- 50% of the loss amount each and every loss subject to a minimum of USD35,000 in respect of Scaffolding
- USD35,000 each and every loss for Others

## 2. **Delay In Start Up Insurance**

### 2.1 **Insured**

The Company and the following Co-insureds:

(1) the Secured Parties;

each for their respective rights and interests.

### 2.2 **Interest**

To indemnify the Insured for fixed costs including all Debt Service following loss or damage which is indemnifiable or would be indemnifiable but for the application of the excess under the Construction All Risks Insurance.

### 2.3 **Sum Insured**

A sum sufficient to cover the sums the subject of the Indemnity for the Indemnity Period.

#### 2.4 **Indemnity Period**

The period commencing from the date which would have been the first date by which Substantial Completion of the Original Project and satisfaction of the Opening Conditions set out in paragraph (a) of the definition thereof in respect of the Original Project would have occurred but for the loss or damage and ending when the insured business ceases to be delayed in consequence of the loss or damage. Not exceeding the Indemnity Period Limit.

The Indemnity Period Limit shall not be less than 9 months.

#### 2.5 **Territorial Limits**

As per the Construction All Risks Insurance.

#### 2.6 **Period of Insurance**

As per the Construction All Risks Insurance.

#### 2.7 **Permitted Exclusions**

To include:

As per the Construction All Risks Insurance and in addition:

Loss in respect of any additional delay arising directly or indirectly as a consequence of:

- (a) any change to the Projects made pursuant to any qualification, condition, restriction or other terms of any permit, licence or other approval required by a public authority for the completion and operation of the Projects unless the cost or expense in effecting such change is indemnifiable under the Local/Public Authorities Clause in the insurance under 1.8 above;
- (b) alterations, additions, improvements, rectification of defects or faults or elimination of any deficiencies carried out during the repair or replacement of destroyed or damaged property insured under Section 1; and
- (c) non-availability of funds for the repair or replacement of destroyed or damaged items.

#### 2.8 **Required Extensions and Conditions**

- Prevention of Access
- Professional Services
- Suppliers Extension - Nominated Suppliers and Specified Perils
- General Waiver of Subrogation
- Utilities Extension (water, gas or electricity)

- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
- Primary Insurance Clause
- Assignment of Insurance

**2.9 Maximum Time Excess**

Not to exceed 60 days in the aggregate.

**3. Third Party Liability Insurance**

**3.1 Insured**

The Company and the following Co-insureds:

- (1) the Prime Contractor and/or all other Contractors and Subcontractors of any tier and/or suppliers and/or others engaged to provide goods and services in connection with the Projects;
  - (2) in respect of activities on or about the Site only, architects, surveyors, engineers and other professional consultants (including the Advisers); and
  - (3) the Secured Parties,
- each for their respective rights and interests.

**3.2 Interest**

To indemnify the Insured in respect of all sums that it may become legally liable to pay consequent upon death, personal injury and disease to persons, loss or damage to property, obstruction, loss of amenities, stoppage of traffic happening or arising out of or in connection with the Projects.

**3.3 Limit of Indemnity**

Not less than USD50,000,000 in respect of any one occurrence, the number of occurrences being unlimited.

**3.4 Territorial Limits/Jurisdiction**

Worldwide.

**3.5 Period of Insurance**

As per the Construction All Risks Insurance.

**3.6 Permitted Exclusions**

To include:

- Liability for death, illness, disease or bodily injury sustained by employees of the Insured

- Liability for loss or damage to property which is reasonably foreseeable as being inevitable having regard for the nature of work undertaken
- Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- Liability in respect of loss or damage to property in the care, custody and control of the Insured or to the permanent or temporary works
- Liability arising from the ownership, possession or use of any aircraft or waterborne vessel
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- War, civil war etc.
- Nuclear risks
- Terrorism

### 3.7 **Required Extensions and Conditions**

- Cross Liability Clause
- Contractual Liability
- Underground Services
- Vibration Removal or Weakening of Support
- Munitions of War Clause
- General Waiver of Subrogation
- Costs and Expenses in addition to the Limit of Indemnity (other than North America)
- Worldwide jurisdiction
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
- Primary Insurance Clause

### 3.8 **Maximum Excess**

Not to exceed:

- 20% of the loss amount each and every loss subject to a maximum of USD20,000 and minimum of USD10,000 in respect of claims on Vibration, Removal and Weakening of Support
- 10% of the loss amount each and every loss subject to a maximum of USD50,000 and minimum of USD10,000 in respect of Underground Services/Water Damage
- 40% of the loss amount each and every loss subject to a maximum of USD50,000 and minimum of USD10,000 in respect of Oil Filled Cables and Fibre Optic Cables
- USD10,000 each and every occurrence in respect of Third Party Property Damage and Interference with right of way/property/enjoyment of use by obstruction, trespass, loss of amenities or nuisance

### 4. **Terrorism Insurance (including Delay In Start-Up Insurance)**

#### **Insured**

To follow the terms and conditions of the Construction All Risks Insurance (1) and Delay In Start-Up Insurance (2), with the following exceptions:  
Maximum Deductible – Not to exceed USD1,000,000 (or such lesser amount as may be agreed between the Company and the Intercreditor Agent if available on commercially reasonable terms) each and every loss for Property Damage and 60 days for Delay In Start-Up.

Maximum Sum Insured - USD100 million combined limit.

Reinstatement - No reinstatement *provided* that sufficient additional Insurances placed to maintain Maximum Sum Insured.

### 5. **Professional Indemnity Insurance (Prime Contractor)**

#### 5.1 **Insured**

The Prime Contractor.

#### 5.2 **Interest**

To indemnify the Insured in respect of their legal liability for claims made against them during the period of insurance for any negligent act, error or omission in the conduct and execution of their professional activities and duties.

#### 5.3 **Limit of Indemnity**

USD20,000,000 in respect of any one claim and in the aggregate during the period of insurance.

#### 5.4 **Territorial Limits**

Macau SAR.

**5.5 Period of Insurance**

To be effected and maintained on an annually renewable basis for the period commencing no later than the date of this Agreement until 6 years from the date of Substantial Completion of the Expansion.

**5.6 Excess**

Not to exceed USD2,500,000 in respect of each occurrence or such higher amount as may be agreed by the Intercreditor Agent.

**6. Compulsory Insurance**

Insurances required to comply with all statutory requirements including Workers Compensation and Motor Liability Insurances. The Compulsory Insurance effected by the Company shall contain an indemnity clause in favour of the Senior Secured Creditors.



OPERATION PERIOD INSURANCES

1. **Property All Risks Insurance**

1.1 **Insured**

The Company and the following Co-insureds:

- (1) Contractors and Subcontractors of any tier and the Advisers; and
  - (2) the Secured Parties,
- each for their respective rights and interests.

1.2 **Insured Property**

Property and interests of every description used for or in connection with the ownership and/or maintenance and operation of the facilities unless more specifically insured under the Construction All Risks Insurance (Item 1 of Appendix 1) – this shall include mechanical and electrical equipment if applicable.

1.3 **Coverage**

All risks of physical loss or damage which are normally insurable.

1.4 **Sum Insured**

An amount representing the full reinstatement or replacement value of the Insured Property or such lesser amount to be agreed by the Intercreditor Agent.

1.5 **Territorial Limits**

Anywhere in the Macau SAR.

1.6 **Period of Insurance**

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

1.7 **Permitted Exclusions**

To include:

- War, civil war etc.
- Nuclear Risks
- Wear, tear and general deterioration

- Unexplained shortages
- Terrorism
- Consequential financial losses
- Any part of the Insured Property which is in itself defective in design, workmanship and materials but this exclusion shall not apply to other parts of the Insured Property damaged in consequence of such a defect.

#### 1.8 **Required Extensions and Conditions**

- Automatic Increase Clause - 115%
- Clean up of any property of the Insured or for which they are responsible necessarily incurred by the Insured having been affected by the outbreak of any infectious or contagious disease, including but not limited to SARS
- 72 hour clause
- Temporary removal
- Munitions of War Clause
- Strikes, Riot and Civil Commotion
- Minimisation of Loss
- Advance Payment Clause
- Temporary Repairs
- Automatic Reinstatement of Sum Insured
- Including pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded
- Contract works including works and temporary works erected or in the course of erection including materials and other things for incorporation in the Project Works up to a sum of USD1,000,000
- Capital Additions
- Debris Removal
- Professional Fees
- Local/Public Authorities Clause
- Mechanical or electrical breakdown of the Insured Property

- Replacement of computer records
- General Waiver of Subrogation (to include Expansion construction participants)
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (Loss Payee and Notices)
- Primary Insurance Clause
- Assignment of Insurance

**1.9 Maximum Deductible**

Not to exceed USD250,000 in respect of each occurrence or such lesser amount as may be agreed between the Company and the Intercreditor Agent if available on commercially reasonable terms.

**2. Business Interruption Insurance**

**2.1 Insured**

The Company and the following Co-insureds:

(1) the Secured Parties,

each for their respective rights and interests.

**2.2 Interest**

To indemnify the Insured for fixed costs including all Debt Service following loss or damage which is indemnifiable or would be indemnifiable but for the application of the excess under the Property All Risks Insurance.

**2.3 Sum Insured**

A sum sufficient to cover the sums the subject of the Indemnity for the Indemnity Period.

**2.4 Indemnity Period**

The period commencing from the date of the loss or damage and ending when the results of the insured business cease to be affected in consequence of the loss or damage. Not exceeding the Indemnity Period Limit.

The Indemnity Period Limit shall not be less than 12 months.

**2.5 Territorial Limits**

As for the Property All Risks Insurance.

**2.6 Period of Insurance**

As for the Property All Risks Insurance.

## 2.7 Permitted Exclusions

As for the Property All Risks Insurance.

## 2.8 Required Extensions

- Suppliers Extension
- Prevention of Access (not limited to damage)
- Public Utilities
- Payments on Account
- Automatic Reinstatement of Sum Insured
- Professional Accountants Clause
- General Waiver of Subrogation (including the Trusts and to include Expansion construction participants)
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (loss payee and notices)
- Primary Insurance Clause
- Assignment of Insurance
- Interruption or interference arising out of an event insured under the Defects Liability Period covers for the Original Project and the Expansion under the Construction All Risks Insurance

## 2.9 Maximum Excess

Not to exceed 30 days in the aggregate for each and every loss.

## 3. Third Party and Products Liability Insurance

### 3.1 Insured

The Company and the following Co-insureds:

- (1) Contractors and Subcontractors of any tier and the Advisers; and
  - (2) the Secured Parties,
- each for their respective rights and interests.

### 3.2 Interest

To indemnify the Insured in respect of all sums that it may become legally liable to pay consequent upon death, personal injury and disease to persons, loss or damage to property, obstruction, loss of amenities, stoppage of traffic happening or arising from or

in connection with the operation and maintenance of the Projects and the services to be provided thereby.

**3.3 Limit of Indemnity**

Not less than USD50,000,000 in respect of any one occurrence, the number of occurrences being unlimited but in the aggregate in respect of sudden and accidental pollution and products liability.

**3.4 Territorial Limits/Jurisdiction**

Worldwide.

**3.5 Period of Insurance**

As for the Property All Risks Insurance.

**3.6 Permitted Exclusions**

To include:

- Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- Liability for loss or damage to property which is reasonably foreseeable as being inevitable having regard for the nature of work undertaken
- Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion not to apply to employees' or visitors' property including vehicles and their contents
- Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons
- Liability arising from the ownership, possession or use of any aircraft or waterborne vessel
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- War, civil war etc.
- Nuclear risks

### 3.7 **Required Extension and Conditions**

- Cross Liability Clause
- Contractual Liability
- Costs and Expenses in addition to the Limit of Indemnity (other than North America)
- Advertising Liability (relating to physical damage from billboards, signs, etc.)
- General Waiver of Subrogation
- Multiple Insureds Clause (LEG form) Senior Secured Creditors Special Conditions (loss payee and notices)
- Primary Insurance Clause
- Assignment of Insurance

### 3.8 **Maximum Excess**

Not to exceed USD100,000 each occurrence or such higher amount as may be agreed by the Intercreditor Agent.

## 4. **Terrorism Insurance (Including Business Interruption)**

### 4.1 **Insured**

To follow the terms and conditions of the Property All Risks Insurance (1) and Business Interruption Insurance (2), with the following exceptions:  
Maximum Deductible - Not to exceed USD1,000,000 (or such lesser amount as may be agreed between the Company and the Intercreditor Agent if available at commercially reasonable terms) each and every loss for Property Damage and 60 days for Business Interruption.  
Maximum Sum Insured - USD400,000,000.

## 5. **Fidelity Guarantee/Crime Insurance**

### 5.1 **Insured**

The Company and the Secured Parties  
each for their respective rights and interests.

### 5.2 **Coverage**

Direct pecuniary loss of money, negotiable instruments or goods caused by acts of fraud or dishonesty by any employee or any other person.

**5.3 Limits of Liability**

Not less than USD30,000,000 in respect of any one occurrence or such higher amount as may be required to fully cover the amount of money on site at any one time.

**5.4 Territorial Limits**

Worldwide

**5.5 Period of Insurance**

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

**5.6 Maximum Deductible**

Not to exceed USD150,000 in respect of each occurrence or such higher amounts as may be agreed by the Intercreditor Agent.

**6. Money Insurance**

**6.1 Insured**

The Company and the Secured Parties  
each for their respective rights and interests.

**6.2 Coverage**

Loss, destruction or damage of money in transit, money at the business premises of the Insured during office hours and money in locked safe/drawer in the business premises of the Insured after office hours.

**6.3 Limits of Liability**

Not less than USD30,000,000 in respect of any one occurrence or such higher amount as may be required to fully cover the amount of money on site at any one time.

**6.4 Territorial Limits**

Worldwide

**6.5 Period of Insurance**

From the earlier of the Substantial Completion or physical acceptance, use or occupancy by the Company of any part of the Projects or termination of the Construction All Risks Insurance until the Release Date (or such longer period of insurance as may be agreed by the Intercreditor Agent and the Company).

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6.6 **Maximum Deductible**

Not to exceed USD50,000 in respect of each occurrence or such higher amounts as may be agreed by the Intercreditor Agent.



APPENDIX 3

FORM OF ENDORSEMENTS FOR DIRECT INSURANCES

PART A

INSURED PARTIES [ ] (the “**Insureds**”)  
[POLICY/COVER NOTE] REFERENCE NUMBER: [ ] (together with these endorsements, the “**Policy**”)  
EFFECTIVE DATE: [ ]

It is understood and agreed between the Insurer and the Insureds that, notwithstanding any other provision of this Policy, the following endorsement shall apply:

**Section I: Definitions**

1. In this endorsement:

“**Common Terms Agreement**” means the agreement dated 14 September 2004 between, amongst others, the Company, the Intercreditor Agent and the Security Agent as amended, consolidated, supplemented, novated or replaced from time to time;

“**Company**” means Wynn Resorts (Macau) S.A.;

“**Compensation Proceeds Account**” has the meaning given to it in the Common Terms Agreement;

“**Intercreditor Agent**” means Société Générale Asia Limited in its capacity as Intercreditor Agent for the Senior Secured Creditors and includes its successors in that capacity;

“**Insured**” means those parties so described in the Policy Schedule;

“**Insurers**” means the insurer or insurers underwriting this insurance policy;

“**Operating Account**” has the meaning given in paragraph (a) of the definition thereof in the Common Terms Agreement;

“**Projects**” has the meaning given to it in the Common Terms Agreement;

“**Secured Parties**” has the meaning referred to in the Common Terms Agreement;

“**Security Agent**” means Société Générale, Hong Kong Branch in its capacity as agent and security trustee for the Secured Parties and includes its successors in that capacity;

“**Senior Secured Creditors**” has the meaning given in the Common Terms Agreement.

## **Section II: Policy formation / basis**

### **2. Separate Policy**

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

### **3. Interest of the Secured Parties**

The Insurers acknowledge that the Secured Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

### **4. Liability for premium**

Neither the Intercreditor Agent, the Security Agent nor the Secured Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve the Company from its obligations to pay any premium under this Policy.

### **5. Disclosure**

- 5.1 The Insurers acknowledge to the Secured Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring the Company in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by the Insurers in respect of their decision to co-insure the Secured Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Secured Party. The acknowledgements provided by the Insurers in this clause 5.1 shall have no effect on any rights that the Insurers might have had under or in relation to the Policy against any party (including the Company) other than the Secured Parties in the absence of such acknowledgements.
- 5.2 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

## **Section III: Rights to avoid / cancel or change Policy terms**

### **6. Non-vitiating**

- 6.1 The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any

liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.

6.2 The Insurers agree that no Insured shall be penalised or prejudiced in any way where the Insured can prove unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together the “**Relevant Matter**”), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

7. Cancellation

7.1 The Insurers agree that they shall not seek to cancel or suspend this insurance except: (i) for non payment of premium; or (ii) where an insured party consistently fails to comply with Insurers’ requirements relating to survey or loss control action points.

7.2 The Insurers shall promptly notify the Intercreditor Agent in writing:

(a) in the event of any suspension, cancellation or termination of this Policy by the Insurers or the Insured; and

(b) of any act or omission or any event of which any Insurer has knowledge and which might invalidate or render unenforceable, in whole or in part, the Policy.

The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or non-renewal is given to the Intercreditor Agent. Nothing in this clause shall give the Insurers any right to suspend, cancel or terminate this Policy which the Insurers do not otherwise have under this Policy.

7.3 The Insurers shall promptly notify the Intercreditor Agent in writing of any default in the payment of premium and shall give the Intercreditor Agent at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

8. Changes in cover

The Insurers shall give the Intercreditor Agent at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect and shall promptly notify the Intercreditor Agent of any fact, change of circumstance or occurrence of which any Insurer is aware which is material to the risks insured against under the Policy or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Company, the Insurers and the Intercreditor Agent, such amendment to be endorsed on the Policy.

**Section IV: Claims**

10. Notice of claims

Notice of claim by the Secured Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

11. Claim Payments / Loss Payee

Payments made in accordance with this clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Company or any other Insured.

11.1 In respect of the insurance under this Policy of material damage risks only

All claim payments or return premium shall be paid into the Compensation Proceeds Account or to such other account as the Security Agent as loss payee may specify in writing.

11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to an Operating Account or such account as the Security Agent directs in writing.

Any return premiums shall be paid to an Operating Account or such other account as the Security Agent directs in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to an Operating Account or such other account as the Security Agent directs in writing.

11.4 Set-off

The Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by Company under or in relation to the Policy.

12. Waiver of subrogation

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any

Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out);

13. Primary insurance

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Projects;
- (b) any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies;
- (d) any claim made under a Contingent Motor Liability extension to this Policy; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
  - (i) any other policy specifically effected for the construction or operational phase(s) of the Projects; or
  - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Projects; or a related business interruption insurance policy.

## Section V: Miscellaneous

### 14. Notice of Security Interest

- 14.1 The Insurers acknowledge that by an assignment contained in the Assignment of Insurances between the Company and the Security Agent dated [ ] (the “**Assignment**”), the Company assigned by way of security to the Secured Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in the Company’s interest in this insurance.
- 14.2 At the reasonable request of the Intercreditor Agent and at its expense and subject to any legal, contractual or regulatory restrictions, the Insurers shall make those documents contained within their placing and claims files to which the Company would be entitled to have access available to the Intercreditor Agent or the Insurance Adviser and provide copies of such documents to them.

### 15. Notice

- 15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:
- if by fax, when transmitted but only if the sender’s fax machine confirms successful transmission; and
  - if by post, within 2 business days of release from the relevant Insurer’s office.
- 15.2 The address and fax number of the Intercreditor Agent and the Security Agent for all notices under or in connection with the Policy are those notified from time to time by the Intercreditor Agent or the Security Agent for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent and the Security Agent are as follows:

Intercreditor Agent: Société Générale Asia Limited

Address: Level 38, 3 Pacific Place, 1 Queen’s Road East, Hong Kong

Tel: +852 2166 5671/+852 2166 5430

Fax: +852 2804 6215

Attention: Sunny Lui/Raymond Fung  
Risk & Agency

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Security Agent: Société Générale, Hong Kong Branch  
Address: Level 38, 3 Pacific Place, 1 Queen's Road East, Hong Kong  
Tel: +852 2166 5671/+852 2166 5667  
Fax: +852 2804 6215  
Attention: Sunny Lui/Kenneth Choi  
Risk & Agency

16. Governing law & Jurisdiction

The Policy shall be governed and interpreted in accordance with English law.

This endorsement overrides any conflicting provision in this Policy.

**PART B**

At the request of the Insured, it is noted that the Company will give written notice to Société Générale Asia Limited (herein referred to as "the Lender") at its last known address notified to the Company in writing in the following events:

- (a) issuance and/or receipt of cancellation notice pursuant to the cancellation clause of the policy;
- (b) event(s) leading to suspension or termination of this insurance other than natural expiry of this insurance;
- (c) default in payment of premium by the insured; and
- (d) request for reduction in the Limit of Indemnity and/or increase in Excess by the Insured or the Company.

Subject to other terms and conditions of this insurance, the Company agrees not to cancel, suspend or terminate this insurance (other than natural expiry); to reduce the Limit of Indemnity and/or increase the Excess before the expiry of the 30<sup>th</sup> day from the issuance of such notice to the Lender.

## FORM OF ENDORSEMENTS FOR REINSURANCES

REINSURANCE [CONTRACT/COVER NOTE] REFERENCE NUMBER: [ ] (together with these endorsements, the “**Reinsurance Contract**”)

EFFECTIVE DATE: [ ]

It is understood and agreed between the Reinsurer, the Insurers and the Insureds that, notwithstanding any other provision of this Policy, the following endorsement shall apply:

**Section I: Definitions**

1. In this endorsement:

“**Common Terms Agreement**” means the agreement dated 14 September 2004 between, amongst others, the Company, the Intercreditor Agent and the Security Agent as amended, consolidated, supplemented, novated or replaced from time to time;

“**Company**” means Wynn Resorts (Macau) S.A.;

“**Compensation Proceeds Account**” has the meaning given in the Common Terms Agreement;

“**Intercreditor Agent**” means Société Générale Asia Limited in its capacity as Intercreditor Agent for the Senior Secured Creditors and includes its successors in that capacity;

“**Insured**” means those parties so described in the Original Policy;

“**Operating Account**” has the meaning given in paragraph (a) of the definition thereof in the Common Terms Agreement;

“**Original Policy**” means the direct insurance policy reinsured by this reinsurance contract;

“**Projects**” has the meaning given to it in the Common Terms Agreement;

“**Reinsured**” means the Insurer or Insurers of the Original Policy;

“**Reinsurers**” means the insurer or insurers underwriting this insurance policy;

“**Secured Parties**” has the meaning referred to in the Common Terms Agreement;

“**Security Agent**” means Société Générale, Hong Kong Branch in its capacity as agent and security trustee for the Secured Parties and includes its successors in that capacity;

“**Senior Secured Creditors**” has the meaning given in the Common Terms Agreement.



## Section II: Policy formation / basis

### 2. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate Original Policy covering each Insured. Accordingly, the liability of the Reinsurers under this Policy to any one of the Re-insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of the Original Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

### 3. Interest of the Secured Parties

The Reinsurers acknowledge that the Secured Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under the Original Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

### 4. Liability for premium

Neither the Intercreditor Agent, the Security Agent nor the Secured Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve the Reinsured from its obligations to pay any premium under this Policy.

### 5. Disclosure

- 5.1 The Reinsurers acknowledge to the Secured Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring the Reinsured in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by the Reinsurers in respect of their decision to insure the Secured Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Secured Party. The acknowledgements provided by the Reinsurers in this clause 5.2 shall have no effect on any rights that the Reinsurers might have had under or in relation to the Policy against any party (including the Company) other than the Secured Parties and the Intercreditor Agent in the absence of such acknowledgements.
- 5.2 The Reinsurers acknowledge that under the Original Policy non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

### Section III: Rights to avoid / cancel or change Policy terms

#### 6. Non-vitiation

6.1 The Reinsurers acknowledge and accept that the Original Policy contains a Non-vitiation clause whereby the Reinsured undertakes to each Insured that the Original Policy will not be invalidated as regards the rights and interests of such Insured and that the Reinsured will not seek to avoid any liability under the Original Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy. The Reinsurers agree to follow the terms of the Original Policy in this regard.

6.2 The Reinsurers agree that no Reinsured or Insured shall be penalised or prejudiced in any way where the Reinsured or Insured can prove unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together “the Relevant Matter”), but that this shall not apply as regards the individual Reinsured or Insured responsible for the Relevant Matter if that Reinsured or Insured fails to notify the Reinsurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Reinsured or Insured become aware or are made aware of the Relevant Matter.

#### 7. Cancellation

7.1 The Reinsurers agree that they shall not seek to cancel or suspend the this insurance except: (i) for non payment of premium; or (ii) where an Insured consistently fails to comply with Reinsurers’ requirements relating to survey or loss control action points.

7.2 The Reinsurers shall promptly notify the Intercreditor Agent in writing in the event of any suspension, cancellation, termination of this Policy by the Reinsurers or by the Reinsured or Insured. The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or non-renewal is given to the Intercreditor Agent. Nothing in this clause shall give the Reinsurers any right to suspend, cancel or terminate this Policy which the Reinsurers do not otherwise have under this Policy.

7.3 The Reinsurers shall promptly notify the Intercreditor Agent in writing of any default in the payment of premium and shall give the Intercreditor Agent at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

#### 8. Changes in cover

The Reinsurers shall give the Intercreditor Agent at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Reinsurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

9. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Company, the Reinsurers and the Intercreditor Agent, such amendment to be endorsed on the Policy.

**Section IV: Claims**

10. Notice of claims

10.1 Notice of claim by the Secured Parties or any other party entitled to indemnity under the Original Policy shall, in the absence of manifest error, be accepted by Reinsurers as a valid notification of claim on behalf of all other Reinsureds and Insureds subject to the full terms of the Policy.

11. Claim Payments / Loss Payee

Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Reinsurers' liability to pay the Reinsured or any other Insured.

11.1 In respect of the insurance under this Policy of material damage risks only

All claim payments or return premium shall be paid into the Compensation Proceeds Account or to such other account as the Security Agent as loss payee may specify in writing.

11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Reinsured or Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to an Operating Account or such account as the Security Agent directs in writing.

Any return premiums shall be paid to an Operating Account or such other account as the Security Agent directs in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to an Operating Account or such other account as the Security Agent directs in writing.

11.4 Set-off

The Reinsurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by the Reinsured under or in relation to the Policy.

12. Waiver of subrogation

The Reinsurers waive all rights of subrogation howsoever arising which they may have or acquire against any Reinsured or Insured described within the appropriate Schedules

arising out of any Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Reinsured or Insured except against any:

- (i) such Reinsured or Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out);

13. Primary insurance

The Reinsurers agree that the Original Policy provides the primary cover for risks insured under the Original Policy. In the event that any risk insured under the Original Policy is also insured under any other policy of insurance effected by any Reinsured or Insured, the Reinsurers agree to indemnify the Reinsured or Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Projects;
- (b) any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Reinsurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Reinsured or Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies;
- (d) any claim made under a Contingent Motor Liability extension to this Policy; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
  - (i) any other policy specifically effected for the construction or operational phase(s) of the Projects; or
  - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Projects; or a related business interruption insurance policy.

## Section V: Miscellaneous

### 14. Notice of Security Interest

The Reinsurers acknowledge that by an assignment contained in the Assignment of Reinsurances dated [ ] between the Reinsured and the Security Agent (the “**Assignment**”), Reinsured assigned by way of security to the Secured Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Reinsured or Insured is or may at a future time become entitled. The Reinsurers confirm that they have not been notified of any other assignment of or security interest in the Reinsured’s interest in this insurance.

### 15. Insurer access to Due Diligence Reports

The Senior Secured Creditors shall have no duty of disclosure to the Reinsurers in relation to any Reinsurance. Nevertheless, on the written reasonable request of the Reinsurers, the Senior Secured Creditors shall, subject to the Company obtaining any other consents required for such access (which consents the Company agrees it shall use its reasonable endeavours to obtain), provide the Reinsurers with reasonable access to any relevant due diligence report(s) commissioned by the Senior Secured Creditors relating to the Projects. The Company consents to such access and the Reinsurers shall keep such report(s) confidential and shall accept such information without rights of recourse against any of the Senior Secured Creditors, the Company or the party/parties that prepared the said reports.

### 16. Notice

#### 16.1 All notices or other communications under or in connection with the Policy will be given via the reinsurance broker by fax and post. Any such notice given will be deemed to be given on the earlier of:

if by fax, when transmitted but only if the sender’s fax machine confirms successful transmission; and

if by post, within 2 business days of release from the relevant Insurer’s office.

#### 16.2 The address and fax number of the Intercreditor Agent and the Security Agent for all notices under or in connection with the Policy are those notified from time to time by the Intercreditor Agent or the Security Agent for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent and the Security Agent are as follows:

Intercreditor Agent: Société Générale Asia Limited

Address: Level 38, 3 Pacific Place, 1 Queen’s Road East, Hong Kong

Tel: +852 2166 5671/+852 2166 5430

Fax: +852 2804 6215

Attention: Sunny Lui/Raymond Fung  
Risk & Agency

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Security Agent: Société Générale, Hong Kong Branch

Address: Level 38, 3 Pacific Place, 1 Queen's Road East, Hong Kong

Tel: +852 2166 5671/+852 2166 5667

Fax: +852 2804 6215

Attention: Sunny Lui/Kenneth Choi  
Risk & Agency

17. Governing law & Jurisdiction

The Policy shall be governed and interpreted in accordance with English law.

This endorsement overrides any conflicting provision in this Policy.

## FORM OF INSURANCE BROKER'S LETTER OF UNDERTAKING

To: [ ] as Intercreditor Agent

[Date]

Dear Sirs,

1. We refer to Schedule 7 (*Insurance*) (the "**Insurance Schedule**") to the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. (the "**Company**") and the financial institutions referred to therein as Senior Secured Creditors, as amended, consolidated, supplemented, novated or replaced from time to time. Terms used herein shall bear the same meaning as in the Insurance Schedule. Any reference herein to a document being in substantially a specified form shall be construed as meaning such document being in the same form as the specified form save for the insertion of information left in blank or typographical errors.
2. We, in our capacity as insurance brokers to the Company, confirm that each Direct Insurance as required pursuant to Clause 1.1 of the Insurance Schedule is in full force and effect as of the date of this letter on and in respect of the risks set out in the Direct Insurances evidenced in the policy cover notes attached hereto as Annex A and that all premiums which are required to have been paid at the date hereof in respect of such Direct Insurances have been paid in full.
3. We confirm that each Direct Insurance referred to in paragraph 2 above contains endorsements in substantially the form set out in Appendix 3 (*Form of Endorsements for Direct Insurances*) to the Insurance Schedule.
4. Pursuant to instructions received from the Company, we hereby undertake in respect of the Direct Insurances referred to in the attached cover notes:
  - (a) in the case of any such Direct Insurance, as and when the same is renewed, extended or replaced, and subject to market conditions current at the time of application for such renewal, extension or replacement, to use our best efforts to ensure that it complies with the requirements of the Insurance Schedule or such other requirements as you may approve in writing and that it contains endorsements in substantially the form set out in Appendix 3 (*Form of Endorsements for Direct Insurances*) to the Insurance Schedule or in such other form as you may approve in writing;
  - (b) to pay to the accounts specified in the relevant loss payable clauses in the relevant policy documents without any set-off or deduction of any kind for any reason any and all proceeds from or other payments made pursuant to the Direct Insurances (including refunds of premiums) received by us from the insurers except as might otherwise be permitted in the relevant policy endorsement provisions or required by law or court order or as you may otherwise agree in writing;

- (c) to advise you:
  - (i) as soon as practical upon our becoming aware of any actual or proposed:
    - (A) cancellation or suspension of cover under any Direct Insurance;
    - (B) reduction in limits or coverage or any increase in deductibles; and
    - (C) termination prior to the original expiry date of any Direct Insurance;
  - (ii) as soon as practical of any default in the payment of any premium for any of the Direct Insurances;
  - (iii) at least 45 days prior to the expiry of any Direct Insurance if we have not received instructions to negotiate the renewal thereof from the Company and/or any jointly insured parties or the agents of any such party and at least 5 Business Days prior to the expiry thereof if such Direct Insurance has not been renewed;
  - (iv) if we receive instructions to negotiate the renewal of any Direct Insurance, the details of such instructions and, upon the renewal of such Direct Insurance, the terms of such renewal; and
  - (v) of any act or omission of any event of which we have knowledge and which might invalidate or render unenforceable in whole or in part any of the Direct Insurances promptly upon our becoming aware of the same;
- (d) to disclose to you any fact, change of circumstance or occurrence material to the risks insured against under the Direct Insurances or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions promptly upon our becoming aware of the same;
- (e) to notify you promptly following our becoming aware that we shall cease to act as insurance broker to the Company; and
- (f) on your reasonable request and at your expense and subject to any legal, contractual or regulatory restrictions, to make those documents contained within our placing and claims files to which the Company would be entitled to have access available to you or your Insurance Adviser at reasonable times and places, and to provide you with copies of any such documents.

5. The above undertakings are given subject to our continuing appointment as insurance brokers to the Company and in relation to the Direct Insurances and the handling of claims in relation to them.



6. The contents of this letter may not be disclosed to any other party other than to any person:
- (a) to (or through) whom a Secured Party assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and/or obligations under the Senior Finance Documents;
  - (b) to (or through) whom a Secured Party enters 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, any of the Senior Finance Documents or any Obligor; or
  - (c) to whom all or any contents of this letter may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement
- (a “**Third Party**”) and, in the event that it is disclosed to a Third Party, any and all liability howsoever arising to such Third Party is hereby expressly excluded. No person except the Senior Secured Parties has any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.
7. Our aggregate liability to you for any and all matters arising from this letter and the contents thereof shall in any and all events be limited to the sum of USD1,000,000 and confined to direct losses in contract. Any and all other liability including but not limited to liability in tort and liability for consequential losses is hereby expressly excluded. Notwithstanding the foregoing, nothing in this letter shall serve to limit our liability for death or personal injury caused by our negligence.
8. This letter shall be governed and construed in accordance with the laws of England and any disputes arising in connection with this letter shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The arbitration shall take place in Hong Kong and shall be conducted in English. The arbitration award shall be binding upon both parties.

Yours faithfully,

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*[name of insurance broker]*

## FORM OF REINSURANCE BROKER'S LETTER OF UNDERTAKING

To: [ ] as Intercreditor Agent  
[ ] as Security Agent

[Date]

Dear Sirs,

1. We refer to Schedule 7 (*Insurance*) (the "**Insurance Schedule**") to the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. (the "**Company**") and the financial institutions referred to therein as Senior Secured Creditors, as amended, consolidated, supplemented, novated or replaced from time to time. Terms used herein shall bear the same meaning as in the Insurance Schedule. Any reference herein to a document being in substantially a specified form shall be construed as meaning such document being in the same form as the specified form save for the insertion of information left in blank or typographical errors.
2. We, in our capacity as reinsurance brokers to [ ] (the "**Direct Insurer**"), confirm that facultative reinsurance of each Direct Insurance (other than those indicated by you) as required pursuant to Clause 1.2 of the Insurance Schedule are in full force and effect as of the date of this letter on and in respect of the risks set out in the Reinsurances evidenced in the policy cover notes attached hereto as Annex A and that all premiums which are required to have been paid at the date hereof in respect of such Reinsurances have been paid in full and such Reinsurances are placed with reinsurers and underwriters whose identities we have disclosed to you and whom we in good faith believe to be reputable and financially sound.
3. We confirm that each Reinsurance referred to in paragraph 2 above contains endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) to the Insurance Schedule.
4. Pursuant to instructions received from the Direct Insurer, we hereby undertake in respect of the Reinsurances referred to in the attached cover notes:
  - (a) in the case of any such Reinsurance, as and when the same is renewed, extended or replaced, and subject to market conditions current at the time of application for such renewal, extension or replacement, to use our best efforts to ensure that it complies with the requirements of the Insurance Schedule or such other requirements as you may approve in writing and that it contains endorsements in substantially the form set out in Appendix 4 (*Form of Endorsements for Reinsurances*) to the Insurance Schedule or in such other form as you may approve in writing;
  - (b) to pay to the accounts specified in the relevant loss payable clauses in the relevant policy documents without any set-off or deduction of any kind for any reason any and all proceeds from or other payments made pursuant to the

Reinsurances (including refunds of premiums) received by us from the reinsurers except as might otherwise be permitted in the relevant policy endorsement provisions or required by law or court order or as you may otherwise agree in writing;

- (c) to advise you:
  - (i) as soon as practical upon our becoming aware of any actual or proposed:
    - (A) cancellation or suspension of cover under any Reinsurance;
    - (B) reduction in limits or coverage or any increase in deductibles; and
    - (C) termination prior to the original expiry date of any Reinsurance;
  - (ii) as soon as practical of any default in the payment of any premium for any of the Reinsurances;
  - (iii) at least 45 days prior to the expiry of any Reinsurance if we have not received instructions to negotiate the renewal thereof from the Direct Insurer and/or any jointly insured parties or the agents of any such party and at least 5 Business Days prior to the expiry thereof if such Reinsurance has not been renewed;
  - (iv) if we receive instructions to negotiate the renewal of any Reinsurance, the details of such instructions and, upon the renewal of such Reinsurance, the terms of such renewal; and
  - (v) of any act or omission or any event of which we have knowledge and which might invalidate or render unenforceable in whole or in part any of the Reinsurances promptly upon our becoming aware of the same;
- (d) to disclose to you any fact, change of circumstance or occurrence material to the risks insured against under the Reinsurances or which would result in any reduction in limits or alteration in coverage or increase in deductions or exclusions promptly upon our becoming aware of the same;
- (e) to notify you promptly following our becoming aware that we shall cease to act as reinsurance broker to the Direct Insurer; and
- (f) on your reasonable request and at your expense and subject to any legal, contractual or regulatory restrictions, to make those documents contained within our placing and claims files to which the Direct Insurer would be entitled to have access available to you or your Insurance Adviser at reasonable times and places, and to provide you with copies of any such documents.

5. The above undertakings are given subject to our continuing appointment as reinsurance brokers to the Direct Insurer and in relation to the Reinsurances and the handling of claims in relation to them.
6. The contents of this letter may not be disclosed to any other party other than to any person:
  - (a) to (or through) whom a Secured Party assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and/or obligations under the Senior Finance Documents;
  - (b) to (or through) whom a Secured Party enters 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 Obligor; or
  - (c) to whom all or any contents of this letter may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement

(a “**Third Party**”) and, in the event that it is disclosed to a Third Party, any and all liability howsoever arising to such Third Party is hereby expressly excluded. No person except the Senior Secured Parties has any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.
7. Our aggregate liability to you for any and all matters arising from this letter and the contents thereof shall in any and all events be limited to the sum of USD1,000,000 and confined to direct losses in contract. Any and all other liability including but not limited to liability in tort and liability for consequential losses is hereby expressly excluded. Notwithstanding the foregoing, nothing in this letter shall serve to limit our liability for death or personal injury caused by our negligence.
8. This letter shall be governed and construed in accordance with the laws of England and any disputes arising in connection with this letter shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The arbitration shall take place in Hong Kong and shall be conducted in English. The arbitration award shall be binding upon both parties.

Yours faithfully,

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*[name of reinsurance broker]*

APPENDIX 7

OPERATION PERIOD INSURANCE COSTS

<u>Operation Period Insurance</u>	<u>Premium Rate (per annum)</u>
Property All Risks	0.06%
Business Interruption	0.08%
Third Party and Products Liability	0.40%
Terrorism	0.12%
Fidelity Guarantee/Crime Insurance	0.90%
Money Insurance	1.20%

**SCHEDULE 8**  
**HEDGING ARRANGEMENTS**

1. The Company shall, prior to the making of any Advance under a Term Loan Facility, enter into agreements to the extent necessary to ensure that at least 50% of the aggregate amount drawn under the Term Loan Facilities (including the amount of such Advance) and the principal amount owed to each Additional Lender 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 the repayment schedule under each Additional Lender Facility Agreement and with a final maturity date of not less than three years from the date upon which such Hedging Arrangement was first entered into in respect of such amount.
2. The purchase price of any such products may be paid for:
  - (a) by one or other of the other Obligor for the benefit of the Company (*provided* that such payment shall either constitute Equity (other than Base Equity, Contingent Equity or any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents) or otherwise create no recourse to the Company); or
  - (b) out of the amount provided in the "Interest" Line Item (*provided* that the sum of the purchase prices, interest and any other amounts payable by the Company in respect of all such products does not exceed such amount).
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. 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 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. Any payments due from the Company under the Hedging Agreements (except for the purchase price or other amounts in respect of any interest rate caps, collars or other products paid by another Obligor) prior to the Expansion Opening Date, including any

Realised Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall be a permitted Project Cost.

In this paragraph and paragraphs 7 and 10 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.

7. Payments due from the Company under the Hedging Agreements following the Expansion Opening Date, 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.
8. Except with the prior consent of the Intercreditor Agent, 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.
9.
  - (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 *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) If a voluntary or mandatory prepayment is to be made in accordance with Clause 8 (*Repayments, Prepayments and Cancellation*) and following such prepayment the aggregate amount of the “**Notional Amounts**” (as defined in the 2000 Definitions) of all Hedging Agreements at such time would be greater than 125% of the principal amounts outstanding under the Term Loan Facilities, the Company shall unwind, in order of maturity immediately following such prepayment (unless otherwise agreed by the Intercreditor Agent), sufficient transactions under the Hedging Agreements (and pay associated breakage costs) on the first Payment Date (as defined in the 2000 Definitions) (or, where such prepayment falls within 5 Business Days (as defined in the relevant Hedging Agreement) prior to such first Payment Date, the second Payment Date) in respect of such transaction immediately succeeding such prepayment such that the Intercreditor Agent is satisfied that, following such terminations, the aggregate Notional Amounts of all transactions under all Hedging Agreements is not less than 50% and not more than 125% of the principal amounts outstanding under the Facilities.
10. 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.



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**

1. To the extent that any Equity Issuance Proceeds are received by (or paid to the order of) the Company other than from the Wynn Obligor after the Signing Date, the Company shall ensure that an amount equal to the amount of such Equity Issuance Proceeds (excluding any such Equity Issuance Proceeds derived from Base Equity, Contingent Equity or, to the extent required or permitted under this Agreement to fund any Project Costs, any other Equity) shall be applied on the next Term Loan Facility Interest Payment Date after such receipt (or payment) towards prepayment of the Advances under the Term Loan Facilities and, pending such application, deposited in a Debt Service Account.
2. With respect to the Net Cash Proceeds from any Asset Sale made by the Company as to which the Company has:
  - (a) not delivered a Reinvestment Notice within the period required therefor, such Net Cash Proceeds (or portion thereof not subject to such a Reinvestment Notice) shall be applied, on the next Term Loan Facility Interest Payment Date following the expiration of the aforesaid required period for delivery of a Reinvestment Notice with respect to such Asset Sale, towards prepayment of the Advances under the Term Loan Facilities and, pending such application, deposited in a Debt Service Account; or
  - (b) delivered a Reinvestment Notice within the period required therefor, on the next Term Loan Facility Interest Payment Date following each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the portion of Net Cash Proceeds referred to therein shall be applied towards the prepayment of the Advances under the Term Loan Facilities and, pending such application, deposited in a Debt Service Account.
3. On the next Term Loan Facility Interest Payment Date following the date on which the Company receives any Termination Proceeds or Eminent Domain Proceeds, the Company shall apply such proceeds towards prepayment of the Advances under the Term Loan Facilities.
4. If, for any Fiscal Year commencing with the Fiscal Year in which the Original Project Opening Date occurs, there shall be Excess Cash Flow, the Company shall, subject to ensuring each of the Debt Service Accounts, the Special Gaming Tax Account and the Reserve Accounts are funded in accordance with Schedule 6 (*Accounts*), apply the ECF Percentage of such Excess Cash Flow towards prepayment of the Advances under the Term Loan Facilities. Each such prepayment shall be made on the next Term Loan Facility 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 in a Debt Service Account.

5. Any Insurance Proceeds (other than those received by the Company for any single loss or series of related losses not in excess of USD20,000,000 or its equivalent) shall be applied to the prepayment of the Advances under the Term Loan Facilities on the next Term Loan Facility Interest Payment Date falling not less than 30 days after the Company'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 the Projects in accordance with the terms of Schedule 6 (*Accounts*):
- (a) the damage or destruction does not constitute the destruction of all or substantially all of the Projects;
  - (b) a Default has not occurred and is continuing (other than a Default resulting solely from such damage or destruction) and after giving effect to any proposed repair and restoration, no Default will result from such damage or destruction or proposed repair and restoration;
  - (c) the Company certifies, and the Intercreditor Agent determines in its reasonable judgment, that repair or restoration of the Projects to a condition substantially similar to their condition immediately prior to the event or events to which the relevant Insurance Proceeds relate, is technically and economically feasible within a 9 month period (where the damage or destruction occurs prior to the Construction Completion Date) or a 12 month period (where it occurs thereafter) and that a sufficient amount of funds is or will be available to the Company to make such repairs and restorations (subject at all times to paragraph 7 of Part B of Schedule 5 (*Covenants*));
  - (d) the Company delivers to the Intercreditor Agent a plan (the "**Repair Plan**") describing in reasonable detail the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith, in form and substance reasonably satisfactory to the Intercreditor Agent;
  - (e) the Company certifies, and the Intercreditor Agent determines in its reasonable judgment, that 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 no Forecast Funding Shortfall has occurred and is continuing or could reasonably be expected to occur during or following the repair period;
  - (f) no Permit is necessary to proceed with the repair and restoration of the Projects and no material amendment to the Project Documents, or, except with the consent of the Senior Secured Creditors, any of the Senior Finance Documents, and no other instrument is necessary for the purpose of effecting the repairs or

restoration of the Projects or subjecting the repairs or restoration to the Liens of the applicable Security Documents and maintaining the priority of such Liens or, if any of the above is necessary, the Company will be able to obtain the same as and when required; and

- (g) the Intercreditor Agent shall receive such certificates, opinions or other matters as it may reasonably request as necessary or appropriate in connection with such repairs or restoration of the Projects or to preserve or protect the Senior Secured Creditors' interests hereunder and in the applicable Project Security.

After Insurance Proceeds have been applied to the repair or restoration of the Projects as provided in this Agreement, any excess Insurance Proceeds shall be applied on the next Term Loan Facility Interest Payment Date thereafter to the prepayment of the Advances under the Term Loan Facilities.

6. [Not used.]

- 7. If all or substantially all of either Project is lost, damaged or destroyed or declared by any relevant Insurer to be a constructive total loss, the Company shall immediately prepay all amounts outstanding under the Senior Finance Documents.

**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
- (ii) 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
- (iii) any Obligor 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 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 20.1, 20.2 and 20.3 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), such event, in the reasonable opinion of the Intercreditor Agent, could reasonably be expected to give rise to a Material Adverse Effect.
- (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 (w), (x), (y), (z), (aa) or (bb) 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*); or
  - (iv) paragraph 1 of Part B of Schedule 5 (*Covenants*).
- (d) Any Obligor or the Performance Bond Provider 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 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 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 Wynn Obligor 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 USD5,000,000 or its equivalent in the case of the Company and the Wynn Obligors (other than Wynn Resorts) taken as a whole or USD10,000,000 or its equivalent in the case of Wynn Resorts and, in the case of Wynn Resorts after the Sponsor Support Release Date, such event, in the reasonable opinion of the Intercreditor Agent, could reasonably be expected to give rise to a Material Adverse Effect.
- (f) (i) Any Obligor (other than the Subordinated Funding Provider) 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, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, administration, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Obligor (other than the Subordinated Funding Provider) or the Performance Bond Provider shall make a general assignment for the benefit of its creditors;
- (ii) there shall be commenced against any Obligor (other than the Subordinated Funding Provider) 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 or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days;

- (iii) there shall be commenced against or any Obligor (other than the Subordinated Funding Provider) 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 that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;
- (iv) any Obligor (other than the Subordinated Funding Provider) 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
- (v) any Obligor (other than the Subordinated Funding Provider) 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:

- (vi) immediately upon (and, in any event, no more than three 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
- (vii) within 60 days (or such shorter period as the Intercreditor Agent may determine is required pursuant to the Concession Contract) after such action, event or condition has occurred:
  - (A) the Performance Bond Provider has been replaced by a Person (the “**Replacement Performance Bond Provider**”) acceptable to the Intercreditor Agent;
  - (B) the Replacement Performance Bond Provider has provided a replacement Concession Contract Performance Bond and acceded to the terms of the Deed of Appointment and Priority, in each case on terms acceptable to the Intercreditor Agent; and
  - (C) the Intercreditor Agent is satisfied that no breach of the Concession Contract or any applicable Legal Requirement has occurred or will result from such replacement, and that the replacement complies, and has been authorised by the Macau SAR in accordance with, the Concession Contract and all other applicable Legal Requirements.

- (g) At any time prior to the Construction Completion Date, a Forecast Funding Shortfall occurs and continues for 30 days without being cured.

- (h) (i) Any Person shall engage in any “prohibited transaction” (as defined in section 406 of ERISA or section 4975 of the Code) involving any Plan;
- (ii) any “accumulated funding deficiency” (as defined in section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favour of the PBGC or a Plan shall arise on the assets of any Obligor or any Commonly Controlled Entity;
- (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Intercreditor Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA;
- (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than in a standard termination under section 4041(b) of ERISA;
- (v) any Obligor or any Commonly Controlled Entity shall, or in the reasonable opinion of the Intercreditor Agent is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan; or
- (vi) any Obligor, or any of their Subsidiaries or any Commonly Controlled Entity shall be required to make during any Fiscal Year payments pursuant to any employee welfare benefit plan (as defined in section 3(1) of ERISA) that provides benefits to retired employees (or their dependents), other than as required by sections 601 and following of ERISA, section 4980B of the Code, or the corresponding provisions of applicable state law, and in each case in sub-paragraphs (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect.
- (i) One or more judgments or decrees shall be entered against Wynn Resorts which could reasonably be expected to have a Material Adverse Effect or against the Company or any Wynn Obligor involving (in the latter case) for the Company and the Wynn Obligors taken as a whole a liability (not paid or covered by insurance as to which the relevant insurance company has acknowledged coverage) of USD5,000,000 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.
- (j) Any of the Senior Finance Documents shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or any Obligor 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.



- (k) The Company shall breach or default under in any material respect any material term, condition, provision, covenant, representation or warranty contained in any Major Project Document and such breach or default shall continue unremedied for 30 or, save in the case of any payment default, provided the Company 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 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.
- (l) 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 and such breach or default shall continue unremedied for 30 days after the earlier of:
- (i) the Company 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, in the reasonable opinion of the Intercreditor Agent, such breach or default could reasonably be expected to have a Material Adverse Effect.
- (m) 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 *provided* 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 Construction Contract or the IP Agreement) shall constitute an Event of Default under this paragraph (m) only if the same could reasonably, in the reasonable opinion of the Intercreditor Agent, be expected to result in a Material Adverse Effect and the same shall continue unremedied for 30 days after the earlier of:
- (i) the Company 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 Construction 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 (m) if the Company provides written notice to the Intercreditor Agent immediately upon (but in no event more than 3 Business Days after) the Company becoming aware of such occurrence that it intends to replace such Project Document and:
- (A) the Company obtains a replacement obligor or obligors for the affected party;

- (B) the Company enters into a replacement Major Project Document on terms no less beneficial to the Company 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 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.

(n) A Change of Control shall occur.

(o) Any Subordinated Debt, the Subordinated Funding Agreement 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.

(p) The Company or any Wynn Obligor shall fail to observe, satisfy or perform, or there shall be a violation or breach of, any of the terms, provisions, agreements, covenants or conditions attaching to or under the issuance to such Person of any Permit or any such Permit or any provision thereof shall be suspended, revoked, cancelled, terminated or materially and adversely modified or fail to be in full force and effect or any Governmental Authority shall challenge or seek to revoke any such Permit if such failure to perform, violation, breach, suspension, revocation, cancellation, termination or modification could reasonably be expected to have a Material Adverse Effect.

(q) Substantial Completion and the satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof shall not have occurred in respect of the Original Project or the Expansion by the date specified:

Original Project	28 February 2007
Expansion	10 January 2008

or Construction Completion shall not have occurred by 10 April 2008.

(r) The Technical Adviser shall reasonably determine (based on its experience, familiarity and review of the Projects and the information and schedule provided by the Company and the Prime Contractor and having regard to any measures for expediting or accelerating the progress of the works) that Substantial Completion and the satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof is likely to occur in respect of the Original Project or the Expansion no earlier than the date specified:

Original Project	28 February 2007
Expansion	10 January 2008

or that Construction Completion is likely to occur no earlier than 10 April 2008.

- (s) The Company shall abandon either of the Projects or otherwise cease to pursue them.
- (t) 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.
- (u) The Company shall fail to at all times maintain in full force and effect the insurance policies required by Schedule 7 (*Insurance*).
- (v) Any Governmental Authority takes any action or there is a change in (or in the interpretation, administration or application of) or the introduction of any Legal Requirement:
  - (i) which deprives the Company of the use of all or any material part of its Property (including nationalisation, expropriation, modification, suspension or extinguishment of any material rights benefiting or the imposition of any restrictions materially and adversely affecting any of the Projects by such Governmental Authority);
  - (ii) which prevents the Company from conducting its business or operations, or a material part thereof, in a similar manner as contemplated at the Signing Date; or
  - (iii) which, in the reasonable opinion of the Intercreditor Agent, otherwise could reasonably be expected to have a Material Adverse Effect, and, in each case, such action, change or introduction or the effects thereof, are not removed or stayed within 30 days of the occurrence of such action, change or introduction.
- (w) Any temporary administrative intervention is made by the Macau SAR pursuant to article 79 of the Concession Contract.
- (x) 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.
- (y) The Intercreditor Agent considers the subject matter of any negotiations required to be notified to it pursuant to paragraph 24(c) of Part A of Schedule 5 (*Covenants*) is such as could reasonably give rise to an entitlement of the Macau SAR to unilaterally dissolve the Concession Contract pursuant to article 80 thereof.

- (z) Any consultations are commenced as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement and (save for the purpose of giving notice to the Macau SAR that the Security Agent intends to take action to enforce all or any of the pledges constituted by the Company Share Pledge, the Wynn International Share Charge and/or the Wynn HK Share Charge which may be given by the Security Agent immediately upon such consultations being commenced) the Intercreditor Agent considers the subject matter of such consultations is reasonably likely to give rise to (a) the taking of any action to terminate the Concession Contract or (b) an agreement to terminate the Concession Contract.
- (aa) The Land Concession Contract is terminated or rescinded or the Macau SAR takes any formal measure seeking any termination of the Land Concession Contract pursuant to Clause 15 thereof or any rescission pursuant to Clause 16 thereof.
- (bb) The Macau SAR gives any notice pursuant to paragraph C7 of the Land Concession Consent Agreement.
- (cc) 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 14 September 2004 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 (*Transfer 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 or the Projects.
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 (*Transfer by Lenders*) of the Common Terms Agreement, it shall be bound by the terms of:
  - (a) the Common Terms Agreement as if it had been a party to such agreement in the capacity of a [*specify Lender*]; and
  - (b) 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]

By:

Date:

[            ]

as Intercreditor Agent

By:

Date:

[Transferee]

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 (the “**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:
  - (a) 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;
  - (b) [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
  - (c) (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)<sup>15</sup>] 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)<sup>16</sup>] 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.

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<sup>15</sup> If paragraph 2(b) deleted.

<sup>16</sup> If paragraph 2(b) deleted.

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 the 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 the Project.

“**[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**

**PERMITS**

**Part A**

**Permits required on or before the CP Satisfaction Date**

1. Construction licence.
2. Enactment of legislation by the Macau SAR providing for casino operators to be grantors of credit to patrons.
3. Macau SAR approval of the location of the horizontal property comprised in the Casino Project.
4. Publication of the Land Concession Contract in the Official Bulletin.
5. Provisional registration of the rights of the Company to the land which is the subject of the Land Concession Contract (for the purposes of this Schedule, the "**Land**").
6. Macau SAR confirmation that the scope of insurances set out in Schedule 7 satisfy the requirements of Article 40 of the Concession Contract.
7. Agreement by the Gambling Inspection and Coordination Bureau and the Financial Bureau of the Macau SAR as to the identity of the Auditor in accordance with Article 57 of the Concession Contract.
8. Macau SAR authorisation: (i) pursuant to article 16(1) of the Concession Contract to pledge the Company's shares; (ii) pursuant to article 16(5) of the Concession Contract to charge the shares of the Company's shareholders; (iii) pursuant to article 21(3) of the Concession Contract to execute a power of attorney in relation to the Land; (iv) pursuant to article 42(1) of the Concession Contract to mortgage the portion of the Land, including any constructions thereon, referred to therein; and (v) pursuant to article 42(1) of the Concession Contract to pledge the gaming equipment and utensils of the Company.
9. To the extent applicable, disclosure to Macau SAR of any serious alteration to the economic or financial conditions of the Company, the Company's shareholders or certain of the Company's Affiliates pursuant to article 23 of the Concession Contract.

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**Part B**

**Permits required after the CP Satisfaction Date**

1. Project Certificates of Occupancy.
2. Definitive registration of the rights of the Company to the land which is the subject of the Land Concession Contract and definitive registration of the horizontal property comprised in the Projects.
3. Permits required under Article 84 of the Concession Contract.
4. Amended construction licence for the Projects (including the Expansion).
5. Written confirmation from Macau SAR Department of Public Works that, upon approval of the amended construction licence for the Projects (including the Expansion), the Land Concession Contract will be amended as soon as practicable to the extent required to reflect the Projects as actually built pursuant to the original construction licence and the amended construction licence.

**SCHEDULE 13  
FORM OF PROJECT BUDGET**

**Wynn Resorts (Macau) S.A. – Project Budget**

Date: [       ]

**I. PROJECTED DRAWDOWN SCHEDULE FOR ADVANCES UNDER THE TERM LOAN FACILITIES**

<u>Month</u>	<u>Year</u>	<u>Projected Amount (USD equivalent)</u>
[   ]	[   ]	[   ]
[   ]	[   ]	[   ]
[   ]	[   ]	[   ]

**II. SOURCES AND USES OF FUNDS**

**A. SOURCES OF FUNDS**

<u>(USD equivalent)</u>	<u>W Drawn</u>	<u>X Available</u>	<u>Y = W+X Total</u>
1 Base Debt Facility			
(i) Hotel Facility			
HKD tranche			
USD tranche			
(ii) Project Facility			
HKD tranche			
USD tranche			
(iii) Additional Lender Facility <sup>1</sup>			
HKD tranche			
USD tranche			
2 Base Equity			
3 Base Subordinated Funding			

<sup>1</sup> If any.



<u>(USD equivalent)</u>	<u>W</u> <u>Drawn</u>	<u>X</u> <u>Available</u>	<u>Y = W+X</u> <u>Total</u>
4 Base Net Operating Cashflow Amount <sup>2</sup>			
5 <b>Total Base Funding = A.1+A.2+A.3 +A.4</b>			
6 Contingent Debt Facility			
(i) Hotel Facility			
HKD tranche			
USD tranche			
(ii) Project Facility			
HKD tranche			
USD tranche			
7 Contingent Equity			
8 Contingent Subordinated Funding			
9 Contingent Net Operating Cashflow Amount <sup>3</sup>			
10 <b>Total Contingent Funding = A.6+A.7+A.8+A.9</b>			
11 The amount standing to the credit of the Accounts to the extent such balances are available to meet Project Costs			
		N.A.	
12 Proceeds of any delay in start-up Insurance meeting the requirements of paragraph (d) of the definition of Available Funding			
		N.A.	

<sup>2</sup> Adjusted, in the event of any adjustment to the Net Operating Cashflow Amount pursuant to paragraph (h) of the definition of “Available Funding” in Clause 1.1 (*Definitions*), by 75% of the amount of such adjustment.

<sup>3</sup> Adjusted, in the event of any adjustment to the Net Opening Cashflow Amount pursuant to paragraph (h) of the definition of “Available Funding” in Clause 1.1 (*Definitions*), by 25% of the amount of such adjustment.

<u>(USD equivalent)</u>	<u>W Drawn</u>	<u>X Available</u>	<u>Y = W+X Total</u>
13 Proceeds of any liquidated damages meeting the requirements of paragraph (e) of the definition of Available Funding			
14 Other committed funds meeting the requirements of paragraph (f) of the definition of Available Funding		N.A.	
<b>15 Total Sources of Funds = A.5+sum of A.10 to A.14</b>			

**B. USES OF FUNDS (PROJECT COSTS)**

<u>(USD equivalent)</u>	<u>V Project Budget as at Signing Date</u>	<u>W Variance<sup>4</sup></u>	<u>X = V+W Current Project Budget<sup>5</sup></u>	<u>Y Used</u>	<u>Z = X - Y Balance to Complete<sup>6</sup></u>
1 Hard Construction Costs					
(i) Construction and Building					
(ii) Interior Furnishings and Equipment					
(iii) Design Fees					
(iv) Contractor's Fees					
(v) Construction Contingency					
(vi) Owner's Contingency					
2 Pre-Opening Costs					
(i) Payroll					
(ii) Direct Expenses					
(iii) Corporate Expenses					

<sup>4</sup> From Project Budget as at the Signing Date

<sup>5</sup> To achieve Construction Completion in accordance with the Project Schedule

<sup>6</sup> To achieve Construction Completion in accordance with the Project Schedule

<u>(USD equivalent)</u>	<u>V</u> <u>Project</u> <u>Budget as</u> <u>at Signing</u> <u>Date</u>	<u>W</u> <u>Variance<sup>4</sup></u>	<u>X = V+W</u> <u>Current</u> <u>Project</u> <u>Budget<sup>5</sup></u>	<u>Y</u> <u>Used</u>	<u>Z = X - Y</u> <u>Balance to</u> <u>Complete<sup>6</sup></u>
3	Owner Furniture, Fittings and Equipment				
	(i) Casino				
	(ii) Hotel				
	(iii) Food and Beverage				
	(iv) Others				
4	Land Cost				
5	Pre-Opening Working Capital				
6	Capitalised Interest and Commitment Fees				
	(i) Base Debt Facility and Contingent Debt Facility				
	(ii) Revolving Credit Facility				
	(iii) Base and Contingent Subordinated Funding				
	(iv) Performance Bond Facility				
7	Tax, Fees and Expenses				
<b>8</b>	<b>Total Base Project Costs = sum of B.1 to B.7</b>				
9	Contingency				
<b>10</b>	<b>Total Uses of Funds = B.8+B.9</b>				

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### III. Forecast Funding Shortfall Calculation

#### A. Remaining Project Costs

(USD equivalent)

1 = Balance to Complete in Column Z of II.B.10

#### B. Available Funding

(USD equivalent)

1 = Prior to the Initial Advance, the sum in Column X of A.5 + A.11 to A.14. Following the Initial Advance, the sum in Column X of A.15

#### C. Forecast Funding Shortfall

The Available Funding as shown in III.B.1 [exceeds the Balance to Complete as shown in III.A.1 and the Company confirms that as such no Forecast Funding Shortfall exists OR is less than the Balance to Complete as shown in III.A.1 and the Company confirms that as such a Forecast Funding Shortfall exists].

### IV. Hotel Project Costs

A. The amount of Hotel Project Costs expended to the date of this Project Budget is USD [ ] equivalent.

B. The amount drawn under the Hotel Facility to the date of this Project Budget is USD [ ] equivalent.

### V. Exchange Rate

The HKD/USD exchange rate used in calculating the USD equivalent amounts set out in this Project Budget is [ ].

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Name:

Responsible Officer

for and on behalf of

**Wynn Resorts (Macau) S.A.**

**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:

	<u>Actual</u>	<u>Required</u>
1. Leverage Ratio	[ ]	[ ]
2. Debt Service Cover Ratio	[ ]	[ ]
3. Net Worth	[ ]	[ ]
4. Interest Coverage Ratio	[ ]	[ ]

We attach the information and calculations necessary for determining the above ratios.

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**  
**CONCESSION CONTRACT INVENTORY OF PROPERTIES**

Tables

Common Area:

- Bean Baccarat
- Midi Baccarat
- Blackjack
- Roulette
- YHH (double sided)
- YHH (single sided)
- Sic-Bo (double sided)
- Sic-Bo (single)
- Fan-Tan
- 3 Card Poker
- 3 Card Baccarat
- Caribbean Stud
- Money wheel

VIP Area:

- Big Baccarat
- Bean Baccarat
- Blackjack
- Roulette

Chairs:

- Dealers
- Pit Clerks

Shuffle Machines:

- MD-1
- King
- Ace
- Deck Mates
- MD-2

Layouts:

- Big Baccarat
- Bean Baccarat
- Midi Baccarat
- Blackjack
- Roulette
- 3 Card Baccarat
- 3 Card Poker
- Caribbean Stud
- YHH (single sided)
- YHH (double sided)
- Sic-Bo (double sided)
- Sic-Bo (single)
- Unprinted Layout

Cards:

- Standard

Table Items:

- Roulette Wheels
- Sic-Bo spare shakers

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- Dealing shoes
- Drop boxes and sleeves
- Stacker Boxes
- Note pushers
- Brass slot covers
- Tip boxes
- Discard holders plastic
- Discard holders in table
- 15 tube hideaway float trays
- Float trays VIP
- Float trays MF
- Security card vaults
- Card seals
- Locks
- Cutting cards
- Table signs
- Sic-Bo dice
- Roulette dollies
- Roulette balls
- Roulette float covers
- Roulette wheel covers
- Roulette wheel guards
- Fan-Tan sticks and buttons
- Big Baccarat table covers
- Bean Bacarrat table covers
- Blackjack table covers
- Roulette Buttons
- Marker Buttons

Game Displays:

- Roulette
- Sic-Bo/YHH
- Baccarat

Card Destruction Machine

Furniture:

- Pit Stands
- Pit card storage

Shuffle Room:

- Work stations
- Supervisors table
- Storage cabinetry

Miscellaneous:

- Crowd control Stands
- Crowd control Ropes
- Pit trash
- Scorecard holders
- Red-Blue pens
- Players scorecards
- Chip carry cases

Chips:

- Total order

Slot Operations



---

Machines

Signage

Additional:

    Tokens

    Cups

    Bases

    Stools

    Chairs

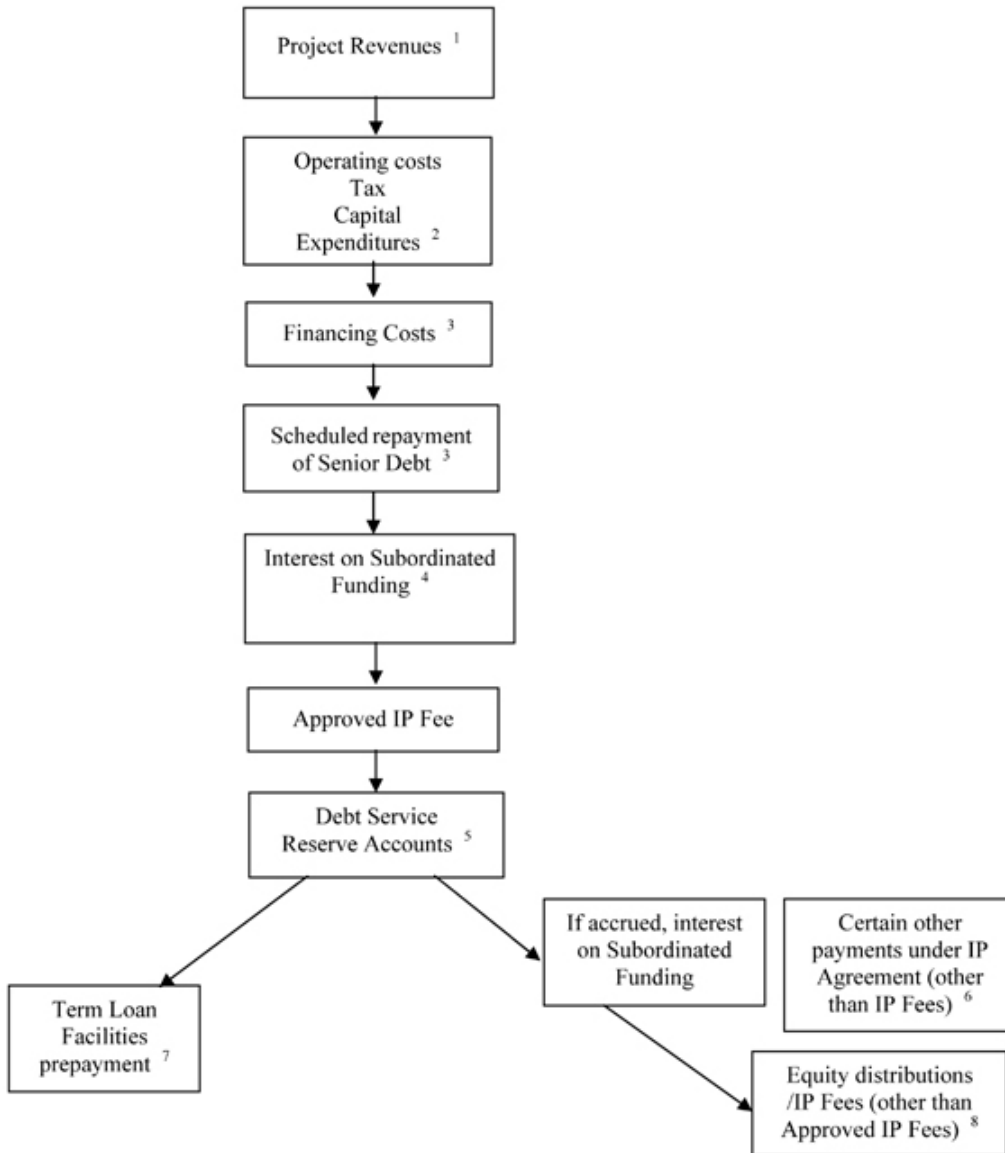
    Jackpot controllers

    Attendant Stations

    Locks

    Workshop Equipment

**SCHEDULE 17  
PAYMENT WATERFALL**



Note 1: Separate treatment for cash or cash proceeds paid for grant of Subconcessions and other receipts which are subject to Schedule 9 (*Mandatory Prepayment*)

Note 2: As permitted by paragraph 7 of Part B, Schedule 5 (*Covenants*)

Note 3: Debt Service on Term Loan Facilities built up in Debt Service Accounts pursuant to paragraph 5 of Schedule 6 (*Accounts*)

Note 4: 7.5% fixed rate. Interest accrues in the event of a cash shortfall (Clause 6.3 Deed of Appointment and Priority)

Note 5: Six months Debt Service on Term Loan Facilities pursuant to paragraph 7 of Schedule 6 (*Accounts*)

Note 6: As permitted by paragraph 20(d), Part B, Schedule 5 (*Covenants*)

Note 7: As required by paragraph 4 of Schedule 9 (*Mandatory Prepayment*)

Note 8: Subject to distribution tests in paragraph 6, Part B, Schedule 5 (*Covenants*)

**SCHEDULE 18**  
**MONTHLY CONSTRUCTION PERIOD REPORT**

**List of Minimum Information to be Included**

**A. Summary**

**B. Project Schedule**

1. Describe (in respect of both work under the Construction Contract and Company scope including FF&E and pre-opening activities):
  - 1.1 Overall progress of work broken down by major area
  - 1.2 Major activities that have taken place in the period since the last report
  - 1.3 Major activities scheduled to take place in the period until the next report
  - 1.4 The Company's estimate of:
    - (a) The date of Substantial Completion for the Original Project, Area 4, Area 5 and the Expansion
    - (b) The Opening Date (and satisfaction of the Opening Conditions specified in paragraph (a) of the definition thereof) for the Original Project, Area 4, Area 5 and the Expansion
    - (c) The date of Construction Completion
    - (d) The Final Completion Date
2. With reference to the attached Project Schedule:
  - 2.1 Highlight changes in the Project Schedule from the last report
  - 2.2 Highlight major milestones achieved in the period since the last report
  - 2.3 Describe remedial activities being taken to accelerate the works (if any)

**C. Project Budget**

With reference to the attached Project Budget:

- (a) Highlight changes in the Project Budget from the last report
- (b) Highlight Forecast Funding Shortfall (if any)

**D. Manpower**

1. Indicate current staffing level vs. projected for the Company, the PASA Agent and the Construction Contractor

2. Indicate any fatalities or injuries associated with the Projects incurred by the Company, the PASA Agent, the Prime Contractor, any Subcontractor or any other person in the period since the previous report with detail as to the nature of injuries incurred and cumulative figures since the [Date of Commencement] under and as defined in the Construction Contract
3. Highlight any major executive positions filled or vacated in the period since the last report

**E. Other**

1. List material Permits issued or made by or with a Governmental Authority obtained by the Company in the period since the last report
2. List any requests for change orders or variations under the Construction Contract received, requested, agreed or approved in the period since the last report
3. Hedging Arrangements entered into in the period since the last report

**F. Lease and Subconcession Agreements**

1. List total space leased vs. vacant for each of the following categories:
  - 1.1 Restaurants
  - 1.2 Retail
  - 1.3 Other facilities
2. List tenants secured and target date of opening for each space indicated as leased
3. Describe any agreements, whether in-principle or otherwise, entered into by the Company in the period since the last report in respect of subconcessions under the Concession Contract

**G. Operating Results of Projects**

Following the Opening Date of the Original Project until the Expansion Opening Date, provide the operating results of the Company in the preceding month, including:

- (a) Operating revenues, broken down by major source category
- (b) Operating costs, broken down by major line item
- (c) Working capital and other adjustments for non-cash items
- (d) Other cash payments or reserves made from operating cashflow
- (e) Net cashflow from operations and the sum transferred to the Construction Disbursement Accounts

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H. **Schedules**

Photographs

I. **Attachments**

1. Project Schedule
2. Project Budget
3. Actual vs. projected expenditure "S" curve
4. Monthly Construction Progress Report

**SCHEDULE 19**  
**FORMS OF OPENING CONDITIONS CERTIFICATES**

**Part A**

**Form of Company's Opening Conditions Certificate**

To: [            ] as Intercreditor Agent

Date: [            ]

Dear Sirs,

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 certificate is provided for the purposes of the definition of "Opening Conditions" in Clause 1.1 (*Definitions*) of the Common Terms Agreement in respect of [specify Original Project/Expansion/phase of Expansion].
3. We hereby certify, as at the date of this certificate, that:
  - (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of [the Original Project/Expansion/phase] for their intended uses have been installed and are operational;
  - (ii) all the Project Certificates of Occupancy have been issued, each area in which any operation of casino games of chance or other forms of gaming will be carried out has been classified as a casino or gaming zone in accordance with Article 9 of the Concession Contract and (other than any Permit issued or made by or with a Governmental Authority the failure of which to obtain or make could not reasonably be expected to affect the operations of the Projects in any material respect) each other Permit issued or made by or with a Governmental Authority required under applicable Legal Requirements to be obtained or made prior to the Opening Date has been obtained or made;
  - (iii) [the Original Project/Expansion/phase] (other than the premises to be occupied by individual retail and restaurant tenants in the Projects) is fully open for business to the general public [and at least, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables are in operation, 80% of restaurant outlets are open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating)][and, in the case of the Expansion, 80% of each of the projected 500 slot machines and 150 gaming tables are in operation];

- (iv) the remaining work on the Projects will not materially affect the operation of [the Original Project/Expansion/phase];
- (v) the failure to complete the remaining work will not materially affect the operation of the [Original Project/Expansion/phase]; and
- (vi) the Company has available a fully trained staff to operate [the Original Project/Expansion/phase] including the hotel and casino.

Yours faithfully,

---

Name:

Responsible Officer  
for and on behalf of

**Wynn Resorts (Macau) S.A.**

**Part B**

**Form of Technical Adviser's Opening Conditions Certificate**

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

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 certificate is provided for the purposes of the definition of "Opening Conditions" in Clause 1.1 (*Definitions*) of the Common Terms Agreement in respect of [specify Original Project/Expansion/phase of Expansion].
3. We hereby certify, as at the date of this certificate, that:
  - (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of [the Original Project/Expansion/phase] for their intended uses have been installed and are operational;
  - (ii) all the Project Certificates of Occupancy have been issued and (other than any Permit made or issued by or with a Governmental Authority the failure of which to make or obtain could not reasonably be expected to affect the operations of the Projects in any material respect) each other Permit made or issued by or with a Governmental Authority required under applicable Legal Requirements to be made or obtained prior to the Opening Date have been obtained;
  - (iii) [the Original Project/Expansion/phase] (other than the premises to be occupied by individual retail and restaurant tenants in the Projects) is fully open for business to the general public [and at least, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables are in operation, 80% of restaurant outlets are open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating)][and, in the case of the Expansion, 80% of each of the projected 500 slot machines and 150 gaming tables are in operation];
  - (iv) the remaining work on the Projects will not materially affect the operation of [the Original Project/Expansion/phase]; and
  - (v) the failure to complete the remaining work will not materially affect the operation of the [Original Project/Expansion/phase].



Yours faithfully,

---

Name:

For and on behalf of

*[Technical Adviser]*

**DATED 14 SEPTEMBER 2005**

**WYNN RESORTS, LIMITED**

**WYNN RESORTS (MACAU) S.A.**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**  
as Security Agent

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**WYNN RESORTS SUPPORT AGREEMENT**  
**DEED OF AMENDMENT**

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**THIS DEED** is dated 14 September 2005 and made between:

- (1) **WYNN RESORTS, LIMITED** (“**Wynn Resorts**”);
- (2) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”); and
- (3) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**, in its capacity as agent and security trustee for and on behalf of the Secured Parties (the “**Security Agent**”).

**RECITALS:**

- (A) The Company proposes to expand the Original Project.
- (B) The Secured Parties have agreed to amend certain Finance Documents and enter into additional Finance Documents and the Original First Ranking Lenders have agreed to increase the size of certain of the Facilities originally provided thereunder in connection with the Expansion.
- (C) It has been agreed to amend the Wynn Resorts Support Agreement as set out below.

**IT IS AGREED** as follows:

**1. DEFINITION AND INTERPRETATION**

**1.1 Incorporation of defined terms**

- (a) Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Deed.
- (b) 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 Deed.

**1.2 Clauses**

In this Deed any reference to a “Clause” or a “Schedule” is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Deed.

**2. AMENDMENT**

The Wynn Resorts Support Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Wynn Resorts Support Agreement*).

**3. REPRESENTATIONS**

The representations and warranties referred to in Clause 8 (*Representations and Warranties*) of the Schedule and expressed to be made on the Expansion Signing Date are deemed to be made by Wynn Resorts (by reference to the facts and circumstances then existing) on the date of this Deed and as if any reference therein to “Wynn Resorts Support Agreement” or “Security Documents” included, to the extent relevant, this Deed and the Wynn Resorts Support Agreement as expressed to be amended thereby.

**4. CONTINUITY AND FURTHER ASSURANCE**

**4.1 Continuing obligations**

The provisions of the Wynn Resorts Support Agreement shall, save as amended by this Deed, continue in full force and effect.

**4.2 Further assurance**

Each party shall, upon the written request of the Security 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 Deed.

**5. MISCELLANEOUS**

**5.1 Incorporation of terms**

The provisions of clause 1.3 (*Third Party Rights*), clause 1.4 (*Non-recourse Liability*), clause 13.2 (*Other Expenses*), clause 16 (*Notices*), clause 17 (*Partial Invalidity*), clause 18 (*Remedies and Waivers*), clause 20 (*Language*), clause 22 (*Jurisdiction*) and clause 23 (*Exercise of Rights*) of the Schedule shall be incorporated into this Deed as if set out in full herein and as if references in those clauses to “Agreement” are references to this Deed and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

**5.2 Counterparts**

This Deed 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 Deed.

**6. GOVERNING LAW**

This Agreement is governed by English law.

**This Deed has been entered into on the date stated at the beginning of this Deed and executed as a deed by Wynn Resorts and signed by the duly authorised representatives of the Company and the Security Agent on the date specified above.**

SIGNATURES

**Wynn Resorts**

Executed as a deed by ) /s/ *Matthew Maddox*

**WYNN RESORTS, LIMITED**

acting by Matthew Maddox )

Name: Matthew Maddox

Title: Chief Financial Officer

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1)-702-770-2111

Fax: (1)-702-770-1520

Attention: General Counsel

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**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: /s/ **Matthew Maddox**

Address: 335-341 Alameda Dr. Carlos d' Assumpção  
9<sup>th</sup> Floor  
Hotline Center  
Macau

Tel: (853) 889-966

Fax: (853) 329-966

Attention: Matt Maddox

With a copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Telephone: (1)-702-770-2111

Fax: (1)-702-770-1520

Attention: General Counsel

**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Telephone: (852) 2166-5671/ (852) 2166-5667

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Attention: Sunny Lui/ Kenneth Choi  
Risk & Agency



**SCHEDULE**

**AMENDED WYNN RESORTS SUPPORT AGREEMENT**

**WYNN RESORTS, LIMITED**

**WYNN RESORTS (MACAU) S.A.**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

as Security Agent

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**WYNN RESORTS SUPPORT AGREEMENT**

(As amended by the Wynn Resorts Support Agreement Deed Of  
Amendment dated 14 September 2005)

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

**BETWEEN:**

- (1) **WYNN RESORTS, LIMITED** (“Wynn Resorts”);
- (2) **WYNN RESORTS (MACAU) S.A.** (the “Company”); and
- (3) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**, in its capacity as agent and security trustee for and on behalf of the Secured Parties (the “Security Agent”).

**WHEREAS:**

- (A) The Secured Parties have agreed to make available the Facilities and/or to enter into various agreements and arrangements associated therewith on and subject to the terms of the Common Terms Agreement and the other Finance Documents to which they are a party.
- (B) It is a condition to the Secured Parties making the Facilities available and/or entering into such agreements and arrangements that the parties hereto enter into this Agreement which sets out the terms on which Wynn Resorts will support the obligations of the Company in connection with the Projects.

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Deed of Appointment and Priority or, if not defined or referred to in the Deed of Appointment and Priority, the Common Terms Agreement shall bear the same meaning when used in this Agreement and, in addition:

“**Common Terms Agreement**” means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the Security Agent, the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent and the Intercreditor Agent.

“**Contingent Equity Commitment**” means the commitment by Wynn Resorts to cause Wynn Asia to provide the Contingent Equity pursuant to Clause 3.1 (*Contingent Equity Commitment*).

“**Contingent Subordinated Funding Commitment**” means the commitment by Wynn Resorts to cause Wynn Asia to provide the Contingent Subordinated Funding pursuant to Clause 5.1 (*Contingent Subordinated Funding Commitment*).

“**Permitted Transfer**” means a sale, transfer or other disposal in accordance with Clause 7 (*Permitted Transfers*) of Capital Stock in any Person who, legally or beneficially, directly or indirectly, owns or holds any of the Capital Stock of the Company.

“**Securities Account**” means the Bank Account as defined in the Securities Account Control Agreement.

“**Securities Account Shortfall**” has the meaning given in Clause 4.2 (*Securities Account Shortfall*).

“**Sponsor Support Release Date**” means the date on which the following conditions are satisfied:

- (a) the Construction Completion Date has occurred;
- (b) the Leverage Ratio of the Company is less than 4:1 as at two successive Quarterly Dates calculated by reference to the period comprising the four most recent fiscal quarters commencing after the date (the “**relevant date**”) which falls at the end of the first full fiscal quarter commencing after the later of:
  - (i) the Construction Completion Date; and
  - (ii) the last day of the Hotel Facility Availability Period and the Project Facility Availability Period*provided* that, if the period between the relevant date and the Quarterly Date on which the Leverage Ratio is tested consists of less than four fiscal quarters, EBITDA shall be calculated on an annualised basis using the sum of EBITDA for each full fiscal quarter within such period; and
- (c) no Event of Default has occurred and is continuing.

“**Substantial Shareholder**” means Wynn Resorts, Wynn Asia, Wynn International, Wynn Holdings, Wynn HK and any other Transferee Shareholder who, legally or beneficially, directly or indirectly, owns or holds 5% or more of the share capital of the Company.

“**Transferee Shareholder**” means any Person to whom a Permitted Transfer is made.

“**Wynn Resorts Support Agreement Deed of Amendment**” means the deed so entitled made between the parties hereto.

## 1.2 Interpretation

In this Agreement:

- 1.2.1 the principles of construction and interpretation contained or referred to in clause 1.2 (*Construction*) of the Deed of Appointment and Priority shall apply to the construction and interpretation of this Agreement;
- 1.2.2 each Obligation of Wynn Resorts under this Agreement is independent of, in addition to and in no way prejudiced by any other Obligation of Wynn Resorts or any other Obligor (including any guarantee or security now or subsequently held by any Secured Party);

1.2.3 any representation and warranty, covenant, undertaking, indemnity or other agreement given by Wynn Resorts under the terms of this Agreement is given by it for the benefit of the Secured Parties only;

1.2.4 any reference to any or all of the Grantors or any or all of the Secured Parties shall be construed so as to include its or their (and any subsequent) successors and any permitted assignees and transferees in accordance with their respective interests; and

1.2.5 unless the contrary intention appears, a reference to a Clause or a Schedule is a reference to a clause of or a schedule to this Agreement.

### 1.3 **Third party rights**

1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives subject always to the terms of Clause 21 (*Governing Law*) and Clause 22 (*Jurisdiction*).

1.3.2 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.

1.3.3 Subject to Clause 24.2 (*Amendment of other Security Documents*) of the Deed of Appointment and Priority, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

### 1.4 **Non- Recourse Liability**

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other 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 Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. **BASE EQUITY FUNDING**

2.1 Wynn Resorts shall ensure that a certificate from the Company addressed to the Security Agent, duly executed by a Responsible Officer of the Company, confirming that an aggregate amount equivalent to not less than the Base Amount is funded to Wynn Asia, Wynn International, Wynn HK and/or the Company, together with bank statements or transfer records evidencing such deposits, are provided to the Security Agent within 7 days after the Signing Date. For the purpose of this Clause 2.1, "**Base Amount**" means an amount equal to USD230,000,000 minus (a) any costs and expenses incurred by the Company up to and including the date that is 7 days after the Signing Date for the purpose of the Projects (provided that such costs and expenses are included in the Project

Budget in effect on the Signing Date) and (b) an amount equal to USD50,000,000 (or its equivalent in Macau Patacas or Hong Kong dollars) deposited by or on behalf of the Company with the Second Ranking Finance Party provided in the case of (b) that evidence of such deposit is provided to the Security Agent within 7 days after the Signing Date.

2.2 Wynn Resorts shall ensure that the amount funded pursuant to Clause 2.1 is:

2.2.1 not repaid, distributed or applied by any of Wynn Asia, Wynn International, Wynn HK or the Company save in accordance with Clause 2.2.2 below; and

2.2.2 applied to fund Base Equity as required by paragraph 11 of Part B of Schedule 2 (*Conditions Precedent*) of the Common Terms Agreement prior to the submission of an Advance Request by the Company for the Initial Advance.

### 3. **CONTINGENT EQUITY**

#### 3.1 **Contingent Equity Commitment**

Wynn Resorts shall cause Wynn Asia to provide the Contingent Equity to the Company for the following purposes:

3.1.1 to pay Project Costs (other than Project Costs incurred in respect of a variation to the Project Works which the Company is obliged to fund from other sources pursuant to paragraph 15.2.1(B) of part B of schedule 5 (*Covenants*) of the Common Terms Agreement); and

3.1.2 to be applied towards satisfaction of the Company's Obligations under the Senior Finance Documents, in each case in accordance with and subject to this Agreement and the Common Terms Agreement.

#### 3.2 **Reduction and increase in Contingent Equity Commitment**

The Contingent Equity Commitment shall be:

3.2.1 reduced by the amount of each contribution of Contingent Equity made by Wynn Asia in accordance with Clause 3.1 (*Contingent Equity Commitment*); and

3.2.2 increased by the US dollar equivalent amount of each Advance made to the Company pursuant to clause 7.2.1(a) (*Rebalancing between Debt, Equity and Net Operating Cashflow*) of the Common Terms Agreement.

#### 3.3 **Full Release of Contingent Equity Commitment**

The Contingent Equity Commitment shall be released in full on the Sponsor Support Release Date.

#### 4. FUNDING INTO SECURITIES ACCOUNT

##### 4.1 Initial Funding

4.1.1 Wynn Resorts shall ensure that, prior to the submission of an Advance Request for the Initial Advance, the amount standing to the credit of the Securities Account is, without taking account of any other amount required to be funded to the Securities Account, not less than USD30,000,000 (which amount may comprise Permitted Investments made and the value of which is determined in accordance with Section 3.05 of the Securities Account Control Agreement or cash).

4.1.2 Wynn Resorts shall ensure that, within 7 days after the Signing Date, either:

- (a) the amount standing to the credit of the Securities Account is, without taking account of any other amount required to be funded to the Securities Account, not less than USD30,000,000 (which amount may comprise Permitted Investments made and the value of which is determined in accordance with the terms of Section 3.05 of the Securities Account Control Agreement or cash); or
- (b) an on-demand standby letter of credit, in form and substance reasonably satisfactory to the Security Agent, in an amount equal to USD30,000,000 (or such lesser amount equal to the difference between USD30,000,000 and such amount which, in addition to any other amount which is required to be funded to the Securities Account is standing to the credit of the Securities Account) is issued by a bank rated at least "A" by S&P or "A2" by Moody's in favour of the Company with no recourse (directly or indirectly) to the Company and which cannot expire or be cancelled or revoked until such time as the Company draws on such letter of credit to ensure compliance with, or otherwise complies with, Clause 4.1.1 or the Company has otherwise satisfied its obligation under Clause 4.1.2(a).

4.1.3 The performance by Wynn Resorts of its obligations under this Clause 4.1 shall not reduce its obligations under Clause 2.

##### 4.2 Securities Account Shortfall

If, on the later to occur of (a) the last day of the Hotel Facility Availability Period and (b) the last day of the Project Facility Availability Period, and after allowing for any deposit made pursuant to paragraph 2.1 of schedule 6 of the Common Terms Agreement but excluding any deposit made pursuant to Clause 5.3 (*Funding into Securities Account*), the balance standing to the credit of the Securities Account is less than USD20,000,000 (which amount may comprise Permitted Investments made and the value of which is determined in accordance with Section 3.05 of the Securities Account Control Agreement or cash), Wynn Resorts shall ensure that on such date an amount equal to the shortfall (the "**Securities Account Shortfall**") is deposited into the Securities Account; provided, however, that such amount shall be limited to the lesser of (x) USD20,000,000 and (y) the amount by which contributions of Contingent Equity and drawings under the Contingent Debt Facilities (other than, in either case, for application towards variations to the Project Works in accordance with paragraph 15.2.1(B) of part B of schedule 5 (*Covenants*) of the Common Terms Agreement) exceed, in aggregate, USD10,000,000 (or its equivalent).

**5. CONTINGENT SUBORDINATED FUNDING**

**5.1 Contingent Subordinated Funding Commitment**

Wynn Resorts shall cause Wynn Asia to provide the Contingent Subordinated Funding to the Company for the following purposes:

5.1.1 to pay Project Costs (other than Project Costs incurred in respect of a variation to the Project Works which the Company is obliged to fund from other sources pursuant to paragraph 15.2.1(B) of part B of schedule 5 (*Covenants*) of the Common Terms Agreement); and

5.1.2 to be applied towards satisfaction of the Company's Obligations under the Senior Finance Documents, in each case in accordance with and subject to this Agreement and the Common Terms Agreement.

**5.2 Reduction in Contingent Subordinated Funding Commitment**

The Contingent Subordinated Funding Commitment shall be reduced by the amount of Contingent Subordinated Funding provided by Wynn Asia in accordance with Clause 5.1 (*Contingent Subordinated Funding Commitment*).

**5.3 Funding into Securities Account**

5.3.1 Wynn Resorts shall cause the funding of any remaining Contingent Subordinated Funding Commitment into the Securities Account in the event that:

(a) it has less than USD100,000,000 (or its equivalent) in available cash; or

(b) its external ratings fall below "B" from S&P or "B3" from Moody's.

5.3.2 When Wynn Resorts has the aforementioned amount of available cash and external ratings at least equal to the levels set forth in Clause 5.3.1(b) again and provided no Default has occurred and is continuing, any remaining amount of such funding may be released from the Securities Account and paid to Wynn Resorts.

5.3.3 For the purposes of this Clause, "available cash" means, at any time, cash or cash equivalents denominated in US dollars and credited to an account or accounts with a financial institution in the name of Wynn Resorts and to which Wynn Resorts is alone beneficially entitled and for so long as such cash or cash equivalents are not subject to the prior discharge of any indebtedness of any person or the satisfaction of any other condition (other than the giving of notice for repayment), there is no Security over them and they are freely available to be applied towards any of the Obligations of Wynn Resorts hereunder.



5.4 **Full Release of Contingent Subordinated Funding Commitment**

Wynn Resorts shall be released from the Contingent Subordinated Funding Commitment in full on the Sponsor Support Release Date. Any remaining amount funded to the Securities Account pursuant to Clause 5.3 (*Funding into Securities Account*) shall be released from the Securities Account and paid to Wynn Resorts on the Sponsor Support Release Date.

6. **ENFORCEMENT NOTICE**

6.1 Prior to the Sponsor Support Release Date, if the Security Agent shall have delivered an Enforcement Notice, the Security Agent may, by written notice to Wynn Resorts and the Company:

6.1.1 require that Project Costs be funded, as and when required, by the remaining amounts of the Contingent Equity Commitment and/or the Contingent Subordinated Funding Commitment; and/or

6.1.2 call on and demand that the remaining amounts of the Contingent Equity Commitment and/or the Contingent Subordinated Funding Commitment be applied towards satisfaction of the Company's Obligations under the Senior Finance Documents,

whereupon Wynn Resorts shall, within 3 Business Days of receipt of notice under this Clause 6, cause such remaining amounts to be paid in accordance with Clause 10 (*Payments*).

6.2 Following the issuance of an Enforcement Notice, Wynn Resorts may give notice in writing to the Security Agent terminating its obligations under Clause 7 (*Permitted Transfers*) and in the event that such notice is given, the obligations of Wynn Resorts:

6.2.1 under Clause 7 (*Permitted Transfers*) shall terminate and Wynn Resorts and each Transferee Shareholder which is a Substantial Shareholder may sell, transfer or otherwise dispose of any of the Capital Stock of any Person who, legally or beneficially, directly or indirectly, owns or holds any of the Capital Stock of the Company without the prior written consent of the Security Agent; and

6.2.2 under Clause 8 (*Representations and Warranties*) and Clause 9 (*Covenants*) shall terminate on the date Wynn Resorts ceases to legally or beneficially, directly or indirectly, own or hold 5% or more of the Capital Stock of the Company.

7. **PERMITTED TRANSFERS**

Wynn Resorts and each Transferee Shareholder which is a Substantial Shareholder undertakes that it will not issue, sell, transfer or otherwise dispose of any of the Capital Stock of any person (including itself) who, legally or beneficially, directly or indirectly, owns or holds any of the Capital Stock of the Company without the prior written consent of the Security Agent unless the following conditions are met to the satisfaction of the Security Agent:

(a) a Wynn Event would not occur as a result of such issue, sale, transfer or disposal;

- (b) no other Event of Default would arise as a result of such issues, sale, transfer or disposal;
- (c) all relevant Legal Requirements are complied with in all material respects and the Security Agent receives evidence, in form and substance reasonably satisfactory to it, of any Macau SAR consent or authorisation required in connection with the issue, sale, transfer or disposal;
- (d) the purchaser, transferee or, as the case may be, other disposee has executed and delivered to the Security Agent a deed of accession substantially in the form set out in Schedule 2 (*Form of Deed of Accession*); and
- (e) the Security Agent receives relevant legal opinions, in form and substance reasonably satisfactory to it, concerning the undertakings assumed by the purchaser, transferee or other disposee pursuant to such deed of accession,

provided, however, notwithstanding anything in the foregoing to the contrary and for the avoidance of doubt, Wynn Resorts shall, so long as it is listed on a stock exchange, be permitted to issue, sell, transfer or otherwise dispose of its shares from time to time either directly or through one or more underwritings.

## 8. REPRESENTATIONS AND WARRANTIES

### 8.1 Matters represented

Wynn Resorts or any Transferee Shareholder which is a Substantial Shareholder makes to each Secured Party the representations and warranties set out in Schedule 4 (*Representations and warranties*) of the Common Terms Agreement insofar as they expressly relate to Wynn Resorts or to such Transferee Shareholder, in each case, as an Obligor or, to any of their respective assets, operations, businesses, prospects or other circumstances as at each of the dates specified in Clause 8.2 (*Timing*).

### 8.2 Timing

Unless stated to be made as of an earlier or different date or as provided in Clause 6.2.2, each of the representations and warranties referred to in Clause 8.1 (*Matters represented*) is made by Wynn Resorts and, if applicable, any Transferee Shareholder which is a Substantial Shareholder, on the Expansion Signing Date and at the CP Satisfaction Date and is deemed to be repeated by Wynn Resorts and, if applicable, any Transferee Shareholder which is a Substantial Shareholder, on each subsequent Advance Date with reference to the facts and circumstances then existing.

**9. COVENANTS**

**9.1 Content**

Wynn Resorts and each Transferee Shareholder which is a Substantial Shareholder hereby undertakes to each Secured Party that it will comply with the covenants applicable to it set out or referred to in Schedule 1 (*Covenants*).

**9.2 Duration**

Subject to Clause 6.2.2, the undertaking in Clause 9.1 (*Content*) shall remain in force from the Signing Date until the Secured Obligations have been discharged in full or, in the case of any Transferee Shareholder which is a Substantial Shareholder, the earlier of the date on which it ceases to be a Substantial Shareholder and the date on which the Secured Obligations have been discharged in full.

**10. PAYMENTS**

**10.1 Payments by Wynn Resorts**

All payments made by Wynn Resorts under this Agreement:

10.1.1 as Contingent Equity or (save where Clause 5.3 (*Funding into Securities Account*) applies) Contingent Subordinated Funding shall be paid into the Capital Contributions Account or, following the issuance of an Enforcement Notice, into such account as the Security Agent may notify Wynn Resorts for the purposes set out in Clause 3.1; and

10.1.2 pursuant to any other provision of this Agreement shall be paid into such account as the Security Agent may notify Wynn Resorts for such purpose.

**10.2 Set-off and counterclaim**

All payments made by Wynn Resorts under this Agreement will be made without set-off or counter-claim.

**10.3 Gross-up**

10.3.1 All payments by Wynn Resorts under this Agreement shall be made without any withholding or deduction and free and clear of, and without deduction for, or on account of any Taxes, except to the extent that Wynn Resorts is required by law to make payment subject to any Taxes.

10.3.2 If any Tax or amounts in respect of Tax must be withheld or deducted, or any other deductions must be made, from any amounts payable or paid by Wynn Resorts pursuant to sub-clause 10.3.1 above, Wynn Resorts shall (on the due date for payment of the amount subject to deduction) pay such additional amounts as may be necessary to ensure that the relevant recipient receives a net amount equal to the full amount which it would have received had payment not been made subject to Tax.

#### 10.4 Tax receipts

All Taxes required by law to be deducted or withheld by Wynn Resorts from any amounts paid or payable under this Agreement shall be paid by Wynn Resorts when due and Wynn Resorts shall, within 15 Business Days of a written request therefor, deliver to the Security Agent for the relevant Secured Party, evidence reasonably satisfactory to that Secured Party (including all relevant tax receipts if received within that time period) that the payment has been duly remitted to the appropriate authority (provided that Wynn Resorts 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. DEFAULT INTEREST

If Wynn Resorts fails to pay any amount to the Security Agent when due under this Agreement (including any amount payable under this Clause 11), it shall pay interest on the amount outstanding from the due date up to the date of actual payment (both before and after judgment) at the rate determined in accordance with the provisions of Clause 19.5 (*Interest on demands*) of the Deed of Appointment and Priority. Any interest accruing under this Clause 11 shall be immediately payable by Wynn Resorts on demand by the Security Agent.

#### 12. CURRENCY CONVERSION AND INDEMNITY

12.1 For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent or any Receiver pursuant to this Agreement from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent.

12.2 If any sum (a "**Sum**") due from Wynn Resorts under this Agreement or any order or judgment given or made in relation thereto has to be converted from the currency (the "**First Currency**") in which such Sum is payable into another currency (the "**Second Currency**") for the purpose of:

12.2.1 making or filing a claim or proof against Wynn Resorts; or

12.2.2 obtaining or enforcing an order or judgment in any court or other tribunal,

Wynn Resorts shall (through the Security Agent) indemnify each person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

**13. EXPENSES**

**13.1 Amendment costs**

If Wynn Resorts requests an amendment, waiver or consent under any Finance Document to which it is a party, Wynn Resorts shall, within 30 days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Security Agent in responding to, evaluating, negotiating or complying with that request.

**13.2 Other expenses**

Wynn Resorts shall, within 15 Business Days of demand, pay to the Security Agent, to the extent the same has not been paid by the Company under the Common Terms Agreement (but without any obligation on the part of the Security Agent to claim first against the Company) the amount of all costs and expenses (including legal fees) incurred by the Secured Parties in connection with action to preserve any rights against Wynn Resorts under this Agreement and/or the enforcement of rights against Wynn Resorts under this Agreement provided that prior to the delivery of an Enforcement Notice, such costs shall be reasonable.

**14. TERMINATION**

Without prejudice to Clause 6.2, the obligations of Wynn Resorts and the Company under this Agreement shall terminate and cease to have any effect on and as from the Release Date.

**15. CHANGES TO THE PARTIES**

15.1 Each of Wynn Resorts and the Company may not assign or transfer any or all of its rights (if any) and/or obligations under this Agreement.

15.2 The Security Agent may:

15.2.1 assign all or any of its rights under this Agreement; and

15.2.2 transfer all or any of its obligations (if any) under this Agreement,

to any successor Security Agent in accordance with the provisions of the Deed of Appointment and Priority, provided that it is acknowledged that such assignment or transfer shall not in any way prejudice the priority of the security constituted by this Agreement (which shall be assigned to such successor Security Agent pursuant to the terms of the Deed of Appointment and Priority). Upon such assignment and transfer taking effect, the successor Security Agent shall be and be deemed to be acting as agent and trustee for the Secured Parties for the purposes of this Agreement and in place of the former Security Agent.

15.3 Subject to the relevant provisions of the Finance Documents, each Secured Party may assign all or any of its rights under this Agreement (whether direct or indirect) in accordance with the provisions of the Finance Documents. It is acknowledged that none of the Finance Parties (other than the Assignor) has or shall have any obligation under this Agreement.

15.4 Each of Wynn Resorts and the Company irrevocably and unconditionally confirms that:

15.4.1 it consents to any assignment or transfer by any Finance Party of its rights and/or obligations made in accordance with the provisions of the Finance Documents;

15.4.2 it shall continue to be bound by the terms of this Agreement, notwithstanding any such assignment or transfer; and

15.4.3 the assignee or transferee of such Finance Party shall acquire an interest in this Agreement upon such assignment or transfer taking effect.

**16. NOTICES**

16.1 Any communication to be made under or in connection with this Agreement shall be made in writing but, unless otherwise stated, may be made by fax or letter.

16.2 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 this Agreement is identified with its name on the signing pages of the Wynn Resorts Support Agreement Deed of Amendment, or any substitute address, fax number or department or officer as the party may notify to the other parties by not less than 10 Business Days' notice.

16.3 Any communication or document made or delivered by one Person to another under or in connection with this Agreement shall only be effective:

16.3.1 if delivered personally or by overnight courier, when left at the relevant address;

16.3.2 if by way of fax, when received in legible form; or

16.3.3 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 16.2, if addressed to that department or officer.

16.4 Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by the Security 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 16.2 (or any substitute department or officer as the Security Agent shall specify for this purpose).

**17. PARTIAL INVALIDITY**

If at any time, any provision of this Agreement 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 of this Agreement under the law of such jurisdiction nor of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.

**18. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Agreement 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 this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**19. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

**20. 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.

**21. GOVERNING LAW**

This Agreement shall be governed by English law.

**22. JURISDICTION**

**22.1 Jurisdiction of English courts**

22.1.1 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**”).

22.1.2 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.

22.1.3 This Clause 22.1.3 is for the benefit of the Secured Parties only. As a result, no Secured Parties shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Finance Documents, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**22.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each of Wynn Resorts and the Company:

22.2.1 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

22.2.2 agrees that failure by a process agent to notify Wynn Resorts or the Company of the process shall not invalidate the proceedings concerned.

**23. EXERCISE OF RIGHTS**

Notwithstanding anything in Clause 22.1.3 to the contrary, the Secured Parties will only exercise their rights under this Agreement through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17.1 (*Resignation of Security Agent*) of the Deed of Appointment and Priority.

**IN WITNESS** whereof this Agreement has been executed and delivered as a deed by Wynn Resorts and signed by the duly authorised representatives of the Company and the Security Agent the day and year first before written.



**SCHEDULE 1  
COVENANTS**

Wynn Resorts and each Transferee Shareholder which is a Substantial Shareholder undertakes to:

- (a) **Concession Contract** - comply with the requirements of all material provisions of the Concession Contract as may relate to it (including obligations relating to the transfer of shares, notifications relating to shares and the maintaining of proper qualifications under Article 26 of the Concession Contract) and, to the extent it becomes aware of any such failure or circumstance, notify the Security Agent of any failure or any circumstance which may cause a failure by any Substantial Shareholder to maintain proper qualifications under Article 26 of the Concession Contract except to the extent that notification of such failure or circumstance has been given to the Security Agent by any other Obligor.

Wynn Resorts undertakes to:

- (a) **Common Terms Agreement** - perform (or refrain from performing) all such acts or things that the Company is obliged under the Common Terms Agreement (other than paragraph 22 of Schedule 5 Part A of the Common Terms Agreement) to cause Wynn Resorts to perform or refrain from performing.
- (b) **Default** - promptly give notice to the Security Agent of the occurrence of any Default as soon as it becomes aware of the same except to the extent notification of such occurrence has been given to the Security Agent by any other Obligor.

**SCHEDULE 2**  
**FORM OF DEED OF ACCESSION**

THIS DEED dated [ ] is supplemental to the Wynn Resorts Support Agreement (the “**Wynn Resorts Support Agreement**”) dated 14 September 2004 between Wynn Resorts, Limited, Wynn Resorts (Macau) S.A. and Société Générale, Hong Kong Branch as Security Agent (as amended, varied, supplemented and novated from time to time).

Words and expressions defined in or by reference in the Wynn Resorts Support Agreement have the same meanings when used in this Deed and the principles of construction and rules of interpretation set out or referred to therein shall also apply.

[ ] (the “**Existing Shareholder**”) has resolved to make a Permitted Transfer to [name of new Shareholder] (the “**New Shareholder**”).

The New Shareholder hereby agrees with each other person who is or who becomes a party to the Wynn Resorts Support Agreement that with effect on and from the date of this Deed it shall be severally bound by the Wynn Resorts Support Agreement as a Transferee Shareholder as if it had been party to the Wynn Resorts Support Agreement in that capacity.

The initial fax number, address and person designated by the New Shareholder for the purposes of Clause 16 (*Notices*) of the Wynn Resorts Support Agreement are:

[ ]

This Deed is governed by and shall be construed in accordance with the laws of England.

Executed as a deed by

[insert full name of the New Shareholder and execution clause appropriate thereto and to manner of execution]

**DATED 14 SEPTEMBER 2005**

**CERTAIN FINANCIAL INSTITUTIONS**  
as Original First Ranking Lenders

**CERTAIN FINANCIAL INSTITUTIONS**  
as Original Hedging Counterparties

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

**WYNN GROUP ASIA, INC.**  
as Third Ranking Finance Party

**WYNN RESORTS (MACAU) S.A.**  
as Company

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**  
as Security Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Intercreditor Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Hotel Facility Agent and Project Facility Agent

and

**OTHERS**

---

DEED OF APPOINTMENT AND PRIORITY  
DEED OF AMENDMENT

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**THIS DEED** is dated 14 September 2005 and made between:

- (1) **THE FINANCIAL INSTITUTIONS** named on the signing pages as First Ranking Lenders in their capacities as Original First Ranking Lenders;
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Hedging Counterparties in their capacities as Original Hedging Counterparties;
- (3) **BANCO NACIONAL ULTRAMARINO, S.A.** as Second Ranking Finance Party;
- (4) **WYNN GROUP ASIA, INC.** as Third Ranking Finance Party and Assignor;
- (5) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (6) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Security Agent;
- (7) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Intercreditor Agent;
- (8) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Hotel Facility Agent;
- (9) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Project Facility Agent;
- (10) **BANC OF AMERICA SECURITIES ASIA LIMITED, DEUTSCHE BANK AG, HONG KONG BRANCH** and **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in their capacities as Global Coordinating Lead Arrangers; and
- (11) **BANCO NACIONAL ULTRAMARINO, S.A.** in its capacity as POA Agent.

**RECITALS:**

- (A) The Company proposes to expand the Original Project.
- (B) The Secured Parties have agreed to amend certain Finance Documents and enter into additional Finance Documents (the Finance Documents, as so amended and together with such additional Finance Documents, including this Deed and the other Finance Documents specified in clause 1.3 (*Designation*) of the Common Terms Agreement Amendment Agreement dated on or about the date hereof between the Company and the Senior Secured Creditors referred to therein, the “**Amended Finance Documents**”) and the Original First Ranking Lenders have agreed to increase the size of certain of the Facilities originally provided thereunder in connection with the Expansion.
- (C) It has been agreed to amend the Deed of Appointment and Priority and to acknowledge its continued full force and effect in respect of the Amended Finance Documents and the Secured Obligations thereunder as set out below.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Incorporation of defined terms**

- (a) Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Deed.

(b) 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 Deed.

**1.2 Clauses**

In this Deed any reference to a “Clause” or a “Schedule” is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Deed.

**2. AMENDMENT**

The Deed of Appointment and Priority shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Deed of Appointment and Priority*).

**3. REPRESENTATIONS**

The representations and warranties (and acknowledgments in respect thereof) set out in clause 8 of the Schedule and expressed to be made by any of the Second Ranking Finance Party, the Third Ranking Finance Party or the Assignor are deemed to be made by it (by reference to the facts and circumstances then existing) on the date of this Deed and as if any reference therein to “DAP Finance Documents” or “Deed” included, to the extent relevant, this Deed and the Deed of Appointment and Priority as expressed to be amended thereby.

**4. CONTINUITY AND FURTHER ASSURANCE**

**4.1 Continuing obligations**

The provisions of the Deed of Appointment and Priority shall, save as amended by this Deed, continue in full force and effect, including in respect of the Amended Finance Documents and the Secured Obligations and Liabilities thereunder. Each of the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor acknowledges and agrees that:

- (a) the Deed of Appointment and Priority secures (and was intended as and from the date thereof to secure) the priority and the payment and discharge of the First Ranking Liabilities, the Second Ranking Liabilities and the First and Second Ranking Secured Obligations under the Finance Documents as amended, consolidated, supplemented, novated or replaced from time to time, including the Amended Finance Documents and, on the terms set out therein, in favour of the First Ranking Finance Parties, the Second Ranking Finance Party and the TRL Secured Parties comprised in the Secured Parties thereunder;
- (b) save as amended by this Deed, the Deed of Appointment and Priority continues to have full force and effect in accordance with its terms in respect of the Amended Finance Documents and to secure the priority and the payment and discharge of the First Ranking Liabilities, the Second Ranking Liabilities and the First and Second Ranking Secured Obligations thereunder in favour of such Secured Parties; and
- (c) without prejudice to the foregoing, to the extent (if any) to which, notwithstanding such acknowledgement and agreement, the Security expressed

to be granted by the Assignor under or pursuant to the Deed of Appointment and Priority does not have or continue to have such force or effect, the Assignor hereby grants in favour of the Security Agent Security for the payment and discharge of the First and Second Ranking Secured Obligations under the Amended Finance Documents over the Project Security described in the Deed of Appointment and Priority on the terms and conditions set out in the Schedule (all of which shall apply as between the Security Agent, the Assignor and the other parties hereto as if repeated and set out in full herein and as if dated as of the date hereof and as if any reference therein to "Deed" or "Schedule" included a reference to this Deed and "Clause" a reference to a clause of the Deed of Appointment and Priority).

**4.2 Further assurance**

Each party shall, upon the written request of the Security 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 Deed and the acknowledgements, agreements and, where relevant, grant of Security contemplated herein.

**5. MISCELLANEOUS**

**4.3 Incorporation of terms**

The provisions of clause 1.3 (*Third Party Rights*), clause 1.4 (*Non-recourse Liability*), clause 16.21 (*Perpetuity Period*), clause 19.2 (*Transaction and Enforcement Expenses*), clause 19.4 (*Stamp Taxes*), clause 22 (*Notices*), clause 23.1 (*Partial Invalidity*), clause 23.2 (*Remedies and Waivers*) and clause 27 (*Enforcement*) of the Schedule shall be incorporated into this Deed as if set out in full herein and as if references in those clauses to "Deed" are references to this Deed and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

**5.1 Counterparts**

This Deed 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 Deed.

**6. GOVERNING LAW**

This Deed is governed by English law.

**This Deed has been entered into on the date stated at the beginning of this Deed and executed as a deed by the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor and is intended to be and is delivered by them as a deed on the date specified above.**

**First Ranking Lenders and POA Agent**

*(As Project Facility Lender)*

**BANK OF AMERICA, N.A.**

By: */s/ Frederick Chin*

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2597-3910

Fax: (852) 2597-3914

Attention: Danny Chu

Copy to:

Bank of America, N.A.

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2847-5226/ (852) 2847-5897

Fax: (852) 2847-5886/ (852) 2847-5232

Attention: Brian Ho/Tiffany Lam

*(As Project Facility Lender)*

**DEUTSCHE BANK AG, HONG KONG BRANCH**

By: */s/ Jocelyn Court* */s/ Juhi Prasad*

Address: 45<sup>th</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-8130

Fax: (852) 2203-7241

Attention: Jackie Leung



---

Copy to:

Address: Floor 10  
60 Wall Street  
New York  
NY  
USA

Tel: (1) 212-250-6039

Fax: (1) 212-797-5690

Attention: MaryKay Coyle

And to:

Address: 51<sup>st</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-8047/(852) 2203-7463

Fax: (852) 2203-7215

Attention: Chris Gammons/Melissa Lu

*(As Project Facility Lender)*

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5414

Fax: (852) 2868-1874

Attention: Kenny Chan  
Commercial Back Office - Loans

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5610/(852) 2166-5615

Fax: (852) 2804-6215

Attention: David Gore/Kitty Leung

*(As Project Facility Lender)*

**AOZORA BANK, LTD.**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: 3-1  
Kudan-Minami 1-chome  
Chiyoda-ku  
Tokyo 102-8660  
Japan

Tel: (81) 3-5212-9412/ (81) 3-3239-8038/ (81) 3-5212-9410

Fax: (81) 3-3263-9872/ (81) 3-3263-7284/ (81) 3-3263-9872

Attention: Emiko Sano/Kouji Amano/Akira Nozu

*(As Project Facility Lender, Revolving Credit Facility Lender and POA Agent)*

**BANCO NACIONAL ULTRAMARINO, S.A.**

By: /s/ **Herculano Sousa** /s/ **Artur Santos**

Address: Avenida de Almeida Ribeiro  
No. 22  
Macau

Tel: (853) 355-188/ (853) 355-828/ (853) 398-9134

Fax: (853) 355-800/ (853) 356-867

Attention: Ronald Kan Cheok Kuan/Vitor Rosário/Violet Choi

---

*(As Hotel Facility Lender)*

**BANK OF CHINA LIMITED MACAU BRANCH**

By: */s/ Allen Fok* */s/ Huang Miao*

Address: Avenida Doutor Mario Soares  
Bank of China Building  
Macau

Tel: (853) 792-1698/ (853) 792-1659

Fax: (853) 792-1659

Attention: Wong Weng Tim/ Kuan Sio Keng

*(As Project Facility Lender)*

**WESTLB AG, HONG KONG BRANCH**

By: */s/ Peter Geldart* */s/ Mike Cheng*

Address: 36<sup>th</sup> Floor, Bank of America Tower  
12 Harcourt Road  
Hong Kong

Tel: (852) 2842-0214/ (852) 2842-0436

Fax: (852) 2842-0290

Attention: William Ip/Florence Yip

Copy to:

WestLB AG, Hong Kong Branch

Address: 36<sup>th</sup> Floor, Bank of America Tower  
12 Harcourt Road  
Hong Kong

Tel: (852) 2842-0458/ (852) 2842-0211

Fax: (852) 2842-0298

Attention: Jasper Wong/Angela Chen

---

*(As Project Facility Lender)*

**DBS BANK LTD., HONG KONG BRANCH**

By: /s/ **Peter Chan**

Address: 16<sup>th</sup> Floor, Man Yee Building  
68 Des Voeux Road Central  
Hong Kong

Tel: (852) 2848-3451/ (852) 2848-3452

Fax: (852) 2877-6703

Attention: Samuel Wong/Colum Ting  
Corporate Banking Middle Office

*(As Project Facility Lender)*

**THE ROYAL BANK OF SCOTLAND PLC**

By: /s/ **Sandra Pemberton**

Address: 50 Raffles Place  
#08-00, Singapore Land Tower  
Singapore 048623

Tel: (65) 6416-8734/ (65) 6416-8735

Fax: (65) 6223-2070

Attention: Grace Toh/Looi Yin Peng

*(As Hotel Facility Lender)*

**AAREAL BANK AG**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: Paulinenstrasse 15  
65189 Wiesbaden  
Germany

Tel: (49) 611-348-3430/ (49) 611-348-3381

Fax: (49) 611-348-2757/ (49) 611-348-2246

Attention: Fei Mao-Sander/Alexander Schöneich

(As Project Facility Lender)

**UNITED OVERSEAS BANK LIMITED**

By: /s/ **Chow Yew Hon**

Address: 25<sup>th</sup> Floor, Gloucester Tower  
The Landmark  
11 Pedder Street, Central  
Hong Kong

Tel: (852) 2820-9172/ (852) 2820-9167

Fax: (852) 2501-5738

Attention: Rosita Tse/Wanna So  
Credit Administration Department

(As Project Facility Lender)

**COMMERZBANK AKTIENGESELLSCHAFT, HONG KONG BRANCH**

By: /s/ **Devlin Li** /s/ **David Chan**

Address: 21<sup>st</sup> Floor, Hong Kong Club Building  
3A Chater Road, Central  
Hong Kong

Tel: (852) 2842-9605/ (852) 2842-9662

Fax: (852) 2842-9605/ (852) 2842-9609

Attention: Andreas Peter Kurtz/Sally Yuen

(As Project Facility Lender)

**ALLIED IRISH BANKS, p.l.c.**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: Trade Centre  
IFSC  
Dublin 1  
Ireland

Tel: (353) 1-641-7678

Fax: (353) 1-670-0064

Attention: Shane O'Neill  
Structured Finance

---

*(As Project Facility Lender)*

**STANDARD CHARTERED FIRST BANK KOREA LIMITED**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: 100 Gongpyung-dong  
Jongro-gu  
Seoul  
Korea

Tel: (82) 2-3702-4807

Fax: (82) 2-3702-4926

Attention: Gun Ko  
Corporate Finance, Project & Export Finance

*(As Project Facility Lender)*

**THE BANK OF NOVA SCOTIA**

By: /s/ **Andy Poon**

Address: 25<sup>th</sup> Floor, United Centre  
95 Queensway  
Hong Kong

Tel: (852) 2861 4882

Fax: (852) 2527 2527

Attention: Caesar Ng

*(As Hotel Facility Lender)*

**BAYERISCHE LANDESBANK, HONG KONG BRANCH**

By: /s/ **Stephan Schmidbauer** /s/ **Silvia Chin**

Address: 19<sup>th</sup> Floor, Standard Chartered Bank Building  
4A Des Voeux Road, Central  
Hong Kong

Tel: (852) 2978-8322/(852) 2978-8377

Fax: (852) 2978-8352

Attention: Doris Pang/Mary Chan

(As Project Facility Lender)

**BAYERISCHE HYPO- UND VEREINSBANK AG, HONG KONG BRANCH**

By: /s/ **Freddy Hung** /s/ **Edmond Chan**

Address: 13<sup>th</sup> Floor, Citic Tower  
1 Tim Mei Avenue, Central  
Hong Kong

Tel: (852) 2533-4100

Fax: (852) 2533-4700

Attention: Rita Hung

(As Project Facility Lender)

**HSB NORDBANK AG, HONG KONG BRANCH**

By: /s/ **Gilbert Yu** /s/ **Ulrich Gasser**

Address: 26<sup>th</sup> Floor  
Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2843-2665/ (852) 2843-2646

Fax: (852) 2845-9018

Attention: Stephen Chan/Bobby Kwok  
Banking Services

Copy to:

HSB Nordbank AG, Hong Kong Branch

By:

Address: 26<sup>th</sup> Floor  
Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2843-1019/ (852) 2843-2695

Fax: (852) 2845-9018

Attention: Gilbert Yu/Iris Wong

(As Hotel Facility Lender)

**INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED**

By: /s/ **Wilson Wan** /s/ **Kenneth Yung**

Address: 33<sup>rd</sup> Floor, ICBC Tower  
3 Garden Road, Central  
Hong Kong

Tel: (852) 3510-8682/ (852) 3510-8680

Fax: (852) 2851-9361

Attention: Amy Wong/Esther Cheng  
Loans Processing Department

(As Project Facility Lender and Revolving Credit Facility Lender)

**BANCO COMERCIAL DE MACAU, S.A.**

By: /s/ **Sam Tou** /s/ **Kenneth Chan**

Address: Avenida da Praia Grande  
No. 572  
Macau

Tel: (853) 7910-861/ (853) 7910-273

Fax: (853) 580-967

Attention: Sam Tou/Ida Chau

(As Project Facility Lender)

**BANK OF SCOTLAND**

By: /s/ **Jocelyn Court** /s/ **Juhi Prasad**

Address: 565 Fifth Avenue  
New York, NY 10017  
USA

Tel: (212) 450-0875/ (212) 450-0876/ (212) 450-0880

Fax: (212) 479-2807

Attention: Shirley Vargas/Victoria McFadden/Elizabeth Taduran



(As Project Facility Lender)

**BANCO ESPÍRITO SANTO DO ORIENTE, S.A.**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: Av. Dr. Mário Soares  
No. 323  
Bank of China Building  
28<sup>th</sup> Floor "A, E-F"  
Macau

Tel: (853) 7965-215/ (853) 7965-222/ (853) 7965-223

Fax: (853) 785-228

Attention: Sylvana Chan/Christine Lee

(As Project Facility Lender)

**CREDIT INDUSTRIEL ET COMMERCIAL, SINGAPORE BRANCH**

By: /s/ **Julia Tan** /s/ **Heng Seow Ee**

Address: 63 Market Street #15-01  
Singapore 048942

Tel: (65) 6231-9720

Fax: (65) 6536-7008

Attention: Kiang Kin Ngoh Credit Administration

(As Project Facility Lender)

**FAR EASTERN INTERNATIONAL BANK**

By: /s/ **David Gore** /s/ **Sun Peng Lui**

Address: 26<sup>th</sup> Floor, No.207, Sec. 2  
Tun Hwa S. Road, Taipei  
Taiwan, R.O.C.

Tel: (886) 2-2376-5776/ (886) 2-2376-5780

Fax: (886) 2-2376-5654

Attention: Chingh Siang Chen/Corrina Chen

(As Project Facility Lender)

**HANA BANK HONG KONG BRANCH**

By: /s/ **Hyung-Joon Park**

Address: 3314-16, 33<sup>rd</sup> Floor  
Two International Finance Centre  
8 Finance Street, Central  
Hong Kong

Tel: (852) 2522-3646/ (822) 3771-2348

Fax: (852) 2526-2999

Attention: Hyung-Joon Park/Yong-Jin Park

(As Project Facility Lender)

**NORDKAP BANK AG**

By: /s/ **Jocelyn Court** /s/ **Juhi Prasad**

Address: Thurgauerstrasse 54  
8050 Zurich  
Switzerland

Tel: (41) 44-306-49-18

Fax: (41) 44-306-49-11

Attention: Lai-Kuen Mak-Yau

Copy to:

Nordkap Bank AG

By:

Address: Thurgauerstrasse 54  
8050 Zurich  
Switzerland

Tel: (41) 44-306-49-26

Fax: (41) 44-306-49-11

Attention: Flavia Sennhauser

---

*(As Hotel Facility Lender)*

**THE BANK OF EAST ASIA, LIMITED**

By: /s/ **William Chu** /s/ **Christine Wong**

Address: 18<sup>th</sup> Floor  
10 Des Voeux Road Central  
Hong Kong

Tel: (852) 3608-0963/ (852) 3608-0968

Fax: (852) 3608-6133

Attention: William Chu/Christine Wong  
Corporate Lending & Syndication Department  
Corporate Banking Division

*(As Revolving Credit Facility Lender)*

**BANCO DELTA ASIA S.A.R.L.**

By: /s/ **David Lau** /s/ **Wong Kai Fun**

Address: Rua Do Campo  
No. 39-41  
Macau

Tel: (853) 3958-200/ (853) 3958-505

Fax: (853) 570-068/ (853) 3958-729

Attention: Philip Ng/Alex Chou

---

**Hedging Counterparties**

**BANC OF AMERICA SECURITIES ASIA LIMITED**

By: */s/ Kevin Salerno*

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2597-3910/ (852) 2847-5266

Fax: (852) 2597-3914/ (852) 2847-5886

Attention: Danny Chu/Brian Ho

Copy to:

Banc of America Securities Asia Limited

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2847-6002

Fax: (852) 2810-0821

Attention: Russell McCormack

**DEUTSCHE BANK AG**

By: */s/ Jocelyn Court* */s/ Juhi Prasad*

Address: 5 Temasek Boulevard  
#12-08 Suntec Tower 5  
Singapore 038985

Tel: (65) 6423-8132

Fax: (65) 6883-0847

Attention: Legal Department

**SOCIÉTÉ GÉNÉRALE**

By: /s/ *David Gore* /s/ *Ashley Clark Wilkins*

Address: Tour Société Générale  
92987 Paris La Defense Cedex  
France

Tel: (33) 1-4213-8363

Fax: (33) 1-4213-7508/(33) 1-4213-3325/(33) 1-4213-7830

Attention: Paris Head Office  
(OPER/DFI/TAU)

**The Second Ranking Finance Party**

Executed as a deed by ) /s/ *Herculano Sousa*

**BANCO NACIONAL ULTRAMARINO, S.A.) Artur Santos**

acting by Herculano Sousa and Artur Santos )

in the presence of: )

Name of Witness: Henrique Saldanha

Occupation of Witness: Solicitor

Address of Witness: 429 Avenida da Praia Grande  
25<sup>th</sup> Floor  
Macau

Address: Avenida de Almeida Ribeiro  
No. 22  
Macau

Tel: (853) 355-188/(853) 355-828/(853) 398-9134

Fax: (853) 355-800/(853) 356-867

Attention: Ronald Kan Cheok Kuan/Vitor Rosário/Violet Choi

**The Third Ranking Finance Party and the Assignor**

Executed as a deed by ) /s/ *Matthew Maddox*  
**WYNN GROUP ASIA, INC.** )  
acting by Matt Maddox under the board resolution )  
of 1 August 2005 in the presence of: )

Name of Witness: Jay Schall  
Occupation of Witness: Attorney at Law  
Address of Witness: 30<sup>th</sup> Floor, Tower Two  
Lippo Centre  
89 Queensway  
Central  
Hong Kong

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Tel: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel

---

**The Company**

**WYNN RESORTS (MACAU) S.A.**

By: /s/ *Matthew Maddox*

Address: 335-341 Alameda Dr. Carlos d' Assumpção  
9<sup>th</sup> Floor  
Hotline Center  
Macau

Tel: (853) 889-966

Fax: (853) 329-966

Attention: Matt Maddox

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
USA

Tel: (1) 702-770-2111

Fax: (1) 702-770-1520

Attention: General Counsel



**The Security Agent**

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**

By: */s/ David Gore* */s/ Sun Peng Lui*

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel (852) 2166-5671/ (852) 2166-5667

Fax: (852) 2804-6215

Attention: Sunny Lui/ Kenneth Choi  
Risk & Agency

**The Intercreditor Agent**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: */s/ David Gore* */s/ Sun Peng Lui*

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5671/ (852) 2166-5430

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Attention: Sunny Lui/ Raymond Fung  
Risk & Agency

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5414/ (852) 2166-5344

Fax: (852) 2868-1874

Attention: Kenny Chan/ Elaine Tsang  
Commercial Back Office - Loans

---

**The Hotel Facility Agent and Project Facility Agent**

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: */s/ David Gore* */s/ Sun Peng Lui*

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
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Tel: (852) 2166-5671/ (852) 2166-5665

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Attention: Sunny Lui/ Michael Poon  
Risk & Agency

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Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
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Tel: (852) 2166-5414/ (852) 2166-5344

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Attention: Kenny Chan/ Elaine Tsang  
Commercial Back Office - Loans

**The Global Coordinating Lead Arrangers**

**BANC OF AMERICA SECURITIES ASIA LIMITED**

By: */s/ Kevin Salerno*

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2597-3910

Fax: (852) 2597-3914

Attention: Danny Chu

Copy to:

Banc of America Securities Asia Limited

Address: 42<sup>nd</sup> Floor, Two International Finance Centre  
8 Finance Street  
Central  
Hong Kong

Tel: (852) 2847-6002

Fax: (852) 2810-0821

Attention: Russell McCormack

**DEUTSCHE BANK AG, HONG KONG BRANCH**

By: /s/ *Jocelyn Court* /s/ *Juhi Prasad*

Address: 51<sup>st</sup> Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Tel: (852) 2203-8047/(852) 2203-7463

Fax: (852) 2203-7215

Attention: Chris Gammons/Melissa Lu

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**

By: /s/ *David Gore* /s/ *Sun Peng Lui*

Address: Level 38, 3 Pacific Place  
1 Queen's Road East  
Hong Kong

Tel: (852) 2166-5610/(852) 2166-5615

Fax: (852) 2804-6215

Attention: David Gore/Kitty Leung

**SCHEDULE  
AMENDED DEED OF APPOINTMENT AND PRIORITY**

**DATED 14 SEPTEMBER 2004**

**CERTAIN FINANCIAL INSTITUTIONS**  
as Original First Ranking Lenders

**CERTAIN FINANCIAL INSTITUTIONS**  
as Original Hedging Counterparties

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

**WYNN GROUP ASIA, INC.**  
as Third Ranking Finance Party

**WYNN RESORTS (MACAU) S.A.**  
as Company

**SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH**  
as Security Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Intercreditor Agent

**SOCIÉTÉ GÉNÉRALE ASIA LIMITED**  
as Hotel Facility Agent and Project Facility Agent

and

**OTHERS**

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DEED OF APPOINTMENT AND PRIORITY  
(As amended by the Deed of Appointment and  
Priority Deed of Amendment dated 14 September 2005)

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**THIS DEED** is dated 14 September 2004 and made between:

- (1) **THE FINANCIAL INSTITUTIONS** named in Schedule 5 as First Ranking Lenders (the “**Original First Ranking Lenders**”);
- (2) **THE FINANCIAL INSTITUTIONS** named in Schedule 5 as Hedging Counterparties (the “**Original Hedging Counterparties**”);
- (3) **BANCO NACIONAL ULTRAMARINO, S.A.** (the “**Second Ranking Finance Party**”);
- (4) **WYNN GROUP ASIA, INC.**, a company organised under the laws of Nevada, as creditor of the Third Ranking Liabilities (the “**Third Ranking Finance Party**”) and as assignor under Schedule 2 (*Assignment of Third Ranking Liabilities*) (the “**Assignor**”);
- (5) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (6) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** as agent and security trustee for (unless otherwise provided herein) the Secured Parties (the “**Security Agent**”);
- (7) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Intercreditor Agent (the “**Intercreditor Agent**”);
- (8) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Hotel Facility Agent (the “**Hotel Facility Agent**”);
- (9) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Project Facility Agent (the “**Project Facility Agent**”);
- (10) **BANC OF AMERICA SECURITIES ASIA LIMITED, DEUTSCHE BANK AG, HONG KONG BRANCH** and **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in their capacities as global coordinating lead arrangers of the Facilities (the “**Global Coordinating Lead Arrangers**” or “**GCLAs**”); and
- (11) **BANCO NACIONAL ULTRAMARINO, S.A.** in its capacity as agent for the Security Agent under the Power of Attorney (the “**POA Agent**”).

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, terms defined in the Common Terms Agreement shall, unless otherwise defined in this Deed, bear the same meaning when used in this Deed and, in addition:

“**Affiliate**” means, in relation to any Person, a Subsidiary of that Person or a Holding Company of that Person or any other Subsidiary of that Holding Company.

“**Assignor Accession Deed**” means a deed in substantially the form set out in Schedule 3 (*Form of Assignor Accession Deed*).

“**Charged Property**” means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

**“Collateral Rights”** means all rights, powers and remedies of the Security Agent provided by Schedule 2 (*Assignment of Third Ranking Liabilities*) or by law.

**“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 Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent.

**“Confirmation of Wong Share Pledge”** means the Confirmation of Wong Share Pledge dated on or about the date of the Deed of Appointment and Priority Deed of Amendment between Mr Wong Chi Seng, the Security Agent and the Company.

**“DAP Finance Documents”** means this Deed, the Second Ranking Facility Agreement and the Third Ranking Funding Agreement.

**“Deed of Appointment and Priority Deed of Amendment”** means the deed so entitled between the parties hereto.

**“Delegate”** means any delegate, agent (including the POA Agent), attorney or co-trustee appointed by the Security Agent in accordance with the terms of the relevant Finance Documents.

**“Enforcement Action”** means:

- (a) the acceleration of any Liabilities or any declaration that any Liabilities are prematurely due and payable or payable on demand;
- (b) the taking of any steps to perfect, enforce or require the perfection or enforcement of any of the Transaction Security (including the crystallisation or consolidation of any floating charge forming part of the Transaction Security) or any other Security in respect of any Liabilities;
- (c) the making of any demand against any Grantor or any other Person in relation to any guarantee, indemnity or other assurance against loss in respect of any Liabilities or exercising any right to require any Grantor or any other Person to acquire any Liability (including exercising any put or call option against any Grantor or any other Person) for the redemption or purchase of any Liability;
- (d) the exercise of any right of set-off against any Grantor or any other Person in respect of any Liabilities;
- (e) the suing for, commencing or joining of any legal or arbitration proceedings against any Grantor or any other Person to recover or in respect of any Liabilities;
- (f) the entering into of any composition, assignment or arrangement in the context of insolvency with any Grantor; or
- (g) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in

relation to, the winding up, bankruptcy, dissolution, administration or reorganisation of any Grantor or any suspension of payments or moratorium of any indebtedness of any Grantor, or any analogous procedure or step in any jurisdiction.

**“Enforcement Notice”** means a notice of enforcement delivered by the Security Agent to any Sponsor after receipt by the Security Agent:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, of an instruction from the Intercreditor Agent stating that an Event of Default under the First Ranking Finance Documents has occurred (which instruction may only be given by the Intercreditor Agent pursuant to Clause 19.2 of the Common Terms Agreement) and, as at the date of such notice from the Intercreditor Agent, is continuing;
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, of an instruction from the Second Ranking Finance Party stating that an Event of Default under the Second Ranking Finance Documents has occurred and, as at the date of such notice from the Second Ranking Finance Party, is continuing; or
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, of an instruction from the Third Ranking Finance Party stating that an Event of Default under the Third Ranking Finance Documents has occurred and, as at the date of such notice from the Third Ranking Finance Party, is continuing.

**“Event of Default”** means:

- (a) in relation to or under the Common Terms Agreement, any event or circumstance specified as such in the Common Terms Agreement;
- (b) in relation to or under the Second Ranking Facility Agreement, any event or circumstance specified as such in the Second Ranking Facility Agreement or if no such event or circumstance is specified in the Second Ranking Facility Agreement, the failure by the Company to pay any amount within 5 days after such amount becomes due in accordance with the terms thereof; or
- (c) in relation to or under the Third Ranking Funding Agreement, any event or circumstance specified as such in the Third Ranking Funding Agreement, and an “Event of Default” means any of them.



**“Finance Document”** means each of the First Ranking Finance Documents, the Second Ranking Finance Documents, the Third Ranking Finance Documents and any other document designated as such by the Security Agent and the Company.

**“Finance Parties”** means the Secured Parties other than the Security Agent.

**“Finance Party Accession Undertaking”** means an undertaking in substantially the form set out in Schedule 1 (*Form of Finance Party Accession Undertaking*).

**“First and Second Ranking Secured Obligations”** means the Secured Obligations other than the Third Ranking Liabilities.

**“First Ranking Finance Documents”** means the Senior Finance Documents as defined in the Common Terms Agreement.

**“First Ranking Finance Parties”** means the First Ranking Funding Parties, the Intercreditor Agent, the GCLAs, the Hotel Facility Agent and the Project Facility Agent.

**“First Ranking Funding Parties”** means the First Ranking Lenders and the Hedging Counterparties.

**“First Ranking Lenders”** means each Original First Ranking Lender and any Person which becomes a Party to this Deed as a First Ranking Lender in accordance with Clause 18 (*Change of Party and Accession by Hedging Counterparties*).

**“First Ranking Liabilities”** means the Liabilities owed by the Grantors to the First Ranking Finance Parties under the First Ranking Finance Documents.

**“Funding Parties”** means the First Ranking Lenders, the Hedging Counterparties, the Second Ranking Finance Party and the Third Ranking Finance Party.

**“Grantors”** means the Company, the Obligors, Mr. Wong Chi Seng and the Assignor.

**“Hedging Counterparties”** means each Original Hedging Counterparty and any Hedging Counterparty (as defined in the Common Terms Agreement) which becomes a Party in accordance with the terms of Clause 18.2 or Clause 18.4 (*Hedging Counterparties*).

**“Hedging Liabilities”** means the Liabilities owed by the Company to the Hedging Counterparties under the Hedging Agreements.

**“Insolvency Event”** means, in relation to any Grantor (other than Mr Wong Chi Seng):

- (a) such Grantor shall have commenced any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, administration, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial

part of its assets, or such Grantor shall make a general assignment for the benefit of its creditors;

- (b) there shall be commenced against such Grantor any case, proceeding or other action of a nature referred to in sub-paragraph (a) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismitted, undischarged or unbonded for a period of 60 days;
- (c) there shall be commenced against such Grantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;
- (d) such Grantor consents to, approves of, or acquiesces in, any of the acts set forth in sub-paragraphs (a), (b) or (c) above; or
- (e) such Grantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

**“Liabilities”** means all present and future liabilities and obligations at any time of:

- (a) any Sponsor to any First Ranking Finance Party (including the Obligations as defined in the Common Terms Agreement), the Second Ranking Finance Party and/or the Third Ranking Finance Party, in each case under the Finance Documents; and/or
- (b) the Assignor to any First Ranking Finance Party and/or the Second Ranking Finance Party under this Deed,

both actual and contingent and whether incurred solely or jointly or in any other capacity under the Finance Documents together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (i) any refinancing, novation, deferral or extension;
- (ii) any claim for damages or restitution; and
- (iii) any claim as a result of any recovery by any Grantor (other than Mr Wong Chi Seng) of a payment or discharge on the grounds of preference, and any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of those amounts in any insolvency or other proceedings.

**“Mandatory Permitted Lien”** means:

- (a) any attachment or judgment Lien not constituting an Event of Default; or
- (b) any other Lien arising by mandatory operation of law,

provided that in each case such Lien is either discharged within 21 days of arising or one or more bonds are provided for such Lien on such terms and for such amount satisfactory to the Security Agent (acting reasonably).

“**Party**” means a party to this Deed.

“**Performance Bond**” means the bank guarantee issued or to be issued by the Second Ranking Finance Party under or pursuant to the Second Ranking Facility Agreement.

“**Permitted Payment**” means:

- (a) payment to the Second Ranking Finance Party permitted under Clause 5.2 (*No Payment*) and Clause 5.3 (*Restricted Payments*); and
- (b) payment to the Third Ranking Finance Party permitted under Clause 6.2 (*No Payment*), Clause 6.3 (*Accrual of Interest*) and Clause 6.4 (*Restricted Payments*).

“**Receiver**” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

“**Second Ranking Facility Agreement**” means the Bank Guarantee Reimbursement Agreement dated 14 September 2004 between the Company and the Second Ranking Finance Party.

“**Second Ranking Finance Documents**” means the Second Ranking Facility Agreement.

“**Second Ranking Liabilities**” means the Liabilities owed by the Grantors to the Second Ranking Finance Party under the Second Ranking Finance Documents.

“**Secured Obligations**” means all the Liabilities (other than any of the Liabilities owed by Mr Wong Chi Seng) and all other present and future obligations at any time due, owing or incurred by any Grantor (other than Mr Wong Chi Seng) to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

“**Secured Parties**” means the Security Agent, any Receiver or Delegate, and each of the First Ranking Finance Parties, the Second Ranking Finance Party and the Third Ranking Finance Party from time to time but, in the case of each First Ranking Finance Party, the Second Ranking Finance Party and the Third Ranking Finance Party, only if it is a party to this Deed or has delivered to the Security Agent a duly executed Finance Party Accession Undertaking accepted by the Security Agent in accordance with Clause 18.6 (*Finance Party Accession Undertaking*) and, in the case of a First Ranking Finance Party (other than the Intercreditor Agent), the Intercreditor Agent.

“**Security**” means:

- (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any Person;

(b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any Person or;

(c) any other type of preferential arrangement (including any title transfer and retention arrangement) having a similar effect.

“**Security Providers**” means each Direct Insurer which is a party to an Assignment of Reinsurances and the Grantors.

“**Sponsors**” means the Grantors (other than the Assignor in its capacity as such).

“**Third Ranking Funding Agreement**” means the Subordinated Funding Agreement and the notes issued thereunder.

“**Third Ranking Finance Documents**” means the Third Ranking Funding Agreement.

“**Third Ranking Liabilities**” means any Liabilities owed by the Company to the Third Ranking Finance Party under the Third Ranking Finance Documents.

“**Transaction Security**” means the Security created or expressed to be created under or pursuant to any of the Security Documents (including, without limitation, the assignment created or expressed to be created under or pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*)).

“**TRL Enforcement Notice**” means a notice of enforcement delivered by the Security Agent to the Assignor after receipt by the Security Agent:

(a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, of an instruction from the Intercreditor Agent stating that an Event of Default has occurred under the First Ranking Finance Documents and (as at the date of such notice from the Intercreditor Agent) is continuing; or

(b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, of an instruction from the Second Ranking Finance Party stating that an Event of Default has occurred under the Second Ranking Facility Agreement and (as at the date of such notice from the Second Ranking Finance Party) is continuing.

“**TRL Secured Parties**” means the Secured Parties (other than the Third Ranking Finance Party).

“**Wong Event**” has the meaning given in the Wong Share Pledge.

## 1.2 Construction

(a) In this Deed, the rules of construction and interpretation contained in Clause 1.2 (*Principles of Construction*) and Clause 1.3 (*Rules of Interpretation*) of the

Common Terms Agreement shall be incorporated into this Deed and shall apply to the construction of this Deed and, unless a contrary indication appears a reference in this Deed to:

- (i) any Grantor, the Assignor, any Secured Party or any Party shall be construed so as to include its successors in title, permitted assignees and permitted transferees and, in the case of the Security Agent, any Person for the time being appointed as agent and security trustee or security trustees in accordance with this Deed and, in the case of the POA Agent, any Person for the time being appointed as agent for the Security Agent under the Power of Attorney in accordance with this Deed;
- (ii) “assets” includes present and future properties, revenues and rights of every description; and
- (iii) a Second Ranking Finance Document or a Third Ranking Finance Document shall be construed as that Second Ranking Finance Document or, as the case may be, that Third Ranking Finance Document amended or novated (however fundamentally) as permitted by this Deed.

### 1.3 **Third party rights**

- (a) The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives subject always to the terms of Clause 26 (*Governing Law*) and Clause 27 (*Enforcement*).
- (b) Except as provided in sub-paragraph (a) above, a Person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- (c) The consent of any Person who is not a party to this Deed is not required to rescind or vary this Deed.

### 1.4 **Non-Recourse Liability**

Notwithstanding any provision in the Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Finance Document to which such Operative is party. The sole recourse of the Secured Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other 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 Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

## 2. **PARALLEL DEBT (COVENANT TO PAY THE SECURITY AGENT)**

- 2.1 Notwithstanding any other provision of this Deed, the Company hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of

each amount payable by the Company to each of the Secured Parties under each of the Finance Documents as and when that amount falls due for payment under the relevant Finance Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting the Company, to preserve its entitlement to be paid that amount.

- 2.2 The Security Agent shall have its own independent right to demand payment of the amounts payable by the Company under Clause 2.1, irrespective of any discharge of the Company's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting the Company, to preserve their entitlement to be paid those amounts.
- 2.3 Any amount due and payable by the Company to the Security Agent under this Clause 2 (*Parallel Debt (Covenant to Pay the Security Agent)*) shall be decreased to the extent that the other Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Finance Documents.

### 3. **RANKING AND PRIORITY**

Each of the Parties agrees that the Liabilities owed by, and the Transaction Security granted by, the Grantors to the Secured Parties rank in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

- (a) first, the First Ranking Liabilities;
- (b) second, the Second Ranking Liabilities; and
- (c) third, the Third Ranking Liabilities.

### 4. **FIRST RANKING FINANCE PARTIES: RIGHTS AND OBLIGATIONS**

#### 4.1 **Payment**

The Grantors may pay, repay, redeem or acquire the First Ranking Liabilities at any time in accordance with the terms of the First Ranking Finance Documents.

#### 4.2 **Security**

The First Ranking Finance Parties may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the First Ranking Liabilities in addition to the Transaction Security.

#### 4.3 **Increase of principal**

The First Ranking Finance Parties may from time to time (if permitted under the terms of the First Ranking Finance Documents), without the consent of the Second Ranking Finance Party or the Third Ranking Finance Party, increase the principal amount available under the First Ranking Finance Documents up to USD1,200,000,000 (or, if the Company incurs Financial Indebtedness permitted under paragraph 2(f) of Schedule 5 Part B of the Common Terms Agreement, USD1,200,000,000 plus an amount being 150% of the aggregate amount of such Financial Indebtedness incurred by the Company) shall be treated as being part of the First Ranking Liabilities.

#### 4.4 Amendments

The First Ranking Finance Parties may (in addition to any increase in principal permitted by this Deed) amend the First Ranking Finance Documents (other than this Deed) at any time, provided such amendments are made in accordance with the terms thereof.

### 5. SECOND RANKING FINANCE PARTY: RIGHTS AND OBLIGATIONS

#### 5.1 Subordination

Each of the Company, the Assignor and the Second Ranking Finance Party agrees that, prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, the Second Ranking Liabilities and the claims of the Second Ranking Finance Party (whether in respect of principal, interest or otherwise) in respect of the Second Ranking Liabilities shall be subordinated to the First Ranking Liabilities and postponed to the claims of the First Ranking Finance Parties in respect of the First Ranking Liabilities in accordance with the terms hereof. For the avoidance of doubt, this Clause is without prejudice to Clause 15 (*Application of Proceeds*).

#### 5.2 No Payment

Except as permitted under Clause 11 (*Effect of Insolvency Event*) and Clause 5.3 (*Restricted Payments*), each of the Company, the Assignor and the Second Ranking Finance Party hereby undertakes and agrees that, unless and until the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities:

- (a) no Second Ranking Liabilities (nor any part thereof) shall be payable or repayable, paid or repaid; and
- (b) none of the Second Ranking Finance Party and the Grantors shall at any time have or claim any right of set-off, deduction or counterclaim in respect of the Second Ranking Liabilities or any part thereof, and each of the Second Ranking Finance Party, the Company and the Assignor agrees that none of them shall exercise any such right which it may otherwise have and hereby waives all such rights,

except that:

- (i) at all times the Company may pay annual fees in accordance with section 2.4 and section 2.5 of the Second Ranking Facility Agreement and, if the Performance Bond is drawn, interest in accordance with section 3.4 of the Second Ranking Facility Agreement; and
- (ii) if:
  - (A) the Company fails to pay any sum due under the Concession Contract which failure is of a technical or administrative nature;
  - (B) the Performance Bond is drawn by the Macau SAR in respect of such failure in an amount not more than the sum referred to in paragraph (A) above; and

(C) the Company has delivered evidence satisfactory to the Intercreditor Agent that it had sufficient funds available to make the payment referred to in paragraph (A) above,

the Company may indemnify the Second Ranking Finance Party against the amount so drawn by the Macau SAR under the Performance Bond provided that the Second Ranking Finance Party reinstates the Performance Bond to the amount of bank guarantee required under article 61(3) of the Concession Contract and there is no continuing default under the Concession Contract in respect of such failure to pay.

### 5.3 **Restricted Payments**

The Company may pay Second Ranking Liabilities out of moneys which could be used to make Restricted Payments in accordance with paragraph 6 of Part B (*Negative Covenants*) of Schedule 5 (*Covenants*) of the Common Terms Agreement at the time such Restricted Payments can be made.

### 5.4 **Security**

The Second Ranking Finance Party may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Second Ranking Liabilities in addition to the Transaction Security and the Lien referred to in paragraph 3(n) of Schedule 5 Part B of the Common Terms Agreement.

### 5.5 **Amendments**

The Second Ranking Finance Party may amend the Second Ranking Finance Documents in accordance with their terms at any time unless that amendment is, in relation to the provisions of the Second Ranking Finance Documents as at the date of this Deed, a change:

- (a) in the principal amount of the facility available under the Second Ranking Facility Agreement or the face value of the bank guarantee issued or to be issued pursuant to the Second Ranking Facility Agreement;
- (b) in the currency of repayment, reimbursement or prepayment of that facility;
- (c) the effect of which is to accelerate all or any of the dates of repayment, reimbursement or prepayment of that facility;
- (d) in the basis on which interest, fees or commission accrue, are calculated or are payable;
- (e) the effect of which is to make any Grantor liable to make additional or increased payments; or
- (f) to the representations, undertakings, financial covenants or events of default unless such representations, undertakings, financial covenants or, as the case may be, events of default after such change are no more restrictive or onerous to any Grantor than the terms under the First Ranking Finance Documents

in which case the prior written consent of the Intercreditor Agent is required.



5.6 **Provision of Documents**

The Second Ranking Finance Party shall, promptly upon any amendment of any of the Second Ranking Finance Documents, deliver a copy of such amendment to the Security Agent.

6. **THIRD RANKING FINANCE PARTY: RIGHTS AND OBLIGATIONS**

6.1 **Subordination**

Each of the Company and the Third Ranking Finance Party agrees that, prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Liabilities and the claims of the Third Ranking Finance Party (whether in respect of principal, interest or otherwise) in respect of the Third Ranking Liabilities shall be subordinated to the First Ranking Liabilities and the Second Ranking Liabilities and postponed to the claims of the First Ranking Finance Parties in respect of the First Ranking Liabilities and the Second Ranking Finance Party in respect of the Second Ranking Liabilities in accordance with the terms hereof.

6.2 **No Payment**

Except as permitted under Clause 11 (*Effect of Insolvency Event*), Clause 6.3 (*Accrual of Interest*) and Clause 6.4 (*Restricted Payments*), each of the Company and the Third Ranking Finance Party hereby undertakes and agrees that, unless and until the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities:

- (a) no Third Ranking Liabilities (nor any part thereof) shall be payable or repayable, paid or repaid; and
- (b) none of the Third Ranking Finance Party and the Sponsors shall at any time have or claim any right of set-off, deduction or counterclaim in respect of the Third Ranking Liabilities or any part thereof, and each of the Third Ranking Finance Party and the Sponsors agrees that none of them shall exercise any such right which it may otherwise have and hereby waives all such rights,

except that, the Company may pay:

- (i) at any time prior to the Expansion Opening Date, interest (but not any other payment) then due in accordance with the terms of the Third Ranking Funding Agreement (in this Clause "**Interest**") on an Interest Payment Date for an Advance under any Term Loan Facility provided that:
  - (1) the aggregate amount of such Interest paid prior to the Expansion Opening Date may not exceed US\$14,000,000 (or, if the principal amount of the Subordinated Funding is increased to the extent permitted under paragraph 15.2.1(c)(i)(1) of Schedule 5 Part B of the Common Terms Agreement, US\$14,000,000 plus any Interest paid on any increase in the principal amount of the

- Subordinated Funding as permitted under paragraph 15.2.1(c)(i)(1) of Schedule 5 Part B of the Common Terms Agreement, provided that the amount of such Interest shall not exceed the amount estimated to accrue or be payable in accordance with paragraph 15.2.1(c)(i)(1) at the time of such increase);
- (2) the proceeds of Contingent Equity, the Contingent Debt Facility, Contingent Subordinated Funding and the Revolving Credit Facility and the proceeds, damages and funds referred to in paragraphs (d), (e), (f) and (h) of the definition of “Available Funding” may not be applied towards payment of any such Interest;
  - (3) the Company has delivered evidence reasonably satisfactory to the Intercreditor Agent that the Available Funding (excluding, in the case where such payment is made prior to the Initial Advance, any amount of Net Operating Cashflow in excess of the Base Original Project Cashflow Amount, Contingent Equity, any Available Commitments under the Contingent Debt Facilities and Contingent Subordinated Funding) immediately after such payment will be sufficient to meet all Remaining Project Costs;
  - (4) there is no Event of Default under paragraphs (a), (e) and/or (f) of Schedule 10 (*Events of Default*) to the Common Terms Agreement which is continuing; and
  - (5) there is no acceleration of any or all of the First Ranking Liabilities or any other Enforcement Action (other than the enforcement of security under the Wong Share Pledge as a result of the occurrence or continuance of an event that amounts only to a Wong Event) being taken under any or all of the First Ranking Finance Documents; or
- (ii) at any time on or after the Expansion Opening Date, Interest in accordance with the terms of the Third Ranking Funding Agreement on an Interest Payment Date for an Advance under any Term Loan Facility provided that:
- (1) such payment is made after payment in full of:
    - (x) all scheduled interest and principal which are due and payable under the First Ranking Finance Documents; and
    - (y) all amounts permitted to be paid under Clause 5.2 (*No Payment*) and which are due and payable under the Second Ranking Facility Agreement on or prior to such Interest Payment Date;

- (2) there is no Event of Default under paragraphs (a), (e) and/or (f) of Schedule 10 (*Events of Default*) to the Common Terms Agreement which is continuing; and
  - (3) there is no acceleration of any or all of the First Ranking Liabilities or any other Enforcement Action (other than the enforcement of security under the Wong Share Pledge as a result of the occurrence or continuance of an event that amounts only to a Wong Event) being taken under any or all of the First Ranking Finance Documents.
- (iii) notwithstanding any provision in the Senior Finance Documents to the contrary:
- (1) upon receipt of such payments of interest in accordance with the foregoing, the Third Ranking Finance Party shall be entitled to use, apply, dividend or otherwise distribute such funds in its discretion (subject to compliance with applicable Legal Requirements); and
  - (2) upon receipt of any such funds in accordance with the foregoing by any Wynn Obligor (if applicable) from the Third Ranking Finance Party, such Wynn Obligor shall be entitled to use, apply, dividend or otherwise distribute such funds in its discretion (subject to compliance with applicable Legal Requirements).

### 6.3 **Accrual of Interest**

To the extent that interest (but not any other payment) accrued under the terms of the Third Ranking Funding Agreement is not permitted to be paid under Clause 6.2 (*No Payment*), such interest may be paid on any succeeding Interest Payment Date for an Advance under any Term Loan Facility (together with interest accrued thereon at the same rate as the rate of interest applicable to the principal amount of the Third Ranking Funding Agreement) to the extent that such interest is permitted to be paid under Clause 6.2 (*No Payment*) subject to the Reserve Accounts being fully funded and any prepayment of Advances under the Term Loan Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*) being made.

### 6.4 **Restricted Payments**

The Company may pay Third Ranking Liabilities out of moneys which could be used to make Restricted Payments in accordance with paragraph 6 of Part B (*Negative Covenants*) of Schedule 5 (*Covenants*) of the Common Terms Agreement at the same time as such Restricted Payments can be made.

### 6.5 **Security**

The Third Ranking Finance Party may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Third Ranking Liabilities in addition to the Transaction Security.

## 6.6 Amendments

The Third Ranking Finance Party may amend the Third Ranking Finance Documents in accordance with their terms at any time unless that amendment is, in relation to the provisions of the Third Ranking Finance Documents as at the date of this Deed, a change:

- (a) in the principal amount of the facility available under the Third Ranking Funding Agreement provided that this restriction shall not apply to any increase in the principal amount of such facility to the extent permitted by paragraph 15.2.1(c)(i)(1) of Part B of Schedule 5 (*Covenants*) of the Common Terms Agreement;
- (b) in the currency of repayment, reimbursement or prepayment of that facility;
- (c) the effect of which is to accelerate all or any of the dates of repayment, reimbursement or prepayment of that facility;
- (d) in the basis on which interest, fees or commission accrue, are calculated or are payable;
- (e) the effect of which is to make any Sponsor liable to make additional or increased payments; or
- (f) to the representations, undertakings, financial covenants or events of default unless such representations, undertakings, financial covenants or, as the case may be, events of default after such change are no more restrictive or onerous to any Sponsor than the terms under the First Ranking Finance Documents

in which case the prior written consent of the Intercreditor Agent is required.

## 6.7 Provision of Documents

The Third Ranking Finance Party shall, promptly upon any amendment of any of the Third Ranking Finance Documents, deliver a copy of such amendment to the Security Agent.

## 7. ASSIGNMENT OF THIRD RANKING LIABILITIES

The Assignor agrees to the provisions set out in Schedule 2 (*Assignment of Third Ranking Liabilities*).

## 8. REPRESENTATIONS

### 8.1 Representations of Second Ranking Finance Party and Third Ranking Finance Party

Each of the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor hereby makes the following representations and warranties (in relation to itself) and acknowledges that the Secured Parties (other than the Second Ranking Finance Party and the Third Ranking Finance Party) have entered into the Finance Documents to which they are a party in reliance upon those representations and warranties.

- (a) It is duly organised, incorporated and validly existing under the laws of its jurisdiction of incorporation.

- (b) The obligations expressed to be assumed by it in the DAP Finance Documents to which it is a party are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof, subject only to bankruptcy, insolvency, liquidation or other similar laws of general application and principles of equity.
- (c) Its execution and delivery of the DAP Finance Documents to which it is a party and the performance of its obligations hereunder do not and will not:
  - (i) result in a breach of its constitutive documents or any material Legal Requirement then applicable to or binding on it; or
  - (ii) result in any material breach or constitute any default under any security or agreement or instrument to which it is a party or by which it or any of its Properties may be bound.
- (d) It has the power to execute, deliver and perform under the DAP Finance Documents to which it is a party and all corporate and other action required to authorise its execution and delivery of the DAP Finance Documents to which it is a party and the performance of its obligations thereunder has been duly taken.
- (e) It has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge or belief) threatened against it for its winding-up, dissolution or re-organisation (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrative receiver, custodian, trustee or similar officer of it or of any or all of its assets or revenues.
- (f) Save as pursuant to or permitted under this Deed, it is the sole and absolute legal and beneficial owner of all of, in the case of the Second Ranking Finance Party, the Second Ranking Liabilities or, in the case of the Third Ranking Finance Party and the Assignor, the Third Ranking Liabilities, in each case free from any Security (except for any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien).
- (g) Save, in the case of the Assignor, for the filing referred to in paragraph 2(a) of Schedule 2 (*Assignment of Third Ranking Liabilities*), which filing will be carried out by the CP Satisfaction Date, all acts, conditions and things required to be done, fulfilled and performed in order (i) to enable it lawfully to enter into, and perform and comply with the obligations expressed to be assumed by it in the DAP Finance Documents to which it is a party, (ii) to ensure that the obligations expressed to be assumed by it in the DAP Finance Documents to which it is a party are legal, valid, binding and enforceable and (iii) to make the DAP Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation and England, have been done, fulfilled and performed.

- (h) Save, in the case of the Assignor, for the filing referred to in paragraph 2(a) of Schedule 2 (*Assignment of Third Ranking Liabilities*), which filing will be carried out by the CP Satisfaction Date, under the laws of its jurisdiction of incorporation and England in force at the date hereof, it is not necessary that any of the DAP Finance Documents to which it is a party be filed, recorded or enrolled with any court or other authority in such jurisdictions or that any stamp, registration or similar tax be paid on or in relation to any of the DAP Finance Documents to which it is a party.
- (i) Save as pursuant to or permitted under this Deed, it has not sold, transferred or otherwise disposed of, or agreed to sell, transfer or otherwise dispose of, the benefit of all or any of its rights, title and interest in any or all of, in the case of the Second Ranking Finance Party, the Second Ranking Liabilities or, in the case of the Third Ranking Finance Party, the Third Ranking Liabilities.
- (j) It has disclosed all agreements and all the terms and conditions of, in the case of the Second Ranking Finance Party, the Second Ranking Liabilities or, in the case of the Third Ranking Finance Party, the Third Ranking Liabilities as at the date hereof and has delivered to the Security Agent copies of all such agreements.

The representations and warranties contained in Clause 8.1(a) to Clause 8.1 (j) (other than Clauses 8.1(g)(iii), 8.1(h) and 8.1(j)) shall be deemed to be repeated by each of the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor on the CP Satisfaction Date and each Advance Date by reference to the facts and circumstances then existing on the CP Satisfaction Date or, as the case may be, such Advance Date.

## 8.2 Further Representation of Assignor

- (a) The Assignor hereby represents and warrants that this Deed:
  - (i) constitutes an effective security over the Assignor's right, title and benefit in and to the Third Ranking Liabilities; and
  - (ii) enjoys the priority which it is expressed to have.
- (b) The Assignor acknowledges that the Secured Parties have entered into the Finance Documents to which they are a party in reliance upon the representation and warranty in Clause 8.2(a) above.

## 9. DISPOSAL, INSURANCE PROCEEDS, SECURITIES ACCOUNT AND ACCOUNTS

### 9.1 Proceeds of disposals and claims before enforcement

The proceeds of any sale, lease, transfer or other disposal of any assets or of any claim which are (a) the subject of the Transaction Security and (b) received before the delivery of an Enforcement Notice in respect of the security of which such assets or claim is/are the subject shall (to the extent required by the relevant Finance Documents) be applied:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the

- payment and discharge in full of the First Ranking Liabilities, in accordance with the terms of the Common Terms Agreement;
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, in accordance with the terms of the Second Ranking Finance Documents; and
  - (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, in accordance with the terms of the Third Ranking Finance Documents.

## 9.2 **Proceeds of insurances before enforcement**

The proceeds of any claim under any insurance policy which are (a) the subject of the Transaction Security and (b) received before the delivery of an Enforcement Notice by the Security Agent in respect of the security of which such insurance policy is the subject shall (to the extent required by the relevant Finance Documents) be applied:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, in accordance with the terms of the Common Terms Agreement;
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, in accordance with the terms of the Second Ranking Finance Documents; and
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, in accordance with the terms of the Third Ranking Finance Documents,

and the Company and each Secured Party waives any rights it may have of requiring that any insurance proceeds be applied otherwise.

## 9.3 **Proceeds in Securities Account**

All moneys received or recovered by the Security Agent pursuant to the Securities Account Control Agreement or representing the Contingent Equity or Contingent Subordinated Funding shall be applied towards the purposes set out in Clause 3.1 (*Contingent Equity Commitment*) and Clause 5.1 (*Contingent Subordinated Funding Commitment*) of the Wynn Resorts Support Agreement or the requirements set out in Clause 6.1 (*Enforcement Notice*) of the Wynn Resorts Support Agreement and in accordance with the instructions of the Intercreditor Agent.

#### 9.4 **Accounts**

At any time following the issuance of an Enforcement Notice, any moneys standing to the credit of the Accounts may be applied in accordance with paragraph 11.3.2 of Schedule 6 to the Common Terms Agreement.

### 10. **ENTITLEMENT TO ENFORCE**

#### 10.1 **First Ranking Finance Parties**

The First Ranking Finance Parties may take any action (including, without limitation, Enforcement Action) at any time if entitled to do so under the terms of the First Ranking Finance Documents to which they are a party.

#### 10.2 **General Restriction**

Except as permitted by Clauses 10.3 (*Second Ranking Finance Party: Permitted Enforcement*) to 10.5 (*No restriction on Permitted Payments*) and Clause 11 (*Effect of Insolvency Event*), none of the Second Ranking Finance Party and the Third Ranking Finance Party may take any Enforcement Action at any time.

#### 10.3 **Second Ranking Finance Party: Permitted Enforcement**

Subject to Clause 11 (*Effect of Insolvency Event*), the Second Ranking Finance Party shall not be entitled to take any Enforcement Action until the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but shall be entitled at any time thereafter to take any action (including, without limitation, Enforcement Action) if entitled to do so under the terms of the Second Ranking Finance Documents or if an Event of Default under the Second Ranking Facility Agreement has occurred.

#### 10.4 **Third Ranking Finance Party: Permitted Enforcement**

Subject to Clause 11 (*Effect of Insolvency Event*) the Third Ranking Finance Party shall not be entitled to take any Enforcement Action (other than any action referred to in paragraph (g) of the definition of "Enforcement Action" with respect to itself) until the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities but shall be entitled at any time thereafter to take any action (including, without limitation, Enforcement Action) if entitled to do so under the terms of the Third Ranking Finance Documents.

#### 10.5 **No restriction on Permitted Payments**

No restriction on the taking of Enforcement Action included in this Clause 10 (*Entitlement to Enforce*) shall restrict the taking or making of any Permitted Payment.

### 11. **EFFECT OF INSOLVENCY EVENT**

#### 11.1 **Acceleration and claim**

After (1) the occurrence of an Insolvency Event in relation to any Grantor (other than Mr Wong Chi Seng) and (2) the delivery of an Enforcement Notice upon or after the occurrence of such Insolvency Event, each of the Second Ranking Finance Party and the Third Ranking Finance Party shall be entitled to exercise any right it may have in respect of that Grantor (other than Mr Wong Chi Seng) to:

- (a) accelerate any of such Grantor's Liabilities or declare them prematurely due and payable or payable on demand;



- (b) make a demand under any guarantee, indemnity or other assurance against loss in respect of any Liabilities of that Grantor;
- (c) exercise any right of set off or take or receive any payment in respect of any Liabilities of that Grantor; or
- (d) claim and prove in the liquidation of that Grantor for the Liabilities owing to it.

#### 11.2 **Payment of distributions**

After the occurrence of an Insolvency Event in relation to any Grantor (other than Mr Wong Chi Seng), the Person responsible for the distribution of the assets of that Grantor shall be directed to pay any distributions in respect of any of the Liabilities to the Security Agent until the Secured Obligations have been paid in full.

#### 11.3 **Set-Off**

To the extent that any of the Liabilities is discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event, any Second Ranking Finance Party or Third Ranking Finance Party which benefited from that set-off shall pay an amount equal to the amount of its Liabilities discharged by that set-off to the Security Agent for application in accordance with Clause 15 (*Application of Proceeds*).

#### 11.4 **Filing of claims**

After (1) the occurrence of an Insolvency Event in relation to any Grantor (other than Mr Wong Chi Seng) and (2) the delivery of an Enforcement Notice upon or after the occurrence of such Insolvency Event, the Third Ranking Finance Party irrevocably authorises the Security Agent to:

- (a) take any Enforcement Action (in accordance with the terms of this Deed);
- (b) demand, sue, prove and give receipt for any or all of the Third Ranking Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of the Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover the Liabilities.

#### 11.5 **Funding Parties' Actions**

The Funding Parties will do all things that the Security Agent reasonably requests in order to give effect to this Clause 11 and, if the Security Agent is not entitled to take any of the actions contemplated by this Clause 11 or if the Security Agent requests any Funding Party to take that action, that Funding Party will undertake those actions itself in accordance with the reasonable instructions of the Security Agent.

## 12. TURNOVER OF RECEIPTS

### 12.1 Turnover by the Second Ranking Finance Party and Third Ranking Finance Party

If at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the discharge in full of the First Ranking Liabilities, any Second Ranking Finance Party or Third Ranking Finance Party receives or recovers:

- (a) any payment or distribution of, or on account of or in relation to, any of the Liabilities which is not permitted by Clause 5 (*Second Ranking Finance Party: Rights and Obligations*), Clause 6 (*Third Ranking Finance Party: Rights and Obligations*), Clause 9 (*Disposal, Insurance Proceeds*) or Clause 15 (*Application of Proceeds*);
  - (b) any amount by way of set-off in respect of any of the Liabilities owed to them other than a payment permitted by (i) prior to the issuance of an Enforcement Notice, Clause 5 (*Second Ranking Finance Party: Rights and Obligations*), (ii) Clause 6 (*Third Ranking Finance Party: Rights and Obligations*) or (iii) Clause 9 (*Disposal, Insurance Proceeds*);
  - (c) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 15 (*Application of Proceeds*); or
  - (d) any payment or distribution in cash or in kind made as a result of the occurrence of an Insolvency Event in respect of any Grantor,
- the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party will hold that amount on trust for the Security Agent and promptly pay that amount to the Security Agent or, if this trust cannot be given effect to, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party will pay an amount equal to that receipt or recovery to the Security Agent, to be held on trust by the Security Agent for application in accordance with the terms of this Deed.

### 12.2 Permitted assurance and receipts

Nothing in this Deed shall restrict the ability of any First Ranking Finance Party to:

- (a) arrange with any Person any assurance against loss in respect of, or reduction of its credit exposure to, any Security Provider (including assurance by way of credit based derivative or sub-participation); or
- (b) to receive or recover any sum in respect of its Liabilities as a result of any assignment or transfer permitted by Clause 18 (*Change of Party and Accession by Hedging Counterparties*),

and that First Ranking Finance Party not be obliged to account to any other Party for any sum received by it as a result of that action.

### 12.3 Sums received by Company

If the Company receives or recovers any sum which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, the Company shall hold that amount on trust for the Security Agent and promptly pay that amount to the

Security Agent or, if this trust cannot be given effect to, the Company will promptly pay an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of this Deed.

### 13. SHARING

#### 13.1 Recovering Party's rights

- (a) Any amount paid by the Second Ranking Finance Party or the Third Ranking Finance Party (a "**Recovering Party**") to the Security Agent under Clause 11 (*Effect of Insolvency Event*) or Clause 12 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Grantor and distributed in accordance with the terms of this Deed.
- (b) On a distribution of that amount by the Security Agent, the Recovering Party will be subrogated to the rights of the Secured Parties which have shared in the redistribution.
- (c) If and to the extent that the Recovering Party is unable to rely on its rights under paragraph (b) of this Clause 13.1 the Company shall be liable to the Recovering Party for a debt equal to the amount received or recovered by the Recovering Party and paid to the Security Agent (the "**Shared Amount**") which is immediately due and payable.

#### 13.2 Reversal of redistribution

If any part of the Shared Amount received or recovered by a Recovering Party becomes repayable to a Grantor and is repaid by that Recovering Party to that Grantor then:

- (a) each Secured Party which has received a share of the relevant Shared Amount shall, upon request of the Security Agent, pay to the Security Agent for account of that Recovering Party an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Party for its proportion of any interest on the Shared Amount which that Recovering Party is required to pay); and
- (b) that Recovering Party's rights of subrogation in respect of any reimbursement shall be cancelled and the Company will be liable to each reimbursing Secured Party for the amount so reimbursed.

#### 13.3 Deferral of subrogation

None of the Second Ranking Finance Party, the Third Ranking Finance Party, the Company and the Assignor will exercise any rights which it may have by reason of the performance by it of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Finance Documents of any Secured Party which ranks ahead of it in accordance with the priorities set out in Clause 3 (*Ranking and Priority*) until such time as all of the Liabilities of each Secured Party which ranks ahead of it in accordance with the priorities set out in Clause 3 (*Ranking and Priority*) (or, in the case of any Sponsor, of each Secured Party) have been irrevocably paid in full.

## 14. ENFORCEMENT OF SECURITY

### 14.1 Directions

Subject to Clause 14.2 (*Wong Event*) and Clause 14.3 (*Assignment of Reinsurances*), the Security Agent may enforce the Transaction Security (other than the security created under the Assignment of Reinsurances) but only at the instruction of the Intercreditor Agent (acting on the instruction of the Required Lenders given in accordance with the terms of the Common Terms Agreement), the Second Ranking Finance Party or (other than the assignment created under or pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*)) the Third Ranking Finance Party which is entitled to instruct enforcement as a result of Clause 10 (*Entitlement to Enforce*) provided that the notice setting out such instruction states that an Event of Default under the Common Terms Agreement (in the case of the Intercreditor Agent), the Second Ranking Facility Agreement (in the case of the Second Ranking Finance Party) or the Third Ranking Funding Agreement (in the case of the Third Ranking Finance Party) has occurred and (as at the date of such notice) is continuing. The Security Agent shall, promptly after receipt of such instruction to enforce any Transaction Security, deliver an Enforcement Notice and/or, as the case may be, the TRL Enforcement Notice to the relevant Sponsor(s) and/or, as the case may be, the Assignor. At all times after an instruction to commence enforcement has been issued and subject to the terms of this Deed, the Security Agent will act on the directions of:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

who shall be entitled to give directions and do any other things in relation to the enforcement of the Transaction Security (including in connection with but not limited to, the disposal, collection or realisation of assets subject to the Transaction Security) that it considers appropriate including (without limitation) determining the timing and manner of enforcement against any particular Person or asset.

### 14.2 Wong Event

The Security Agent may enforce the security created under the Wong Share Pledge (or confirmed and agreed under the Confirmation of Wong Share Pledge) on the ground of a

Wong Event if permitted under Clause 5.1 of the Wong Share Pledge. Notwithstanding anything contained herein to the contrary:

- (a) the occurrence or continuance of an event that amounts only to a Wong Event; or
- (b) any non-payment of any Liabilities by Mr Wong Chi Seng

does not trigger any right by the Security Agent to enforce any security under any of the Security Documents (other than the Wong Share Pledge and the confirmation and agreement in respect thereof under the Confirmation of Wong Share Pledge).

#### 14.3 Assignment of Reinsurances

The Security Agent may enforce the security created under an Assignment of Reinsurances if entitled to do so under Clause 2.2 of such Assignment of Reinsurances after receiving an instruction to so enforce from:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent;
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

which instruction shall state that an Insolvency Event (as defined in such Assignment of Reinsurances) has occurred.

#### 14.4 Company's and Assignor's waiver

To the extent permitted under applicable law and subject to Clause 15 (*Application of Proceeds*), each of the Company and the Assignor waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any Person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

#### 14.5 Duties owed

Each of the Secured Parties, the Company and the Assignor acknowledges, in the event that the Security Agent is instructed to enforce the security conferred by the Security Documents, that prior to:

- (a) the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the discharge in full of the First Ranking Liabilities, the duties of the Security Agent and of any Receiver or Delegate owed to the Secured Parties ranking below the First Ranking Finance Parties in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall be no different to the duty to the Grantors that would be owed by the Security Agent, Receiver or Delegate under general law; and
- (b) the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, the duties of the Security Agent and of any Receiver or Delegate owed to the Third Ranking Finance Party in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall be no different to the duty to the Grantors that would be owed by the Security Agent, Receiver or Delegate under general law.

#### 14.6 Disposals by Security Agent

If any assets are sold or otherwise disposed of by (or on behalf of) the Security Agent, or by a Security Provider at the request of the Security Agent either as a result of the enforcement of any of the Transaction Security or if that disposal is permitted under the Security Documents:

- (a) the Security Agent shall be authorised (at the cost of the Company) to release and/or reassign those assets from the Transaction Security and is authorised to execute, on behalf of and without the need for any further authority from, any of the Secured Parties, any release and reassignment of the Transaction Security or any other claim over those assets and to issue any certificates of non-crystallisation or non-consolidation of any floating charge that may, in the absolute discretion of the Security Agent, be considered necessary or desirable; and
- (b) the Secured Parties, the Company and the Assignor shall execute any releases or other documents that the Security Agent may consider to be necessary to give effect to those releases and reassignments **provided that** the proceeds of that disposal are applied in accordance with this Deed.

#### 14.7 Power of Attorney

The POA Agent may not exercise any right under the Power of Attorney until after the delivery of an Enforcement Notice to the Company (and only if instructed by the Security Agent to do so).

#### 14.8 Livranças

The Security Agent may not present any of the Livranças for payment until after the delivery of an Enforcement Notice to the Company. Notwithstanding the terms of the Livrança Covering Letter, the aggregate amount to be inserted by the Security Agent into the Livranças may not exceed the aggregate amount of the Secured Obligations as at the date of such insertion by the Security Agent.

## 15. APPLICATION OF PROCEEDS

### 15.1 Order of application

All amounts from time to time received or recovered by the Security Agent under Clause 2 (*Parallel Debt (Covenant to Pay the Security Agent)*) and Clause 12 (*Turnover of Receipts*) and/or pursuant to any of the Livranças, the Power of Attorney and/or the Wynn Pledgors' Guarantee and/or in connection with the realisation or enforcement of all or any part of the Transaction Security (including, without limitation, the security created under the Mortgage) shall, subject to Clause 9 (*Disposal, Insurance Proceeds, Securities Account and Accounts*), be held by the Security Agent on trust to apply them at any time the Security Agent sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 15 (*Application of Proceeds*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as agent and security trustee), any Receiver or any Delegate;
- (b) in payment to the Intercreditor Agent on behalf of the First Ranking Finance Parties for application (in accordance with the terms of the First Ranking Finance Documents) (other than this Deed) towards the discharge of the First Ranking Liabilities or, in the case of insurance proceeds, for application in accordance with the terms of the First Ranking Finance Documents (other than this Deed);
- (c) after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, in payment to the Second Ranking Finance Party for application (in accordance with the terms of the Second Ranking Finance Documents) towards the discharge of the Second Ranking Liabilities;
- (d) after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and the payment and (ii) discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, in payment to the Third Ranking Finance Party for application (in accordance with the terms of the Third Ranking Finance Documents) towards the discharge of the Third Ranking Liabilities;
- (e) after the payment and discharge in full of the Liabilities (other than any Liabilities owed by Mr Wong Chi Seng), if none of the Sponsors is under any further actual or contingent liability under any Finance Document, in payment to any Person to whom the Security Agent is obliged to pay in priority to any Sponsor; and
- (f) the balance (after full payment and discharge of the liabilities referred to in paragraphs (a) to (e) above), if any, in payment to any Person as directed by the Company.

To the extent that there are any funds available after application under any order listed in (a) to (f) above of amounts received or recovered by the Security Agent referred to above, the Security Agent shall apply such funds in accordance with the immediately

succeeding order and if any of the Liabilities referred to in such immediately succeeding order are not yet payable, the Security Agent shall hold such funds until such Liabilities become payable, provided that in the case of the Second Ranking Liabilities, the Security Agent shall only hold such funds until the earlier of (1) the termination or cancellation of the Performance Bond and (2) 181 days after the date on which the Enforcement Notice is issued whereupon such funds shall be paid to the Third Ranking Finance Party for application towards the discharge of the Third Ranking Liabilities or, if already discharged, to (e) or (f). For example, if there are amounts (received or recovered by the Security Agent referred to above) available after the payment and discharge in full of the First Ranking Liabilities, the Security Agent shall pay such amounts to the Second Ranking Finance Party for application towards the discharge of the Second Ranking Liabilities and if the Second Ranking Liabilities are not yet payable, the Security Agent shall hold such funds until the Second Ranking Liabilities become payable provided that the Security Agent shall only hold such funds until the earlier of (1) the termination or cancellation of the Performance Bond and (2) 181 days after the date on which the Enforcement Notice is issued whereupon such funds shall be paid to the Third Ranking Finance Party for application towards the discharge of the Third Ranking Liabilities or, if already discharged, to (e) or (f).

### 15.2 Information

In giving effect to the provisions of Clause 15.1 (*Order of application*), the Security Agent may rely on the latest information notified to it by the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party in respect of amounts due and payable by the relevant Security Provider(s) under the First Ranking Finance Documents (in the case of the Intercreditor Agent), the Second Ranking Finance Documents (in the case of the Second Ranking Finance Party) or the Third Ranking Finance Documents (in the case of the Third Ranking Finance Party), provided that to the extent that the Security Agent has not received any notification from the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party of any amount due and payable under the First Ranking Finance Documents (in the case of the Intercreditor Agent), the Second Ranking Finance Documents (in the case of the Second Ranking Finance Party) or the Third Ranking Finance Documents (in the case of the Third Ranking Finance Party), the Security Agent shall be entitled to assume that no amount is due and payable under such Finance Document.

### 15.3 Provision of Information

- (a) Each of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party shall from time to time provide the Security Agent or the Intercreditor Agent with such information as may be reasonably required by the Security Agent or the Intercreditor Agent for the purposes of Clauses 15.1 (*Order of application*) and/or Clause 15.2 (*Information*) or the implementation thereof.
- (b) Prior to any application in accordance with Clause 15.1 (*Order of application*), the Security Agent shall give no less than ten Business Days' prior notice to the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Company of such application and request each of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking



Finance Party to provide details of the amounts due and payable by the relevant Security Provider(s) under the First Ranking Finance Documents (in the case of the Intercreditor Agent), the Second Ranking Finance Documents (in the case of the Second Ranking Finance Party) or the Third Ranking Finance Documents (in the case of the Third Ranking Finance Party).

- (c) Prior to the filing of any claim by the Security Agent in respect of the enforcement of the Transaction Security, the Security Agent shall give prior notice to the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party of such filing and request each of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party to provide details of the amounts due and payable by the relevant Grantor(s) under the First Ranking Finance Documents (in the case of the Intercreditor Agent), the Second Ranking Finance Documents (in the case of the Second Ranking Finance Party) or the Third Ranking Finance Documents (in the case of the Third Ranking Finance Party). Any such claim which requires the specification of the Secured Obligations shall include the First Ranking Liabilities, the Second Ranking Liabilities and the Third Ranking Liabilities.

#### 15.4 Investment of proceeds

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 15.1 (*Order of application*) the Security Agent may, at any time after the delivery of an Enforcement Notice, at its discretion, hold all or part of those proceeds in a suspense or impersonal account(s) (which is interest-bearing provided that there is no tax liability on the Security Agent with respect to any interest in such account) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of this Clause 15.4. If the Secured Obligations have been fully discharged or would be fully discharged if the monies in such suspense or impersonal account were applied towards satisfaction of the Secured Obligations, the Security Agent shall apply the monies in such suspense or impersonal account towards satisfaction of the Secured Obligations and if there are any monies remaining in such suspense or impersonal account after the Secured Obligations have been fully discharged, the Security Agent shall pay such remaining monies to any Person as directed by the Company. Any interest accrued on any monies in such suspense or impersonal account shall be credited to such suspense or, as the case may be, impersonal account and shall, subject to the terms of this Clause 15.4, be applied towards satisfaction of the Secured Obligations.

#### 15.5 Currency conversion

- (a) For the purpose of or pending the discharge of any or all of the Secured Obligations, the Security Agent may convert any moneys received, recovered or realised or subject to application by the Security Agent or any Receiver pursuant to this Deed from the currency of such moneys to another for such purpose and any such conversion shall be made at the Security Agent's spot rate of exchange for the time being (or such other rate as may be available to the Security Agent from time to time in the ordinary course of business) for

obtaining such other currency with the first currency and the Secured Obligations shall be discharged only to the extent of the net proceeds of such conversion received by the Security Agent

- (b) The obligations of any Grantor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.
- (c) If any sum (a “**Sum**”) due from the Company or the Assignor, the Second Ranking Finance Party or the Third Ranking Finance Party under this Deed or any order or judgment given or made in relation thereto has to be converted from the currency (the “**First Currency**”) in which such Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
  - (i) making or filing a claim or proof against such Grantor, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party;
  - (ii) obtaining or enforcing an order or judgment in any court or other tribunal; or
  - (iii) applying the Sum in satisfaction of any of the Secured Obligations,

the Company, the Assignor, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party shall (through the Security Agent) indemnify each Person to whom such Sum is due from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange at which such Person may in the ordinary course of business purchase the First Currency with the Second Currency at the time of receipt of such Sum.

#### 15.6 **Permitted deductions**

The Security Agent shall be entitled, at any time after the delivery of an Enforcement Notice, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Deed, and to pay all taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Deed).

#### 15.7 **Good discharge**

The Security Agent is under no obligation to make the payments to the other Secured Parties in respect of the Secured Obligations in the same currency as that in which the Secured Obligations of the relevant Secured Party are denominated.

## 15.8 Calculation of amounts

For the purpose of calculating any Person's share of any sum payable to or by it, the Security Agent shall be entitled to:

- (a) notionally convert the Liabilities owed to any Person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the spot rate (or such other rate as may be available to the Security Agent) at which the Security Agent is able to purchase the notional base currency with the actual currency of that Person's Liabilities at the time at which that calculation is to be made; and
- (b) assume that all moneys received or recovered as a result of the enforcement of the Transaction Security are applied in discharge of the Liabilities in accordance with the terms of the Finance Documents under which those Liabilities have arisen.

## 15.9 Evidence of Secured Obligations

A certificate of the Security Agent as to the amount of the Secured Obligations or any part thereof shall, in the absence of manifest error, be conclusive evidence (in the absence of manifest error) in any legal action or proceedings arising out of or in connection with this Deed.

## 15.10 Consideration

In consideration of the covenants given to the Security Agent by the Company in Clause 2 (*Parallel Debt (Covenant to Pay the Security Agent)*), the Security Agent agrees with the Company to apply all moneys from time to time paid by the Company to the Security Agent in accordance with the provisions of Clause 9 (*Disposal, Insurance Proceeds, Securities Account and Accounts*) or, as the case may be, Clause 15.1 (*Order of application*).

## 16. THE SECURITY AGENT

### 16.1 Appointment of Security Agent

- (a) Each of the Secured Parties appoints the Security Agent to act as agent and, if specified in the relevant Security Documents, security trustee under and in connection with the Security Documents and all other documents (including notices and acknowledgement of the granting of any Transaction Security) in connection with the Security Documents.
- (b) The Security Agent declares that it shall hold, to the extent permitted by applicable law, the Transaction Security (other than the assignment created or expressed to be created under or pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*)) on trust for the Secured Parties and the assignment created or expressed to be created under or pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*) on trust for the TRL Secured Parties on the terms contained in this Deed.
- (c) Each of the parties to this Deed agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Deed or in the Security Documents (and no others shall be implied).
- (d) Each of the Secured Parties (other than the Security Agent) authorises the Security Agent to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with this Deed

and the Security Documents together with any other incidental rights, power, authorities and discretions.

**16.2 No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents except through the Security Agent.

**16.3 Security Agent's instructions**

The Security Agent shall:

- (a) except as otherwise provided in this Deed, act in accordance with any instructions given to it by:
- (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);
  - (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
  - (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

and shall be entitled to assume that (A) any instructions received by it from the Intercreditor Agent, Second Ranking Finance Party or, as the case may be, Third Ranking Finance Party are duly given in accordance with the terms of the relevant Finance Documents and (B) unless it has received actual written notice of revocation, that those instructions or directions have not been revoked;

- (b) be entitled to request instructions, or clarification of any direction, from:
- (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent;
  - (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or

- (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it; and

- (c) be entitled to carry out all dealings with the First Ranking Finance Parties through the Intercreditor Agent and may give to the Intercreditor Agent any notice or other communication required to be given by the Security Agent to the First Ranking Finance Parties.

#### 16.4 Security Agent's actions

Subject to the provisions of Clause 16.3 (*Security Agent's instructions*):

- (a) the Security Agent may, in the absence of any instructions to the contrary, take any action in the exercise of any of its powers and duties under the Finance Documents which in its absolute discretion it considers to be for the protection and benefit of all the Secured Parties; and
- (b) at any time after receipt by the Security Agent of written notice from:
  - (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);
  - (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
  - (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

directing the Security Agent to exercise all or any of its rights, powers or discretions under any of the Finance Documents, the Security Agent may, and shall if so directed by the Intercreditor Agent, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.

## 16.5 Security Agent's discretions

The Security Agent may:

- (a) assume, unless it has in its capacity as security trustee for the Secured Parties, received actual written notice to the contrary from one of the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party that (i) no Default or Event of Default has occurred and none of the Security Providers is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested by any Finance Document in any Person has not been exercised;
- (b) if it receives any instructions or directions from:
  - (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent;
  - (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or
  - (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Partyto take any action in relation to the Transaction Security, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
- (c) engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts (whether obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
- (d) as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or a Security Provider, upon a certificate signed by or on behalf of that Person;
- (e) refrain from acting in accordance with the instructions of the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its absolute discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in bringing any action or proceedings; and

- (f) rely upon any communication or document believed by it to be genuine.

#### 16.6 **Security Agent's obligations**

The Security Agent shall promptly inform each of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party of:

- (a) the contents of any notice or document received by it in its capacity as Security Agent from any Security Provider under any Finance Document; and
- (b) the occurrence of any Default or any default by a Security Provider in the due performance of or compliance with its obligations under any Finance Document of which the Security Agent has received notice from any other party to this Deed.

#### 16.7 **Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Agent shall not:

- (a) be bound to enquire as to (i) whether or not any Default or Event of Default has occurred or (ii) the performance, default or any breach by a Grantor of its obligations under any of the Finance Documents;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other Person (i) any confidential information or (ii) any other information if disclosure would or might in its reasonable opinion constitute a breach of any law or be a breach of fiduciary duty;
- (d) be under any obligations other than those which are specifically provided for in the Finance Documents; or
- (e) have or be deemed to have any duty, obligation or responsibility to, or relationship of trust or agency with, any Security Provider.

#### 16.8 **Exclusion of Security Agent's liability**

Unless caused directly by its gross negligence or wilful misconduct the Security Agent shall not accept responsibility or be liable for:

- (a) the adequacy, accuracy and/or completeness of any information supplied by the Security Agent or any other Person in connection with the Finance Documents or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

- (c) any losses to any Person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents or the Transaction Security or otherwise, whether in accordance with an instruction from the Intercreditor Agent, the Second Ranking Finance Party or Third Ranking Finance Party or otherwise;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents or the Transaction Security; or
- (e) any shortfall which arises on the enforcement of the Transaction Security.

**16.9 No proceedings**

No Party (other than the Security Agent) may take any proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Security Agent may rely on this Clause.

**16.10 Own responsibility**

It is understood and agreed by each Secured Party that at all times that Secured Party has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigation into all risks arising under or in connection with the Finance Documents including but not limited to:

- (a) the financial condition, creditworthiness, condition, affairs, status and nature of each of the Security Providers;
- (b) the legality, validity, effectiveness, adequacy and enforceability of each of the Finance Documents and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents or the Transaction Security;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Grantor, or any other Person or any of their respective assets under or in connection with the Finance Documents, the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under to or in connection with the Finance Documents;
- (d) the adequacy, accuracy and/or completeness of any information provided by any Person in connection with the Finance Documents, the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents; and



- (e) the right or title of any Person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any security interest affecting the Charged Property,

and each Secured Party warrants to the Security Agent that it has not relied on and will not at any time rely on the Security Agent in respect of any of these matters.

#### **16.11 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Security Provider to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any applicable laws in any jurisdiction or to give notice to any Person of the execution of any of the Finance Documents or of the Transaction Security;
- (d) take, or to require any of the Security Providers to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary security interest under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Security Documents.

#### **16.12 Insurance by Security Agent**

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other Person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Agent shall not be responsible for any loss which may be suffered by any Person as a result of the lack of or inadequacy of any insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Intercreditor Agent, the Second Ranking Finance Party or the Third Ranking Finance Party shall have requested it to do so in writing and the Security Agent shall have failed to do so within fourteen days after receipt of that request.

#### **16.13 Custodians and nominees**

The Security Agent may appoint and pay any Person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Deed or any document

relating to the trust created under this Deed and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any Person appointed by it under this Deed or be bound to supervise the proceedings or acts of any Person.

**16.14 Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any of the Security Providers may have to any of the Charged Property and shall not be liable for or bound to require any Security Provider to remedy any defect in its right or title.

**16.15 Refrain from illegality**

The Security Agent may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction which would or might otherwise render it liable to any Person, and the Security Agent may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

**16.16 Business with the Grantors**

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Security Providers.

**16.17 Powers supplemental**

The rights, powers and discretions conferred upon the Security Agent by this Deed shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

**16.18 Security Agent division separate**

In acting as security trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments and any information received by any other division or department of the Security Agent may be treated as confidential and shall not be regarded as having been given to the Security Agent's trustee division.

**16.19 Disapplication**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Deed. Where there are any inconsistencies between the Trustee Act 1925 and the Trustee Act 2000 and the provisions of this Deed, the provisions of this Deed shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Deed shall constitute a restriction or exclusion for the purposes of that Act.

**16.20 Winding up of trust**

If the Security Agent receives:

- (a) a notice from the Intercreditor Agent confirming that the Release Date has occurred;
- (b) a notice from the Second Ranking Finance Party confirming that all of the Second Ranking Liabilities have been discharged in full; and

(c) a notice from the Third Ranking Finance Party confirming that all of the Third Ranking Liabilities have been discharged in full, the trusts set out in this Deed shall be wound up. At that time the Security Agent shall, at the reasonable cost of the Company, release, without recourse or warranty, all of the Transaction Security then held by it and the rights of the Security Agent under each of the Security Documents and execute all such further documents and instruments and do such further acts as the Company may reasonably request for the purpose of effecting such release.

**16.21 Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of eighty years from the date of this Deed.

**17. CHANGE OF SECURITY AGENT AND DELEGATION**

**17.1 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its affiliates as successor by giving written notice to the Secured Parties (or, in the case of the First Ranking Finance Parties, to the Intercreditor Agent on their behalf), with a copy of such notice to the Company, provided that its affiliate is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement and is rated at least A- by Standard & Poor's or A3 by Moody's Investors Services, Inc.
- (b) Alternatively the Security Agent may resign by giving written notice to the Secured Parties (or, in the case of the First Ranking Finance Parties, to the Intercreditor Agent on their behalf), with a copy of such notice to the Company, in which case:
  - (i) if such notice is given at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent may, subject to Clause 17.1(f), appoint a successor Security Agent which is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement;
  - (ii) if such notice is given at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party shall be obliged to, subject to Clause 17.1(g), appoint a successor Security Agent which is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement within 30 days after such notice is given; and

- (iii) if such notice is given at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party shall be obliged to, subject to Clause 17.1(g), appoint a successor Security Agent which is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement within 30 days after such notice is given.
- (c) In the case of Clause 17.1(b)(i), if the Intercreditor Agent has not appointed a successor Security Agent in accordance with Clause 17.1(b)(i) above within 30 days after the Security Agent's resignation notice is given, the Security Agent (after consultation with the Intercreditor Agent) or the Company (after consultation with the Intercreditor Agent) may, subject to Clause 17.1(f), appoint a successor Security Agent which is a bank as referred to in paragraph F.1. in each of the Gaming Concession Consent Agreement and the Land Concession Consent Agreement. In the event that any of the Intercreditor Agent, the Security Agent and the Company has identified a bank during the 90 day period after the giving of a notice of resignation to act as successor Security Agent, the bank identified by the Intercreditor Agent shall be appointed as successor Security Agent or, if no such bank has been identified, the bank identified by the Security Agent shall be appointed as successor Security Agent or, if no such bank has been identified, the bank identified by the Company shall be appointed as successor Security Agent. The Company agrees that it will pay the fees of any successor Security Agent which shall be on market terms applicable to banks acting as security agents and trustees in respect of a transaction of the type contemplated under the Finance Documents.
- (d) In the case of Clause 17.1(b)(i), if the Intercreditor Agent, the Security Agent or the Company has not appointed a successor Security Agent in accordance with Clause 17.1(b)(i) or, as the case may be, Clause 17.1(c) within 90 days after the giving of a notice of resignation by the Security Agent, the Security Agent's resignation notice shall take effect on the date falling 90 days after the giving of such notice of resignation whereupon the Security Agent may, by giving 30 days written notice to the Secured Parties (or, in the case of the First Ranking Finance Parties, to the Intercreditor Agent on their behalf) cease to act as agent and/or trustee for or on behalf of the Secured Parties and be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*) and the Security Agent shall be entitled to release and discharge all of the Transaction Security and shall not have any liability to all or any of the Secured Parties in respect of such release or discharge.

- (e) If:
- (i) in the case of Clause 17.1(b)(ii), the Second Ranking Finance Party has not appointed a successor Security Agent in accordance with Clause 17.1(b)(ii); or
  - (ii) in the case of Clause 17.1(b)(iii), the Third Ranking Finance Party has not appointed a successor Security Agent in accordance with Clause 17.1(b)(iii),
- the Security Agent's resignation notice shall take effect on the date falling 60 days after the giving of such notice of resignation whereupon the Security Agent shall cease to act as agent and/or trustee for or on behalf of the Secured Parties and be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*) and the Security Agent shall be entitled to release and discharge all of the Transaction Security and shall not have any liability to all or any of the Secured Parties in respect of such release or discharge.
- (f) In the case of Clause 17.1(b)(i), if the Intercreditor Agent or the Security Agent appoints a successor in accordance with Clause 17.1(b)(i) or, as the case may be, Clause 17.1(c), the Security Agent's resignation notice shall only take effect upon (i) the assignment and transfer referred to in Clause 17.1(h) and (ii) that successor becoming a party to the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (in place of the Security Agent) provided that if the conditions set out in (i) and (ii) above are not satisfied within 90 days of the giving of the Security Agent's resignation notice, the Security Agent may, by giving 30 days written notice to the Secured Parties (or, in the case of the First Ranking Finance Parties, to the Intercreditor Agent on their behalf), cease to act as agent and/or trustee for or on behalf of the Secured Parties and be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*) and the Security Agent shall be entitled to release and discharge all of the Transaction Security and shall not have any liability to all or any of the Secured Parties in respect of such release or discharge.
- (g) In the case of Clause 17.1(b)(ii) or Clause 17.1(b)(iii), if the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party appoints a successor in accordance with Clause 17.1(b)(ii) or, as the case may be, Clause 17.1(b)(iii), the Security Agent's resignation notice shall only take effect upon (i) the assignment and transfer referred to in Clause 17.1(h) and (ii) that successor becoming a party to the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (in place of the Security Agent) provided that if the conditions set out in (i) and (ii) above are not satisfied within 60 days of the giving of the Security Agent's resignation notice, the Security Agent may cease to act as agent and/or trustee for or on behalf of the Secured Parties and be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*) and the Security Agent shall be entitled to release and discharge

all of the Transaction Security and shall not have any liability to all or any of the Secured Parties in respect of such release.

- (h) If the Security Agent resigns and a successor Security Agent is appointed in accordance with Clause 17.1(a), Clause 17.1(b) or Clause 17.1(c), the Security Agent shall:
- (i) assign all of its rights and benefits under the Finance Documents; and
  - (ii) transfer all of its rights, benefits and obligations (if any) under the Finance Documents,
- to such successor Security Agent, provided that it is acknowledged that such assignment and transfer shall not in any way prejudice the priority of the security constituted by this Deed (which shall be assigned to such successor Security Agent). The Security Agent shall give prior notice of such assignment and transfer to the Government of the Macau SAR.
- (i) Upon (i) the assignment and transfer referred to in Clause 17.1(h) and (ii) the successor Security Agent becoming a party to the Gaming Concession Consent Agreement and the Land Concession Consent Agreement (in place of the Security Agent), the successor Security Agent shall be and be deemed to be acting as agent and security trustee for the Secured Parties for the purposes of this Deed (other than Schedule 2 (*Assignment of Third Ranking Liabilities*)) or as agent and security trustee for the TRL Secured Parties for the purposes of Schedule 2 (*Assignment of Third Ranking Liabilities*) and in place of the former Security Agent.
- (j) Upon the appointment of a successor (if any), the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16 (*The Security Agent*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (k) At any time:
- (i) prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);
  - (ii) after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party; or

(iii) after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party may, by written notice to the Security Agent, require it to resign in accordance with Clause 17.1(b). In this event, the Security Agent shall resign in accordance with Clause 17.1(b).

#### 17.2 Delegation

- (a) The Security Agent may, at any time, delegate (including by power of attorney) to any Person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
- (b) The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent may think fit in the interest of the Secured Parties or, in the case of any delegation relating to the rights, powers and discretions vested in the Security Agent by Schedule 2 (*Assignment of Third Ranking Liabilities*), the TRL Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate unless caused by the gross negligence or wilful misconduct of the Security Agent.

#### 17.3 Additional trustees

- (a) The Security Agent may at any time appoint (and subsequently remove) any Person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be in the interests of the Secured Parties or, in the case of acting as trustee under Schedule 2 (*Assignment of Third Ranking Liabilities*), the TRL Secured Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Sponsors, the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party of any appointment.
- (b) Any Person so appointed (subject to the terms of this Deed) shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Deed) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that Person, and any costs and expenses incurred by that Person in performing its functions as a result of that appointment shall, for the purposes of this Deed, be treated as costs and expenses incurred by the Security Agent.

#### 17.4 The POA Agent

- (a) The Security Agent appoints the POA Agent to act as agent under the Power of Attorney.

- (b) The POA Agent may not exercise any of its rights under the POA without the instructions of the Security Agent, and the POA Agent shall act and exercise rights under the Power of Attorney only in accordance with the instructions given to it by the Security Agent.
- (c) The Power of Attorney shall be held and kept by the Security Agent and the Security Agent shall deliver the Power of Attorney to the POA Agent if and when required for the exercising of rights by the POA Agent under the Power of Attorney.
- (d) The POA Agent shall promptly inform the Security Agent of the contents of any notice or document received by it in its capacity as the POA Agent under or in connection with the Power of Attorney.
- (e) All references to the Security Agent in Clauses 16.7 (*Excluded obligations*), Clause 16.8 (*Exclusion of Security Agent's liability*), Clause 16.9 (*No proceedings*), Clause 16.10 (*Own responsibility*), Clause 16.11 (*No responsibility to perfect Transaction Security*), Clause 16.14 (*Acceptance of title*), Clause 16.15 (*Refrain from illegality*) shall include references to the POA Agent acting as agent under the Power of Attorney.
- (f) The POA Agent may resign by giving notice to the Security Agent and the Company, in which case the Security Agent may (acting in accordance with the instructions given to it pursuant to Clause 16.3(a)) appoint a successor POA Agent which is a financial institution operating in the Macau SAR provided that the Company's consent (which consent shall not be unreasonably withheld or delayed) shall be required if such financial institution is not a Senior Secured Creditor.
- (g) If the Security Agent has not appointed a successor POA Agent in accordance with paragraph (f) above within 60 days after notice of resignation was given, the POA Agent may appoint a successor POA Agent which is (i) a financial institution operating in the Macau SAR and (ii) is acceptable to the Security Agent (acting in accordance with the instructions given to it pursuant to Clause 16.3(a)) provided that the Company's consent (which consent shall not be unreasonably withheld or delayed) shall be required if such financial institution is not a Senior Secured Creditor.
- (h) The POA Agent's resignation notice shall only take effect upon satisfaction of each of the following conditions:
  - (i) the appointment of a successor POA Agent; and
  - (ii) the Security Agent is satisfied that the POA Agent has executed a power of attorney in favour of the successor POA Agent in respect of its power under the Power of Attorney, in form and substance satisfactory to the Security Agent.
- (i) Upon the appointment of a successor POA Agent, the retiring POA Agent shall be discharged from any further obligation in respect of the Power of Attorney.



Its successor and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party hereto.

- (j) The Security Agent may, acting in accordance with the instructions given to it pursuant to Clause 16.3(a)), by notice to the POA Agent require it to resign in accordance with paragraph (f) above. In this event, the POA Agent shall resign in accordance with paragraph (f) above.
- (k) The Company agrees that it will pay the fees of any successor POA Agent which shall be on market terms applicable to a financial institution operating in the Macau SAR.

## **18. CHANGE OF PARTY AND ACCESSION BY HEDGING COUNTERPARTIES**

### **18.1 Change of Party**

No party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Finance Documents or the Liabilities except as permitted by this Clause 18.

### **18.2 Change of Funding Party**

A Funding Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Finance Documents to which it is a party or its Liabilities if:

- (a) in the case of a First Ranking Lender, that assignment or transfer is in accordance with the terms of the Common Terms Agreement;
- (b) in the case of a Hedging Counterparty, that assignment or transfer is in accordance with the terms of the relevant Hedging Agreement;
- (c) in the case of the Second Ranking Finance Party, the prior consent of the Intercreditor Agent has been obtained and that assignment or transfer is in accordance with the terms of the Second Ranking Finance Documents; and
- (d) in the case of the Third Ranking Finance Party, the prior consent of the Intercreditor Agent and the Second Ranking Finance Party has been obtained (such consent not to be unreasonably withheld or delayed by the Intercreditor Agent and the Second Ranking Finance Party) and that assignment or transfer is in accordance with Clause 18.7 (*New Assignor*) and the terms of the Third Ranking Finance Documents

and, in each case, any assignee or transferee permitted by this Clause 18.2 has executed and delivered to the Security Agent a Finance Party Accession Undertaking.

### **18.3 Change of Agent**

Any Person which becomes the Intercreditor Agent, the Hotel Facility Agent or the Project Facility Agent, each as defined in, and in accordance with, the terms of the Common Terms Agreement, shall at the same time accede to this Deed by executing and delivering to the Security Agent a Finance Party Accession Undertaking.

#### 18.4 Hedging Counterparties

Any Person which becomes a Hedging Counterparty as defined in, and in accordance with, the terms of the Common Terms Agreement, shall at the same time accede to this Deed by executing and delivering to the Security Agent a Finance Party Accession Undertaking.

#### 18.5 First Ranking Lenders

Any Person which becomes an Additional Lender pursuant to paragraph 2(f) of Part B of Schedule 5 to the Common Terms Agreement shall at the same time accede to this Deed as a First Ranking Lender by executing and delivering to the Security Agent a Finance Party Accession Undertaking. With effect from the date of acceptance by the Security Agent of a Finance Party Accession Undertaking, the new First Ranking Lender shall assume the same obligations and become entitled to the same rights as if it had been an original party to this Deed.

#### 18.6 Finance Party Accession Undertaking

With effect from the date of acceptance by the Security Agent of a Finance Party Accession Undertaking (which shall be accepted as soon as reasonably practicable after receipt by it of a duly completed Finance Party Accession Undertaking) or, if later the date specified in that Finance Party Accession Undertaking:

- (a) any Party ceasing entirely to be a Finance Party shall be discharged from further obligations towards the Security Agent and other Parties under this Deed and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) as from that date, the replacement or new Finance Party shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Deed.

#### 18.7 New Assignor

- (a) If the Assignor assigns, sells, transfers or otherwise disposes of all of its right, title and interest in and to the Third Ranking Liabilities with (if the assignee, purchaser or, as the case may be, transferee is not Aruze Corporation or an Affiliate of Aruze Corporation) the consent of the Intercreditor Agent and the Second Ranking Finance Party (such consent not to be unreasonably withheld or delayed) in accordance with Schedule 2 (*Assignment of Third Ranking Liabilities*)), the Assignor shall procure the assignee, purchaser or, as the case may be, transferee to, at the same time as such assignment, sale, transfer or, as the case may be, disposal to execute and deliver to the Security Agent an Assignor Accession Deed.
- (b) With effect from the date of acceptance by the Security Agent (which shall be accepted as soon as reasonably practicable after receipt by it of the Assignor Accession Deed and the legal opinion referred to in paragraph 12(a) or, as the case may be, paragraph 12(b) of Schedule 2 (*Assignment of Third Ranking Liabilities*)) and the satisfaction of the conditions set out in Clause 18.8 for accepting an Assignor Accession Deed, the outgoing Assignor shall be discharged from further obligations towards the Security Agent and other

Parties under this Deed and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date) and, as from that date, the replacement Assignor shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Deed.

#### **18.8 Additional Parties**

Each of the Parties appoints the Security Agent to receive on its behalf each Finance Party Accession Undertaking and Assignor Accession Deed delivered to the Security Agent and to accept and sign it if, in the Security Agent's opinion, it is complete and appears on its face to be authentic and duly executed and until accepted and signed by the Security Agent that document shall not be effective.

#### **18.9 Disclosure of Information by Security Agent**

The Security Agent may disclose to any Person:

- (a) to (or through) whom the Security Agent assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and obligations in accordance with the Finance Documents in accordance with Clause 17.1; or
- (b) 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 Security Provider, the Projects and the Finance Documents as the Security Agent may consider appropriate, *provided* that the Person to whom such information is provided under sub-paragraph (a) above first enters into a confidentiality undertaking in substantially the form set out in Schedule 4 (*Form of Confidentiality Undertaking: Change of Security Agent*) and that the Company has received an original copy of such signed undertaking.

#### **19. FEES AND EXPENSES**

##### **19.1 Security Agent's fees**

The Company shall pay to the Security Agent, for its own account, the fees specified in the agreement dated the date hereof between the Security Agent and the Company, at the times and in the amounts specified in that agreement.

##### **19.2 Transaction and enforcement expenses**

The Company shall, from time to time on demand of the Security Agent, reimburse the Security Agent for:

- (a) at any time prior to the delivery of an Enforcement Notice to the Company, all reasonable costs and expenses (including legal fees); or
- (b) at any time upon or after the delivery of an Enforcement Notice to the Company, all costs and expenses (including legal fees)

on a full indemnity basis incurred by the Security Agent and any Receiver and Delegate in connection with:

- (i) the negotiation, preparation and execution of this Deed and the Security Documents and the completion of the transactions and perfection of the security contemplated in the Security Documents in accordance with, in the case of any fees, costs and expenses of the Technical Adviser, Insurance Adviser and legal advisers appointed on or prior to the date of this Deed, the appointment or engagement letters (if any) executed by the Company on or prior to the date hereof; and
- (ii) the exercise, preservation and/or enforcement of any of the rights, powers and remedies of the Security Agent and of the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or of enforcing those rights, powers and remedies

save to the extent that such costs and expenses have been paid to the Security Agent under any other provision of the First Ranking Finance Documents.

#### **19.3 Amendment costs**

If the Company requests an amendment, waiver or consent under any Finance Document to which the Security Agent is a party, the Company shall, within thirty days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Security Agent in responding to, evaluating, negotiating or complying with that request.

#### **19.4 Stamp taxes**

The Company shall pay all stamp, registration, notarial and other taxes or fees to which this Deed, the other Security Documents, the Transaction Security or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax or fees other than any costs which arise as a consequence of any gross negligence or wilful misconduct on the part of the Security Agent.

#### **19.5 Interest on demands**

If the Company or the Assignor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is two per cent. per annum over the rate at which the Security Agent was being offered, by leading banks in the London Interbank Market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select provided that to the extent that default interest shall have accrued on such amount and been paid in accordance with the terms of the other First Ranking Finance Documents, interest shall not be payable on such amount under this Clause 19.5.

#### **19.6 Payments Free Of Deduction**

All payments to be made by the Company, the Assignor, the Second Ranking Finance Party or the Third Ranking Finance Party under this Deed shall be made free and clear of

and without deduction for or on account of tax unless the Company, the Assignor, the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Company, the Assignor, the Second Ranking Finance Party or, as the case may be, the Third Ranking Fund Party in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

## **20. INDEMNITIES**

### **20.1 Company's indemnity**

The Company shall promptly indemnify the Security Agent, the POA Agent, every Receiver and Delegate against any cost, loss or liability, whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of:

- (a) any Default (as defined in the Common Terms Agreement), any Event of Default or any failure by the Company to comply with obligations under Clause 19 (*Fees and Expenses*);
- (b) the taking, holding, protection or enforcement of the Transaction Security;
- (c) the exercise of any of the rights, powers, and discretions vested in any of them by the Finance Documents or by law; or
- (d) any default by any Sponsor in the performance of any of the obligations expressed to be assumed by such Sponsor in the Finance Documents save to the extent that such cost, loss or, as the case may be, liability (i) has been paid to the Security Agent, Receiver or, as the case may be, Delegate under any other provision of the First Ranking Finance Documents or (ii) arises as a consequence of any gross negligence or wilful misconduct of the Security Agent, the POA Agent, the Receiver or, as the case may be, the Delegate.

### **20.2 Second Ranking & Third Finance Parties' Indemnity**

Each of the Second Ranking Finance Party and the Third Ranking Finance Party shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability, whether or not reasonably foreseeable, incurred by it any of them in relation to or arising out of any default by the Second Ranking Finance Party or, as the case may be, the Third Ranking Finance Party in the performance of any of the obligations expressed to be assumed by it in this Deed.

### **20.3 Priority of indemnity**

The Security Agent may, in priority to any payment to the other Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 20.1 (*Company's indemnity*) from the

Company and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it under this Clause.

#### 20.4 **Funding Parties' indemnity**

If the Company fails to perform any of their obligations under this Clause 20 (*Indemnities*) within 3 Business Days:

- (a) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities, each First Ranking Funding Party (in the proportion that the Liabilities owed to it bears to the aggregate of the Liabilities owed to all the First Ranking Funding Parties for the time being (or, if no Advances have been made, in the proportion borne by its share of the aggregate undrawn Available Commitments of all First Ranking Funding Parties to the aggregate undrawn Available Commitments of all First Ranking Funding Parties for the time being) (or, if the Liabilities of each of those First Ranking Funding Parties is zero, immediately prior to their being reduced to zero));
- (b) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of the First Ranking Liabilities but prior to the payment and discharge in full of the Second Ranking Liabilities, the Second Ranking Finance Party; or
- (c) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and the payment and discharge in full of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party

shall indemnify the Security Agent and the POA Agent within three Business Days of demand against any cost, loss or liability incurred by the Security Agent and/or, as the case may be, the POA Agent as a result of that failure to perform and the Company shall indemnify each of the Funding Parties against any payment made by it under this Clause 20 (*Indemnities*). For the purpose of this Clause 20.4, the Liabilities owed to a Hedging Counterparty shall be deemed to be an amount equal to the Realised Hedge Loss (if any) under the Hedging Agreement to which such Hedging Counterparty is party.

### 21. **INFORMATION**

#### 21.1 **Information and dealing**

The Funding Parties shall provide to the Security Agent from time to time (through the Intercreditor Agent in the case of the First Ranking Funding Parties if relevant) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each First Ranking Funding Party shall deal with the Security Agent exclusively through the Intercreditor Agent and shall not deal directly with the Security Agent.

## 21.2 Disclosure

Each of the Company and the Assignor consents, until such time as all of the Secured Obligations have been discharged in full, to the disclosure by any of the Secured Parties to each other of such information concerning any of the Security Providers as any Secured Party shall see fit.

## 22. NOTICES

### 22.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing but, unless otherwise stated, may be made by fax or letter.

### 22.2 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 Finance Documents is:

- (a) identified with its name in the signing pages of the Deed of Appointment and Priority Deed of Amendment;
- (b) specified on the Finance Party Accession Undertaking to which it is a party; or
- (c) specified on the Assignor Accession Deed to which it is a party;

or any substitute address, fax number or department or officer as the party may notify to the Security Agent (or the Security Agent may notify to the other parties, if a change is made by the Security Agent) by not less than 10 Business Days' notice.

### 22.3 Delivery

(a) Any communication or document made or delivered by one Person to another under or in connection with the Finance Documents shall only be effective:

- (i) if delivered personally or by overnight courier, when left at the relevant address;
- (ii) if by way of fax, when received in legible form; or
- (iii) 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 22.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Security Agent shall be effective only when actually received by that Security 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 22.2 (*Addresses*) (or any substitute department or officer as that Security Agent shall specify for this purpose).

- (c) All notices to the Company shall be sent through the Security Agent (but always with a copy to the Intercreditor Agent in the case of any notice from any First Ranking Finance Party (other than the Intercreditor Agent)). All notices from the Company hereunder shall be sent to the Security Agent who shall distribute them to the Intercreditor Agent (who shall forward them to the First Ranking Finance Parties), the Second Ranking Finance Party and the Third Ranking Finance Party.

#### 22.4 **Electronic communication**

- (a) Any communication to be made between the Security Agent and the Intercreditor Agent or a First Ranking Finance Party under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Security Agent and the Intercreditor Agent or the relevant First Ranking Finance Party:
- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) 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
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Security Agent and the Intercreditor Agent or a First Ranking Finance Party shall be effective only when actually received in readable form and in the case of any electronic communication made by a First Ranking Finance Party or the Intercreditor Agent to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

#### 22.5 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be in English or, if not in English, and if so required by the Security 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.

### 23. **PRESERVATION**

#### 23.1 **Partial invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired and, if any part of the security intended to be created by or pursuant to this



Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

### 23.2 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Deed 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 this Deed are cumulative and not exclusive of any rights or remedies provided by law.

### 23.3 Waiver of defences

The provisions of this Deed will not be affected by an act, omission, matter or thing which, but for this Clause 23.3, would reduce, release or prejudice the subordination and priorities in this Deed including:

- (a) any time, waiver or consent granted to, or composition with any Person;
- (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Grantor or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Transaction Security;
- (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Person;
- (d) any amendment (however fundamental) or replacement of a Finance Document or any other document or security except for any express amendment to this Deed to that effect;
- (e) any unenforceability, illegality or invalidity of any obligation of any Person under any Finance Document or any other document or security; or
- (f) any intermediate payment or discharge of any of the Liabilities of the Secured Parties in whole or in part.

### 23.4 Priorities not affected

Except as otherwise provided in this Deed the priorities referred to in Clause 3 (*Ranking and Priority*) will:

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities of the Secured Parties or by any intermediate reduction or increase in, amendment or variation to any of the Finance Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which the Finance Documents and this Deed are executed or registered or notice of them is given to any Person; and

- (c) secure the Liabilities of the Secured Parties in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

## 24. CONSENTS, AMENDMENTS AND OVERRIDE

### 24.1 Required consents

- (a) No term of this Deed may be amended or waived except by the written agreement of the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Security Agent. If the Security Agent has the prior consent of the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor, the Security Agent and the Company may from time to time agree in writing to amend this Deed or waive any of the requirements of this Deed and any amendments or waivers so agreed shall be binding on the Secured Parties and the Assignor.
- (b) If the amendment or waiver may impose new or additional obligations on or withdraw or reduce the rights of any Party, the consent of that Party is required.
- (c) Notwithstanding the foregoing, this Deed may be amended at the request of the Company to the extent necessary to enable the grant of Security ranking behind that of the First Ranking Finance Parties over the Pledged Stock subject to the Company Share Pledge *provided that*:
  - (i) the terms of the grant of the Security (including terms concerning the subordination of the grantee's claims and enforcement in respect thereof) are, as between the First Ranking Finance Parties and the grantee, no more favourable to the latter than those enjoyed by the Second Ranking Finance Party;
  - (ii) such terms and any other terms of the amendment are otherwise reasonably acceptable to the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Security Agent and provide for the accession hereto of the grantee;
  - (iii) all Permits in respect of the grant of the Security, the terms thereof, the terms of the amendments and this Deed as so amended have been obtained (and, to the extent any change may be required to any existing Permit (including the Gaming Concession Consent Agreement or any other Transaction Document to which the Macau SAR is party) or any of the terms thereof, such change is reasonably acceptable to the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Security Agent); and
  - (iv) legal opinions, in form and substance reasonably acceptable to the Intercreditor Agent, the Second Ranking Finance Party, the Third Ranking Finance Party and the Security Agent, have been received by the Security Agent in relation to the grant of the Security, the terms thereof and the amendments;

- (d) An amendment or waiver which relates to the rights or obligations of the Intercreditor Agent, the Hotel Facility Agent, the Project Facility Agent or the Security Agent may not be effected without the consent of the Intercreditor Agent, the Hotel Facility Agent, the Project Facility Agent or, as the case may be, the Security Agent.
- (e) Any amendment or waiver given in accordance with this Clause will be binding on all Parties and the Security Agent may effect, on behalf of any Secured Party or the Assignor, any amendment or waiver permitted by this Clause 24.1.

#### 24.2 **Amendment of other Security Documents**

- (a) Subject to Clause 24.2(b), any term of any of the Security Documents (other than this Deed) may be amended or waived by the Security Agent, acting on the instructions of:
  - (i) at any time prior to the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities, the Intercreditor Agent (acting in accordance with the First Ranking Finance Documents);
  - (ii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities but prior to the payment and discharge in full of all of the Second Ranking Liabilities, the Second Ranking Finance Party (acting in accordance with the Second Ranking Finance Documents); or
  - (iii) at any time after the later of (i) the end of each of the Hotel Facility Availability Period and the Project Facility Availability Period and (ii) the payment and discharge in full of all of the First Ranking Liabilities and the Second Ranking Liabilities, the Third Ranking Finance Party (acting in accordance with the Third Ranking Finance Documents).
- (b) Subject to Clause 17.1 (*Resignation of the Security Agent*), no release or discharge of any Transaction Security may be made except with the prior consent of the Intercreditor Agent, the Second Ranking Finance Party and the Third Ranking Finance Party unless such release or discharge is permitted under the relevant Security Document.

#### 24.3 **Agreement to override**

Unless expressly stated otherwise in this Deed, this Deed overrides anything in the Finance Documents to the contrary.

#### 25. **COUNTERPARTS**

This Deed 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 Deed.

26. **GOVERNING LAW**

This Deed is governed by English law.

27. **ENFORCEMENT**

27.1 **Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 27.1(c) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

27.2 **Service of Process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each of the Company, the Assignor and the Third Ranking Finance Party:
  - (i) 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 Deed; and
  - (ii) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.
- (b) Without prejudice to any other mode of service allowed under any relevant law, the Second Ranking Finance Party:
  - (i) irrevocably appoints Caixa Geral de Depósitos, London Branch, Walbrook-House, 23 - 27<sup>th</sup> Floor, Walbrook, London EC4N 8BT as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed; and
  - (ii) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

27.3 **Exercise of Rights**

Notwithstanding anything in Clause 27.1(c) to the contrary, the Secured Parties will only take actions over the Transaction Security through the Security Agent unless and until the appointment of the Security Agent ceases and no successor Security Agent is appointed under Clause 17 (*Change of Security Agent and Delegation*).

**This Deed has been entered into on the date stated at the beginning of this Deed and executed as a deed by the Second Ranking Finance Party, the Third Ranking Finance Party and the Assignor and is intended to be and is delivered by them as a deed on the date specified above.**

**SCHEDULE 1**  
**FORM OF FINANCE PARTY ACCESSION UNDERTAKING**

To: *[Insert full name of current Security Agent]*, for itself and each of the other Parties to the Deed of Appointment and Priority referred to below.

THIS UNDERTAKING is made on *[date]* by *[insert full name of new Funding Party/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]* (the “**Acceding [Funding Party/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]**”) in relation to the Deed of Appointment and Priority (the “**Deed of Appointment and Priority**”) dated 14 September 2004 between, among others, Wynn Resorts (Macau) S.A., Société Générale Asia Limited as Intercreditor Agent, the financial institutions as Original First Ranking Lenders as defined therein, Banco Nacional Ultramarino, S.A. as Second Ranking Finance Party, Wynn Group Asia, Inc. as Third Ranking Finance Party and Société Générale, Hong Kong Branch as Security Agent. Terms defined in or by reference in the Deed of Appointment and Priority shall bear the same meanings when used in this Undertaking and the principles of construction and rules of interpretation set out or referred to therein shall also apply.

In consideration of the Acceding *[Funding Party/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]* being accepted as *[a First Ranking Lender/Hedging Counterparty/Second Ranking Finance Party/Third Ranking Finance Party/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]* for the purposes of the Deed of Appointment and Priority, the Acceding *[Funding Party/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]* hereby confirms that, as from *[date]*, it intends to be party to the Deed of Appointment and Priority as a *[First Ranking Lender/Second Ranking Finance Party/Third Ranking Finance Party/Hedging Counterparty/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]*, undertakes to perform all the obligations expressed in the Deed of Appointment and Priority to be assumed by *[a First Ranking Lender/Second Ranking Finance Party/Third Ranking Finance Party/Hedging Counterparty/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]* and agrees that it shall be bound by all the provisions of the Deed of Appointment and Priority, as if it had been an original party to the Deed of Appointment and Priority.

This Undertaking shall be governed by and construed in accordance with English law.

**THIS UNDERTAKING** has been entered into on the date stated above *[and is executed as a deed by the Acceding Funding Party]*<sup>1</sup>.

*[Acceding [Funding Party/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]]*

By: \_\_\_\_\_ ]<sup>2</sup>

<sup>1</sup> Delete the wording in square brackets if the Acceding Funding Party will be a First Ranking Finance Party.

<sup>2</sup> Applicable to an Acceding Intercreditor Agent, Acceding Hotel Facility Agent, Acceding Project Facility Agent and, in the case of an Acceding Funding Party, applicable if the Acceding Funding Party is not a Second Ranking Finance Party or a Third Ranking Finance Party.

EXECUTED AS A DEED

BY *[insert full name of Acceding Funding Party and execution clause appropriate thereto and to manner of execution]*<sup>3</sup>

Address: *[insert address of Acceding Funding Party/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]*

Fax: *[insert fax number of Acceding Funding Party/Intercreditor Agent/Hotel Facility Agent/Project Facility Agent]*

Accepted by the Security Agent:

Accepted, in the case of First Ranking Finance Parties by [Intercreditor Agent]/[outgoing Intercreditor Agent]

\_\_\_\_\_  
for and on behalf of

*[Insert actual name of Security Agent]*

\_\_\_\_\_  
for and on behalf of

*[Insert actual name of Intercreditor Agent or outgoing Intercreditor Agent as appropriate]*

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

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

<sup>3</sup> Applicable to an Acceding Funding Party which is a Second Ranking Finance Party or a Third Ranking Finance Party.

**SCHEDULE 2**  
**ASSIGNMENT OF THIRD RANKING LIABILITIES**

**1. Assignment**

- (a) The Assignor hereby assigns, with full title guarantee, to the Security Agent as agent and security trustee for the TRL Secured Parties, as security for the payment and discharge of the First and Second Ranking Secured Obligations, all of the Assignor's right, title and interest from time to time in and to the Third Ranking Liabilities.
- (b) The execution of this Deed by the Company shall constitute notice to the Company of the assignment of the Assignor's right, title and interest in and to the Third Ranking Liabilities by the Assignor. The Company hereby consents to such assignment (and any further assignment or disposal of the Third Ranking Liabilities or any part thereof by the Security Agent or any Receiver pursuant to this Deed) and confirms to the Assignor and the Security Agent (as agent and security trustee for and on behalf of the TRL Secured Parties) that it shall continue to be bound by the terms on which the Third Ranking Liabilities have been or shall have been made available to it.
- (c) Notwithstanding the assignment referred to in paragraph 1(a) of this Schedule, the Assignor remains liable to perform the obligations imposed on it under the Third Ranking Finance Documents and neither the Security Agent nor any of the other Secured Parties is liable to perform any of such obligations nor liable for the consequences of non-performance.
- (d) Subject to the terms of the Finance Documents, each Funding Party is under an obligation to make further advances (or, in the case of a Hedging Counterparty, payments) to the Company and that obligation will be deemed to be incorporated into this Deed as if set out in this Deed.

**2. Further Assurance**

- (a) The Assignor hereby irrevocably authorises the Security Agent at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Third Ranking Liabilities fall within the scope of Article 9 of the Uniform Commercial Code of the State of Nevada or any other Uniform Commercial Code jurisdiction and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State of Nevada, or any other Uniform Commercial Code jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Assignor is an organisation, the type of organisation and any organisational identification number issued to the Assignor. The Assignor agrees to furnish any such information to the Security Agent promptly upon the Security Agent's request.

- (b) The Assignor shall promptly execute all documents and do all things (including without limitation the delivery, transfer or assignment of all or part of the Third Ranking Liabilities to the Security Agent or its nominee(s)) which the Security Agent may require for the purpose of (i) exercising the Collateral Rights or (ii) securing and perfecting the Security Agent's security over or title to all or any part of the Third Ranking Liabilities provided that any such requirement shall be reasonable prior to the delivery of a TRL Enforcement Notice to the Assignor.
- (c) The Assignor shall, upon written demand from the Security Agent, at any time after the Security Agent shall have given a TRL Enforcement Notice, (i) procure the transfer of the Assignor's right, title and interest in and to the Third Ranking Liabilities into the name of the Security Agent or its nominee(s), agents or such purchasers as it shall direct and (ii) execute all documents and do all other things that the Security Agent may require to facilitate the realisation of the Third Ranking Liabilities.

3. **Enforcement of Security Assignment**

- (a) After the Security Agent shall have given a TRL Enforcement Notice to the Assignor, the security created by or pursuant to paragraph 1 of this Schedule is immediately enforceable and the Security Agent may, without notice to the Assignor and/or any Grantor or prior authorisation from the Assignor or any court, enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and get in, collect, hold, sell, assign or otherwise dispose of all or any part of the Third Ranking Liabilities (at the times, in the manner and on such terms as it may think fit).
- (b) Any restrictions on the consolidation of Security shall be excluded to the fullest extent permitted by law and the Security Agent shall, so far as it shall be lawful, be entitled to consolidate all or any of the security interests constituted by this Deed and/or its powers hereunder with any other Security whether in existence at the date of this Deed or created thereafter.
- (c) Neither the Security Agent nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Third Ranking Liabilities or be liable for any loss upon realisation in connection with the Third Ranking Liabilities (or any part thereof) to which a mortgagee in possession might otherwise be liable other than any loss which arises as a consequence of any gross negligence or wilful default on the part of the Security Agent or Receiver.
- (d) The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Deed.



- (e) A certificate in writing by an officer or agent of the Security Agent that any power of sale or other disposal has arisen and is exercisable shall be conclusive evidence (in the absence of manifest error) of that fact, in favour of a purchaser of all or any part of the Third ranking Liabilities.

4. **Receiver**

- (a) After the Security Agent shall have given a TRL Enforcement Notice to the Assignor or if requested to do so by the Assignor, the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent), without prior notice to the Assignor or any Grantor:
  - (i) appoint one or more Persons to be a Receiver of the whole or any part of the Third Ranking Liabilities; and
  - (ii) remove (so far as it is lawfully able) any Receiver so appointed.

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Laws of Property Act 1925 (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any Third Ranking Liabilities.

- (b) Each Person appointed to be a Receiver pursuant to paragraph 4(a) of this Schedule shall be:
  - (i) entitled to act individually or together with any other Person appointed or substituted as Receiver;
  - (ii) for all purposes deemed to be the agent of the Assignor which shall be solely responsible for his acts, defaults and liabilities (other than such acts, defaults and liabilities that are attributed to the gross negligence or wilful misconduct of the Receiver) and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and
  - (iii) entitled to remuneration for his services at a reasonable rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).
- (c) In addition to the powers of the Security Agent conferred by paragraph 3 of this Schedule, each Receiver shall (subject to any limitations or restrictions in the instrument appointing him but notwithstanding any winding-up, insolvency or dissolution of the Assignor) have, in relation to the part of the Third Ranking Liabilities in respect of which he was appointed (in the name of or on behalf of the Assignor or in his own name and, in each case, at the cost of the Assignor):
  - (i) all the powers and rights of an absolute owner and power to do or omit to do anything which the Assignor could do or omit to do;

- (ii) the power to do all things (including without limitation bringing or defending proceedings in the name or on behalf of the Assignor) which are incidental or conducive to (i) any of the functions, powers, authorities or discretions conferred on or vested in him or (ii) the exercise of the Collateral Rights (including without limitation realisation of such part of such Third Ranking Liabilities) or (iii) bringing to his hands any assets forming, or which when got in would be, part of such Third Ranking Liabilities; and
  - (iii) all the powers conferred on him by general law; and
  - (iv) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act and all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver).
- (d) Without prejudice to the generality of the foregoing, each Receiver shall (subject to any limitations or restrictions in the instrument appointing him but notwithstanding any winding-up, insolvency or dissolution of the Assignor) have the following powers in relation to the part of the Third Ranking Liabilities (and any assets which, when got in, would be part of such Third Ranking Liabilities) in respect of which he was appointed (and every reference in this paragraph 4(d) to the "Third Ranking Liabilities" shall be read as a reference to that part of the Third Ranking Liabilities in respect of which such Receiver was appointed):
- (i) **Collection**  
power to collect and get in the Third Ranking Liabilities including without limitation amounts and distributions (whether in cash or in kind) payable in respect thereof;
  - (ii) **Proceedings and Claims**  
power to bring, prosecute, enforce, defend and abandon applications, claims, disputes, actions, suits and proceedings in connection with all or any part of the Third Ranking Liabilities or this Schedule in the name of the Assignor or in his own name and to submit to arbitration, negotiate, compromise and settle any such applications, claims, disputes, actions, suits or proceedings;
  - (iii) **Deal with Subordinated Indebtedness**  
power to sell, assign, transfer, factor or otherwise dispose of the Third Ranking Liabilities or any part thereof or concur in any of the foregoing on behalf of the Assignor in such manner and generally on such terms as he thinks fit;

(iv) **Redemption of Security**

power to redeem, discharge or compromise any security whether or not having priority to the security constituted by this Deed or any part of it;

(v) **Covenants, Guarantees and Indemnities**

power to enter into bonds, covenants, guarantees, commitments, indemnities and other obligations or liabilities as he shall think fit, to make all payments needed to effect, maintain or satisfy such obligations or liabilities and to use the company seal(s) (if any) of the Assignor; and

(vi) **Exercise of Powers in Assignor's Name**

power to exercise any or all of the above powers on behalf of and in the name of the Assignor (notwithstanding any winding-up, insolvency, dissolution of the Assignor) or on his own behalf.

(e) In making any sale or other disposal of all or any part of the assets subject to the security created hereunder or any acquisition in the exercise of their respective powers, a Receiver or the Security Agent may do so for such consideration, in such manner, and generally on such terms and conditions as it thinks fit. Any contract for such sale, disposal or acquisition by the Receiver or the Security Agent may contain conditions excluding or restricting the personal liability of the Receiver or the Security Agent.

(f) So long as Wynn Resorts has not delivered a notice under Clause 6.2 of the Wynn Resorts Support Agreement terminating its obligations under Clause 7 thereof, the Security Agent shall, prior to the acceptance of any offer made by a Senior Secured Creditor for the purchase of all or any of the Third Ranking Liabilities, give reasonable details of all of the written offers received by the Security Agent for the purchase of such Third Ranking Liabilities.

5. **Protection of Purchasers**

(a) The receipt of the Security Agent or any Receiver in respect of consideration from a purchaser shall be conclusive discharge to such purchaser of any part of the Third Ranking Liabilities from the Security Agent or any Receiver.

(b) No purchaser or other Person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.

6. **Power of Attorney**

(a) The Assignor by way of security irrevocably (within the meaning of Section 4 of the Powers of Attorney Act 1971) appoints the Security Agent and any Receiver to be its attorney and in its name, on its behalf and as its act and deed to, upon and at all times after the Security Agent shall have delivered a TRL

Enforcement Notice, execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (i) carrying out any obligation imposed on the Assignor by this Deed (including, without limitation, the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Third Ranking Liabilities) which the Assignor has failed to perform in accordance with the terms hereof; and
  - (ii) enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on it by or pursuant to this Deed or by law (including, without limitation, after the delivery of a TRL Enforcement Notice by the Security Agent, the exercise of any right of a legal or beneficial owner of the Third Ranking Liabilities).
- (b) The Assignor shall ratify and confirm all things done and all documents executed by any attorney in accordance with the terms of this paragraph 6 of this Schedule in the exercise of all or any of its powers granted by or in relation to the Assignor.

**7. Effectiveness of Security**

- (a) The security created by or pursuant to this Schedule shall remain in full force and effect as a continuing security for the First and Second Ranking Secured Obligations unless and until discharged by the Security Agent and shall not cease by reason of any partial payment of any of the First and Second Ranking Secured Obligations. Notwithstanding the foregoing, if the obligations of the Assignor under this Deed cease to be continuing for any reason, the liability of the Assignor at the date of such cessation shall remain, regardless of any subsequent increase or reduction in the First and Second Ranking Secured Obligations.
- (b) The security created by or pursuant to this Schedule and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Security Agent or any TRL Secured Party may at any time hold for any or all of the First and Second Ranking Secured Obligations or any rights, powers and remedies provided by law. No prior security held by the Security Agent (whether in its capacity as agent or security trustee or otherwise) or any of the TRL Secured Party over the whole or any part of the Third Ranking Liabilities shall merge into the security constituted by this Deed.
- (c) None of the obligations of the Assignor hereunder and the Collateral Rights shall be discharged, impaired or otherwise affected by:
  - (i) any winding-up, dissolution, re-organisation, bankruptcy, death or insolvency of, or any change in, any Grantor or any other Person;
  - (ii) any of the Secured Obligations being at any time illegal, invalid, unenforceable or ineffective;

- (iii) any unenforceability or invalidity of any other agreement or document;
  - (iv) any time or other indulgence being granted to the Company or any other Person with respect to the Secured Obligations;
  - (v) any (actual or purported) amendment, variation, waiver or release of any of the Secured Obligations except for a release or discharge in accordance with Clause 16.20 (*Winding up of trust*) or specific amendment of this Deed to that effect;
  - (vi) any variation of the terms of the trust upon which the Security Agent holds the security constituted hereby and/or the Collateral Rights;
  - (vii) any failure to take or failure to realise the value of any other collateral in respect of any or all of the Secured Obligations or any release, discharge, exchange or substitution of any such collateral; or
  - (viii) any other act, event or omission which but for this provision would or might operate to impair, discharge or otherwise affect the obligations of any or all of the Grantors and the Assignor hereunder and/or the Collateral Rights.
- (d) No failure on the part of the Security Agent to exercise, or any delay on its part in exercising, any Collateral Right shall operate as a waiver thereof, nor shall any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.
  - (e) None of the Security Agent, its nominee(s) or any Receiver shall be liable by reason of (i) taking any action permitted by this Deed or (ii) any neglect or default in connection with the Third Ranking Liabilities or (iii) taking possession of or realising all or any part of the Third Ranking Liabilities, except in the case of gross negligence or wilful default upon its part.
  - (f) The Security Agent shall not be obliged to make any demand of any Grantor or any other Person, to take any action or obtain judgment in any court against any Grantor or any other Person or to make or file any proof or claim in a liquidation, bankruptcy, death or insolvency of any Grantor or any other Person or to enforce or seek to enforce any other security in respect of any or all of the First and Second Ranking Secured Obligations before exercising any Collateral Right.
  - (g) Until the satisfaction of the requirements set out in Clause 16.20 in respect of the release of security, any settlement or discharge hereunder in relation to the Assignor shall be conditional upon no security or payment to the Security Agent by or on behalf of any Grantor being avoided or reduced by virtue of any Grantor's bankruptcy, insolvency, liquidation or similar laws of general application and shall in those circumstances be void.
  - (h) Until the security constituted by this Schedule 2 is released by the Security Agent as contemplated by Clause 16.20, the Assignor shall not exercise any

right which it may at any time have, by reason of the performance of its obligations under this Schedule 2, to be indemnified by any Sponsor or to receive any collateral from any Sponsor or to claim any contribution from any other Person of any Sponsor's obligations under all or any of the Finance Documents or to take the benefit (in whole or in part and whether by subrogation or otherwise) of any rights of all or any of the Secured Parties under all or any of the Finance Documents or of any other security taken pursuant to, or in connection with, all or any of the Finance Documents by all or any of the Secured Parties.

**8. Set-Off**

The Assignor authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right) from time to time to, after the delivery of a TRL Enforcement Notice to the Assignor, set off against any or all sums and monies due and payable by the Assignor hereunder but unpaid, any amount or other obligation (contingent or otherwise) owing by the Security Agent to the Assignor.

**9. Subsequent Security Interests**

If the Security Agent (acting in its capacity as agent or security trustee or otherwise) or any of the other Secured Parties (other than the Third Ranking Finance Party) at any time receives or is deemed to have received notice (which it reasonably believes to be genuine, correct and appropriately authorised) of any subsequent Security affecting all or any part of the Third Ranking Liabilities or any assignment or transfer of the Third Ranking Liabilities which is prohibited by the terms of any Finance Document, all payments thereafter by or on behalf of the Assignor to the Security Agent (whether in its capacity as agent or trustee or otherwise) or any of the other Secured Parties (other than the Third Ranking Finance Party) shall be treated as having been credited to a new account of the Assignor and not as having been applied in reduction of any or all of the First and Second Ranking Secured Obligations as at the time when the Security Agent or such other Secured Party received such notice save for the purpose of calculation of interest.

**10. Indemnity**

At any time:

- (a) prior to the delivery of a TRL Enforcement Notice to the Assignor, all reasonable costs and expenses; or
- (b) upon or after the delivery of a TRL Enforcement Notice to the Assignor, all costs and expenses

of any and all of the Secured Parties (other than the Third Ranking Finance Party) (including without limitation legal fees, stamp duties and any value added tax) incurred (i) in connection with the perfection or enforcement of the collateral constituted under or pursuant to this Schedule, (ii) in connection with the exercise of any Collateral Right and (iii) otherwise in relation to this Schedule, shall (except to the extent already reimbursed by the Company pursuant to the Deed of Appointment and Priority) be reimbursed

(through the Security Agent) to such Secured Party/Parties by the Assignor within 15 days of demand on a full indemnity basis.

**11. Discretion And Delegation**

- (a) Any liberty or power which may be exercised or any determination which may be made under this Schedule by the Security Agent or any Receiver may, subject to the other terms and conditions of this Deed, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons save that the Security Agent shall act in a reasonable manner if expressly required under this Schedule.
- (b) Each of the Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Schedule (including without limitation the power of attorney under paragraph 6 of this Schedule) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Security Agent or the Receiver itself or any subsequent delegation or revocation thereof.

**12. Undertakings of Assignor**

- (a) The Assignor shall not, subject to sub-paragraph (b) below, assign, sell, transfer or otherwise dispose of all or any part of its right, title and/or interest in and/or to the Third Ranking Liabilities without the prior consent of the Intercreditor Agent and the Second Ranking Finance Party (such consent not to be unreasonably withheld or delayed) provided that in the event that such consent is granted, the Assignor shall procure the assignee, purchaser or, as the case may be, transferee to, at the same time as such assignment, sale, transfer or, as the case may be, disposal, (1) execute and deliver to the Security Agent an Assignor Accession Deed and (2) deliver to the Security Agent a legal opinion, in form and substance reasonably satisfactory to the Security Agent, in respect of the replacement Assignor's obligations under this Deed.
- (b) The Assignor shall not create, grant or permit to exist any Security (other than any Lien referred to in paragraph 3(a), 3(f) or 3(q) of Schedule 5 Part B of the Common Terms Agreement and any Mandatory Permitted Lien) over all or any of its right, title and/or interest in and to the Third Ranking Liabilities.

**SCHEDULE 3**  
**FORM OF ASSIGNOR ACCESSION DEED**

**THIS AGREEMENT** is made on [date]

**BETWEEN:**

- (1) **INSERT FULL NAME OF NEW ASSIGNOR**] (the “**Acceding Assignor**”); and
- (2) **[INSERT FULL NAME OF CURRENT SECURITY AGENT]** (the “**Security Agent**”), as agent and security trustee for and on behalf of the Secured Parties.

This agreement is made on [date] by the Acceding Assignor in relation to a Deed of Appointment and Priority (the “**Deed of Appointment and Priority**”) dated 14 September 2004 between, among others, Wynn Resorts (Macau) S.A., Société Générale Asia Limited as Intercreditor Agent, the financial institutions as Original First Ranking Lenders as defined therein, Banco Nacional Ultramarino, S.A. as Second Ranking Finance Party, Wynn Group Asia, Inc. as Third Ranking Finance Party and Société Générale, Hong Kong Branch as Security Agent (the “**Deed of Appointment and Priority**”).

**IT IS AGREED** as follows:

Terms defined in or by reference in the Deed of Appointment and Priority shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement and the principles of construction and rules of interpretation set out or referred to therein shall also apply.

The Acceding Assignor and the Security Agent agree that the Security Agent shall hold (a) the Security created or expressed to be created pursuant to Schedule 2 (*Assignment of Third Ranking Liabilities*) of the Deed of Appointment and Priority and (b) all moneys from time to time received or recovered by the Security Agent in connection with the realisation or enforcement of that Security, on trust for the Secured Parties on the terms and conditions contained in the Deed of Appointment and Priority.

The Acceding Assignor hereby assigns, with full title guarantee, to the Security Agent as agent and security trustee for the TRL Secured Parties, as security for the payment and discharge of the First and Second Ranking Secured Obligations, all of the its right, title and interest from time to time in and to the Third Ranking Liabilities upon the terms and conditions set forth in Schedule 2 (*Assignment of Third Ranking Liabilities*) to the Deed of Appointment and Priority.

The Acceding Assignor confirms that it shall be party to the Deed of Appointment and Priority as an Assignor and a Grantor, undertakes to perform all the obligations expressed to be assumed by an Assignor and a Grantor under the Deed of Appointment and Priority and agrees that it shall be bound by all the provisions of the Deed of Appointment and Priority as if it had been an original party to the Deed of Appointment and Priority.

This Agreement shall be governed by, and construed in accordance with, English law.



**THIS AGREEMENT** has been signed on behalf of the Security Agent and executed as a deed by the Acceding Assignor and is delivered on the date stated above.

**The Acceding Assignor**

EXECUTED AS A DEED

BY *insert full name of Acceding Assignor and execution clause appropriate thereto and the manner of execution*]

Address for notices:

Address:

Fax:

**The Security Agent**

*[Full Name of current Security Agent]*

By:

Date:

**SCHEDULE 4**  
**FORM OF CONFIDENTIALITY UNDERTAKING: CHANGE OF SECURITY AGENT**

To: [Insert name of potential succeeding Security Agent]

[Date]

Dear Sirs,

We understand that you are considering accepting an appointment (the "**Appointment**") as security agent under the deed of appointment and priority dated 14 September 2004 (the "**Deed**") in relation to the financing of the design, development, construction, ownership, operation and maintenance of the Wynn Macau hotel, retail and destination gaming resort 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 Appointment.
2. *Permitted Disclosure* We agree that you may disclose Confidential Information:
  - (a) to members of the 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 Appointee Group;
  - (b) subject to the requirements of the 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 as Security Agent under the Deed so long as that person has delivered a letter to you in equivalent form to this letter; and
  - (c) (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 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 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) 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) 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 otherwise) an interest, direct or indirect, as Security Agent under the Deed 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 Grantor 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 Grantor 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 Grantor.
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 in the Deed shall, unless the context otherwise requires, have the same meaning, the principles of construction and rules of interpretation set out or referred to therein shall also apply and:
- “**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).
- “**Confidential Information**” means any information relating to the Projects, any Grantor, the Finance Documents, the Transaction Security, any agreement relating to the Deed and/or the 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 Grantors 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;

“**Projects**” has the meaning ascribed to it in the Common Terms Agreement.

“**Permitted Purpose**” means considering and evaluating whether to enter into the Appointment.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

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For and on behalf of

*[Insert name of Security Agent]*

To: *[Security Agent]*

The Company

We acknowledge and agree to the above:

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For and on behalf of

**[Potential succeeding Security Agent]**

Date:

**SCHEDULE 5**  
**FIRST RANKING LENDERS**

Bank of America, N.A.

Deutsche Bank AG, Hong Kong Branch

Société Générale, Hong Kong Branch

Aozora Bank, Ltd.

Banco Nacional Ultramarino, S.A.

Bank of China Limited Macau Branch

WestLB AG, Hong Kong Branch

DBS Bank Ltd., Hong Kong Branch

The Royal Bank of Scotland plc

Aareal Bank AG

United Overseas Bank Limited

Commerzbank Aktiengesellschaft, Hong Kong Branch

Allied Irish Banks, p.l.c.

Standard Chartered First Bank Korea Limited

The Bank of Nova Scotia

Bayerische Landesbank, Hong Kong Branch

Bayerische Hypo- und Vereinsbank AG, Hong Kong Branch

HSH Nordbank AG, Hong Kong Branch

Industrial and Commercial Bank of China (Asia) Limited

Banco Comercial de Macau, S.A.

Bank of Scotland

Banco Espírito Santo do Oriente, S.A.

Crédit Industriel et Commercial, Singapore Branch

Far Eastern International Bank

Hana Bank Hong Kong Branch

Nordkap Bank AG

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The Bank of East Asia, Limited

Banco Delta Asia S.A.R.L.

**HEDGING COUNTERPARTIES**

Banc of America Securities Asia Limited

Deutsche Bank AG

Société Générale

**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 reporting 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 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 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 8, 2005

/s/ STEPHEN A. WYNN

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**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, John Strzemp, 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 reporting 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 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 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 8, 2005

/s/ JOHN STRZEMP

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**John Strzemp**  
Executive Vice President,  
Chief Financial Officer and Treasurer  
(Principal Financial Officer and  
Principal 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, 2005 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 John Strzemp, 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 his 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

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Name: **Stephen A. Wynn**  
Title: **Chairman and Chief Executive Officer**  
**(Principal Executive Officer)**

Date: November 8, 2005

/s/ JOHN STRZEMP

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Name: **John Strzemp**  
Title: **Executive Vice President,**  
**Chief Financial Officer and Treasurer**  
**(Principal Financial and Accounting Officer)**

Date: November 8, 2005

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.