

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

**FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2018

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)

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

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, \$0.01 par value	Nasdaq Global Select Market

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

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates based on the closing price as reported on the Nasdaq Global Select Market on June 29, 2018 was approximately \$16.34 billion.

As of February 15, 2019, 107,635,436 shares of the registrant's Common Stock, \$0.01 par value, were outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's Proxy Statement for its 2019 Annual Meeting of Stockholders to be filed not later than 120 days after the end of the fiscal year covered by this report are incorporated by reference into Part III of this Form 10-K.

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**FORM 10-K**  
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## PART I

### Item 1. Business

#### Overview

Wynn Resorts, Limited ("Wynn Resorts," or together with its subsidiaries, "we" or the "Company") is a leading developer, owner and operator of destination casino resorts (integrated resorts) that integrate hotel accommodations and a wide range of amenities, including fine dining outlets, premium retail offerings, distinctive entertainment theaters and large meeting complexes.

We currently own approximately 72% of Wynn Macau, Limited ("WML") and operate two integrated resorts in the Macau Special Administrative Region of the People's Republic of China ("Macau"), Wynn Palace and Wynn Macau (collectively, our "Macau Operations"). In Las Vegas, Nevada, we operate and, with the exception of certain retail space, own 100% of Wynn Las Vegas, which we also refer to as our Las Vegas Operations. We are also currently constructing Encore Boston Harbor, an integrated resort in Everett, Massachusetts, adjacent to Boston, which we expect to open in mid-2019.

We present the operating results of our three resorts in the following segments: Wynn Palace, Wynn Macau, and Las Vegas Operations.

Wynn Resorts, a Nevada corporation, was formed in 2002. Wynn Resorts files annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments of such reports with the Securities and Exchange Commission ("SEC"). Any document Wynn Resorts files may be inspected, without charge, at the SEC's internet site address at <http://www.sec.gov>. Information related to the operation of the SEC's public reference room may be obtained by calling the SEC at 1-800-SEC-0330. In addition, through our own internet address at [www.wynnresorts.com](http://www.wynnresorts.com), Wynn Resorts provides a hyperlink to a third-party SEC filing website which posts these filings as soon as reasonably practicable, where they can be reviewed without charge. The information found on our website is not a part of this Annual Report on Form 10-K or any other report we file or furnish to the SEC.

#### Our Resorts

##### *Macau Operations*

We opened Wynn Macau on September 6, 2006, Encore, an expansion of Wynn Macau, on April 21, 2010, and Wynn Palace on August 22, 2016. We operate our Macau Operations under a 20-year casino concession agreement granted by the Macau government in June 2002. We lease from the Macau government approximately 51 acres of land in the Cotai area of Macau where Wynn Palace is located and 16 acres of land in downtown Macau's inner harbor where Wynn Macau is located. See "Regulation and Licensing—Macau" for details on the casino concession agreement, and see "Item 2—Properties" for details on the land concession agreement.

Wynn Palace features the following as of February 20, 2019:

- Approximately 424,000 square feet of casino space, offering 24-hour gaming and a full range of games with 320 table games and 1,041 slot machines, private gaming salons and sky casinos;
- A luxury hotel tower with a total of 1,706 guest rooms, suites and villas;
- 13 food and beverage outlets;
- Approximately 106,000 square feet of high-end, brand-name retail space;
- Approximately 37,000 square feet of meeting and convention space;
- Recreation and leisure facilities, including a gondola ride, health club, spa, salon and pool; and
- Public attractions including a performance lake and floral art displays.

Wynn Macau features the following as of February 20, 2019:

- Approximately 273,000 square feet of casino space, offering 24-hour gaming and a full range of games with 317 table games and 810 slot machines, private gaming salons, sky casinos and a poker pit;
- Two luxury hotel towers with a total of 1,008 guest rooms and suites;
- 11 food and beverage outlets;

- Approximately 59,000 square feet of high-end, brand-name retail space;
- Approximately 31,000 square feet of meeting and convention space;
- Recreation and leisure facilities, including two health clubs and full service spas, a salon and a pool; and
- A rotunda show featuring a Chinese zodiac-inspired ceiling along with gold "prosperity tree" and "dragon of fortune" attractions.

In response to our evaluation of our Macau Operations and our commitment to creating a unique customer experience, we have made and expect to continue to make enhancements and refinements to these resorts.

### *Las Vegas Operations*

We opened Wynn Las Vegas on April 28, 2005 and Encore, an expansion of Wynn Las Vegas, on December 22, 2008. Wynn Las Vegas is located at the intersection of the Las Vegas Strip and Sands Avenue, and occupies approximately 215 acres of land fronting the Las Vegas Strip. In addition, we own approximately 18 acres across Sands Avenue, a portion of which is utilized for employee parking and an office building, and approximately five acres adjacent to the golf course land upon which an office building is located.

Wynn Las Vegas features the following as of February 20, 2019:

- Approximately 192,000 square feet of casino space, offering 24-hour gaming and a full range of games with 243 table games and 1,811 slot machines, private gaming salons, a sky casino, a poker room, and a race and sports book;
- Two luxury hotel towers with a total of 4,748 guest rooms, suites and villas;
- 33 food and beverage outlets;
- Approximately 160,000 square feet of high-end, brand-name retail space (the majority of which is owned and operated under a joint venture of which we own 50.1%);
- Approximately 290,000 square feet of meeting and convention space;
- Three nightclubs and a beach club;
- Recreation and leisure facilities, including swimming pools, private cabanas, two full service spas and salons, and a wedding chapel; and
- A specially designed theater presenting "Le Rêve—The Dream," a water-based theatrical production and a theater presenting entertainment productions and various headliner entertainment acts.

In December 2016, we entered into a joint venture arrangement (the "Retail Joint Venture") with Crown Acquisitions Inc. ("Crown") to own and operate approximately 88,000 square feet of existing retail space. In November 2017, we contributed approximately 74,000 square feet of additional retail space to the Retail Joint Venture, which opened in November 2018. For more information on the Retail Joint Venture, see Item 8—"Financial Statements and Supplementary Data," Note 14, "Retail Joint Venture."

In response to our evaluation of our Las Vegas Operations and our commitment to creating a unique customer experience, we have made and expect to continue to make enhancements and refinements to this resort.

### **Construction and Development Opportunities**

We are currently constructing Encore Boston Harbor, an integrated resort in Everett, Massachusetts, adjacent to Boston along the Mystic River. The resort will contain a hotel, a waterfront boardwalk, meeting and convention space, casino space, a spa, retail offerings and food and beverage outlets. The total project budget, including gaming license fees, construction costs, capitalized interest, pre-opening expenses and land costs, is estimated to be approximately \$2.6 billion. As of December 31, 2018, we have incurred approximately \$2.03 billion in total project costs. We expect to open Encore Boston Harbor in mid-2019.

We are currently constructing approximately 430,000 square feet of additional meeting and convention space at Wynn Las Vegas and have begun design and site preparation for the reconfiguration of the Wynn Las Vegas golf course, which we closed in the fourth quarter of 2017. Based on current designs, we estimate the total project budget to be approximately \$425 million. We

expect to reopen the golf course in the fourth quarter of 2019 and open the additional meeting and convention space in the first quarter of 2020.

We have begun a reconfiguration of the current Wynn Club gaming area at Wynn Macau. When completed, the enhanced space will consist of approximately 40 mass market table games, a refurbished high-limit slot area, two new restaurants and approximately 7,400 square feet of retail space, and will provide for improved pedestrian access. We estimate the total project budget to be approximately \$62 million. We expect to complete the gaming enhancements and open the new restaurants in the third quarter of 2019, and we expect to open the new retail space at the end of 2019.

We are exploring various development opportunities with respect to the approximately 38 acres of land located on the Las Vegas Strip directly across from Wynn Las Vegas.

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

## **Our Strategy**

We believe that Wynn Resorts is the world's preeminent designer, developer, and operator of integrated resorts. The Company's integrated resort business model integrates luxury hotel rooms, high-end retail, an array of dining and entertainment options, meeting and convention space, and gaming, all supported by superior levels of customer service. We believe that our resorts and management continue to benefit from our extensive design and operational experience across numerous gaming jurisdictions, providing a distinct advantage over other gaming enterprises.

Wynn Resorts and its experienced management team have a demonstrated track record in developing and operating successful integrated resort projects around the world. In addition, we have a design, development and construction subsidiary, in which senior management has significant experience across all major construction disciplines.

We aim to build appropriately scaled integrated resorts that attract a wide range of customer segments (including premium international customers) and generate strong financial results. We design and continually refresh our integrated resorts to create unique customer experiences across a wide range of gaming and non-gaming amenities. Our business is dependent upon repeat visitation from our guests. We believe superior customer experience and service is the best marketing strategy to attract and retain our customers. Human resources and staff training are essential to our strategy to ensure our employees are prepared to provide the luxury service that our guests expect.

Our integrated resorts are conceptualized, designed, built and operated in major metropolitan markets to service all customers with an emphasis on providing superior levels of premium customer service. In Las Vegas and Macau, we have been successful in attracting not only a wide range of domestic guests, but also extending our customer market areas into international markets. We leverage our international marketing team across branch offices located in Hong Kong SAR, Singapore, Japan, Taiwan and Canada to attract international customers.

Reflecting our commitment to customer service globally, the Company has received the following recognition:

- Collectively, Wynn Resorts earned more Five-Star awards than any other independent hotel company in the world in the official 2019 Forbes Travel Guide Star Rating list.
- Wynn Palace garnered six individual Five-Star awards in the 2019 Forbes Travel Guide Star Rating list.
- In 2019, Wynn Macau continues to be the only resort in the world with eight individual Forbes Five-Star awards.
- With fourteen Forbes Five-Star awards combined, Wynn Macau and Wynn Palace are the most decorated integrated resort brands in Asia.
- Wynn Resorts owns two of the largest Forbes Five-Star hotels in the United States: Wynn Tower Suites (Las Vegas) and Encore Tower Suites (Las Vegas).
- Wynn Resorts was once again honored as the highest ranking casino resort on FORTUNE Magazine's 2019 World's Most Admired Companies list in the hotel, casino and resort category.

We plan to continue to seek out new opportunities to develop and operate integrated resorts, including related businesses, around the world. Overall, we believe Wynn Resorts has a demonstrated track record of developing integrated resorts that stimulate city- and region-wide economic activity, which we believe includes:

- attracting a wide range of customers to the region, including high-net-worth international tourists;
- driving international tourism for the region;
- raising average hotel room rates in the region;
- extending the average length of stay per visitor;
- complementing existing convention and meeting business with five-star accommodations and appropriately scaled meeting amenities;
- elevating service levels with the execution of five-star customer service; and
- helping stimulate city-wide investment and employment.

## **Market and Competition**

The casino resort industry is highly competitive. Both our Macau Operations and Las Vegas Operations compete with other high-quality casino resorts. Resorts located near our properties compete on the basis of the range of amenities, level of service, price, location, entertainment, themes and size, among other factors. We seek to differentiate our Macau and Las Vegas integrated resorts from other major resorts by delivering superior design and customer service.

### **Macau**

Macau is governed as a special administrative region of China and is located approximately 37 miles southwest of Hong Kong. The journey between Macau and Hong Kong takes approximately 15 minutes by helicopter, 30 minutes by road since the opening of the Hong Kong-Zhuhai-Macau Bridge in October 2018 and one hour by jetfoil ferry. Macau, which has been a casino destination for more than 50 years, consists principally of a peninsula on mainland China and two neighboring islands, Taipa and Coloane, between which the Cotai area is located. In 2002, the government of Macau ended a 40-year monopoly on the conduct of gaming operations by conducting a competitive process that resulted in the issuance of gaming concessions to three concessionaires (including Wynn Resorts (Macau) S.A., ("Wynn Macau SA")) who in turn were permitted, subject to the approval of the government of Macau, to each grant one subconcession, resulting in a total of six gaming concessionaires and subconcessionaires. In addition to Wynn Macau SA, each of Sociedade de Jogos de Macau ("SJM") and Galaxy Entertainment Group Limited ("Galaxy") are primary concessionaires with Sands China Ltd. ("Sands"), Melco International Development Limited ("Melco") and MGM China Holdings Limited ("MGM China") operating under subconcessions. There is no limit to the number of casinos each concessionaire or subconcessionaire is permitted to operate, but each facility is subject to government approval. Currently, there are 41 casinos operating in Macau.

We believe that the Macau region hosts one of the world's largest concentrations of potential gaming customers. Since the introduction of new casinos starting in 2004, the Macau market has experienced a significant increase in annual gaming revenue and has become the largest gaming market in the world. According to Macau Statistical Information, annual gaming revenues have grown from \$2.9 billion in 2002 to \$37.5 billion in 2018.

Macau's gaming market is primarily dependent on tourists. Gaming customers traveling to Macau typically come from nearby destinations in Asia. According to the Macau Statistics and Census Service Monthly Bulletin of Statistics, approximately 90% of the visitors to Macau in 2018 came from mainland China, Hong Kong, and Taiwan. Travel to Macau by citizens of mainland China requires a visa.

According to 2018 government statistics, Macau tourist arrivals increased 9.8%, to 35.8 million, from 32.6 million in 2017. The increase in tourist arrivals contributed to a 13.3% increase in annual gaming revenues to \$37.5 billion in 2018, from \$33.1 billion in 2017.

The Macau market has experienced tremendous growth in capacity since the opening of Wynn Macau in 2006. As of December 31, 2018, there were 38,800 hotel rooms, 6,588 table games and 16,059 slot machines in Macau, compared to 12,978 hotel rooms, 2,762 table games and 6,546 slot machines as of December 31, 2006. During 2016, we contributed to the new capacity in the market with the opening of Wynn Palace in the Cotai area. Several of the current concessionaires and subconcessionaires

also opened additional facilities from 2016 through 2018 in the Cotai area and will open additional facilities over the next few years, which will further increase other gaming and non-gaming offerings in the Macau market.

Our Macau Operations face competition primarily from the 39 other casinos located throughout Macau in addition to casinos located throughout the world, including Singapore, South Korea, the Philippines, Malaysia, Australia, Las Vegas, cruise ships in Asia that offer gaming, and other casinos throughout Asia. Additionally, certain other Asian countries have legalized or in the future may legalize gaming, such as Japan, Taiwan and Thailand, which could increase competition for our Macau Operations.

### **Las Vegas**

Las Vegas is the largest gaming market in the United States. During 2018, the economic environment in the gaming and hotel markets improved in Las Vegas. Las Vegas Strip gaming revenues increased to \$6.6 billion from \$6.5 billion in 2017. Overall Las Vegas visitor volume was 42.1 million in 2018. Passenger traffic at McCarran International Airport increased 2.5% in 2018, following year-over-year increases of 5.8%, 4.5%, and 2.2% from 2015 to 2017, respectively. During 2018, the average daily room rate and revenue per available room on the Las Vegas Strip increased 1.2% and 0.6%, respectively. Occupancy on the Las Vegas Strip slightly decreased 0.5% to 89.5%, from 90.0% in 2017. Convention attendees decreased 2.2% in 2018, following year-over-year increases of 5.3%, 7.1%, and 13.4% from 2015 to 2017, respectively.

Wynn Las Vegas is located on the Las Vegas Strip and competes with other high-quality resorts and hotel casinos in Las Vegas. Wynn Las Vegas also competes, to some extent, with other casino resorts throughout the United States and elsewhere in the world.

## **Regulation and Licensing**

### **Macau**

As a casino concessionaire, Wynn Macau SA is subject to the regulatory control of the government of Macau. The government has adopted Laws and Administrative Regulations governing the operation of casinos in Macau. Only concessionaires or subconcessionaires are permitted to operate casinos. Subconcessions may be awarded subject to the approval of the Macau government and each concessionaire has issued one subconcession. Each concessionaire was required to enter into a concession agreement with the Macau government which, together with the Law and Administrative Regulations, form the framework for the regulation of the activities of the concessionaire.

Under the Law and Administrative Regulations, concessionaires are subject to suitability requirements relating to background, associations and reputation, as are stockholders of 5% or more of a concessionaire's equity securities, officers, directors and key employees. The same requirements apply to any entity engaged by a concessionaire to manage casino operations. Concessionaires are required to satisfy minimum capitalization requirements, demonstrate and maintain adequate financial capacity to operate the concession and submit to continuous monitoring of their casino operations by the Macau government. Concessionaires also are subject to periodic financial reporting requirements and reporting obligations with respect to, among other things, certain contracts, financing activities and transactions with directors, financiers and key employees. Transfers or the encumbering of interests in concessionaires must be reported to the Macau government and are ineffective without government approval.

Each concessionaire is required to engage an executive director who must be a permanent resident of Macau and the holder of at least 10% of the capital stock of the concessionaire. The appointment of the executive director and of any successor is ineffective without the approval of the Macau government. All contracts placing the management of a concessionaire's casino operations with a third party also are ineffective without the approval of the Macau government.

Concessionaires are subject to a special gaming tax of 35% of gross gaming revenue, and must also make an annual contribution of up to 4% of gross gaming revenue for the promotion of public interests, social security, infrastructure and tourism. Concessionaires are obligated to withhold applicable taxes, according to the rate in effect as set by the government, from any commissions paid to gaming promoters. The withholding rate may be adjusted from time to time.

The concession agreement between Wynn Macau SA and the Macau government required Wynn Macau SA to construct and operate one or more casino gaming properties in Macau, including, at a minimum, one full-service casino resort by the end of December 2006, and to invest not less than a total of 4 billion Macau patacas (approximately \$500.0 million) in Macau-related projects by June 2009. These obligations were satisfied upon the opening of Wynn Macau in 2006.

Wynn Macau SA was also obligated to obtain, and did obtain, a 700.0 million Macau pataca (approximately \$87.0 million) bank guarantee from Banco National Ultramarino, S.A. ("BNU") that was effective until March 31, 2007. The amount of this guarantee was reduced to 300 million Macau patacas (approximately \$37.3 million) for the period from April 1, 2007 until 180 days after the end of the term of the concession agreement. This guarantee, which is for the benefit of the Macau government, assures Wynn Macau SA's performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform the concession agreement. Wynn Macau SA is obligated, upon demand by BNU, to promptly repay any claim made on the guarantee by the Macau government. BNU is currently paid an annual fee by Wynn Macau SA for the guarantee of approximately 2.3 million patacas (approximately \$0.3 million).

Effective June 24, 2017, the government of Macau may redeem the concession and in such event, Wynn Macau SA will be entitled to fair compensation or indemnity. The amount of such compensation or indemnity will be determined based on the amount of gaming and non-gaming revenue generated during the tax year prior to the redemption multiplied by the remaining years before expiration of the concession.

The government of Macau may unilaterally rescind the concession if Wynn Macau SA fails to fulfill its fundamental obligations under the concession agreement. The concession agreement expressly provides that the government of Macau may unilaterally rescind the concession agreement if Wynn Macau SA:

- conducts unauthorized games or activities that are excluded from its corporate purpose;
- abandons or suspends gaming operations in Macau for more than seven consecutive days (or more than 14 days in a civil year) without justification;
- defaults in payment of taxes, premiums, contributions or other required amounts;
- does not comply with government inspections or supervision;
- systematically fails to observe its obligations under the concession system;
- fails to maintain bank guarantees or bonds satisfactory to the government;
- is the subject of bankruptcy proceedings or becomes insolvent;
- engages in serious fraudulent activity, damaging to the public interest; or
- repeatedly and seriously violates applicable gaming laws.

If the government of Macau unilaterally rescinds the concession agreement for one of the reasons stated above, Wynn Macau SA will be required to compensate the government in accordance with applicable law, and the areas defined as casino under Macau law and all of the gaming equipment pertaining to the gaming operations of Wynn Macau SA will be transferred to the government without compensation. In addition, the government of Macau may, in the public interest, unilaterally terminate the concession at any time, in which case Wynn Macau SA would be entitled to reasonable compensation.

The government of Macau may assume temporary custody and control over the operation of a concession in certain circumstances. During any such period, the costs of operations must be borne by the concessionaire. The government of Macau also may redeem a concession starting at an established date after the entering into effect of a concession.

The Macau government has publicly commented that it is studying the process by which gaming concessions and subconcessions may be extended, renewed or issued. The current term of our gaming concession ends on June 26, 2022. The gaming concession or subconcession held by each of Galaxy, Sands and Melco also end on June 26, 2022. The gaming concession or subconcession held by each of SJM and MGM China ends on March 31, 2020.

A gaming promoter, also known as a junket representative, is a person or entity who, for the purpose of promoting casino gaming activity, arranges customer transportation and accommodations, and provides credit in their sole discretion, food and beverage services and entertainment in exchange for commissions or other compensation from a concessionaire. Macau law provides that gaming promoters must be licensed by the Macau government in order to do business with and receive compensation from concessionaires. For a license to be obtained, direct and indirect owners of 5% or more of a gaming promoter (regardless of its corporate form or sole proprietor status), its directors and its key employees must be found suitable. Applicants are required to pay the cost of license investigations, and are required to maintain suitability standards during the period of licensure. The term of a gaming promoter's license is one calendar year, and licenses can be renewed for additional periods upon the submission of renewal applications. Natural person junket representative licensees are subject to a suitability verification process every three years and business entity licensees are subject to the same requirement every six years. Macau's Gaming Inspection and Coordination Bureau (the "DICJ") implemented certain instructions in 2009, which have the force of law, relating to commissions paid to, and by, gaming promoters. Such instructions also impose certain financial reporting and audit requirements on gaming promoters.



Under Macau law, licensed gaming promoters must identify outside contractors who assist them in their promotion activities, and these contractors are subject to approval of the Macau government. Changes in the management structure of business entity gaming promoters' licensees must be reported to the Macau government and any transfer or the encumbering of interests in such licensees is ineffective without prior government approval. To conduct gaming promotion activities, licensees must be registered with one or more concessionaires and must have written contracts with such concessionaires, copies of which must be submitted to the Macau government.

Macau law further provides that concessionaires are jointly responsible with their gaming promoters for the gaming activities of such representatives and their directors and contractors in the concessionaire's casinos, and for their compliance with applicable laws and regulations. Concessionaires must submit annual lists of their gaming promoters, and must update such lists on a quarterly basis. The Macau government may designate a maximum number of gaming promoters and specify the number of gaming promoters a concessionaire is permitted to engage. Concessionaires are subject to periodic reporting requirements with respect to commissions paid to their gaming promoters' representatives and are required to oversee their activities and report instances of unlawful activity.

In late 2015, the Macau government implemented enhanced accounting and financial procedures and requirements to be followed by gaming promoters. These enhanced procedures require gaming promoters to disclose more detailed financial and accounting information to the DICJ, including the disclosure of certain financial information on a monthly basis. Gaming promoters also must identify and nominate senior financial or accounting representatives to be available to the DICJ for any follow-up matters the DICJ may require. Local Macau media has reported that the DICJ is finalizing its proposal for additional regulations and enhanced requirements on gaming promoters that may come into effect in 2019.

## **Nevada**

The ownership and operation of casino gaming facilities in the State of Nevada are subject to the Nevada Gaming Control Act and the regulations made thereunder, as well as to various local ordinances. Our Las Vegas Operations are subject to the licensing and regulatory control of the Nevada Gaming Commission ("NGC"), the Nevada Gaming Control Board ("NGCB") and the Clark County Liquor and Gaming Licensing Board ("CCLGLB"). The NGC and NGCB are referred to herein collectively as the "Nevada Gaming Authorities."

The laws, regulations and supervisory procedures of the Nevada Gaming Authorities are based upon declarations of public policy. Such public policy concerns include, among other things:

- preventing unsavory or unsuitable persons from being directly or indirectly involved with gaming at any time or in any capacity;
- establishing and maintaining responsible accounting practices and procedures;
- maintaining effective controls over the financial practices of licensees, including establishing minimum procedures for internal fiscal affairs and safeguarding assets and revenue, providing reliable recordkeeping and requiring the filing of periodic reports with the Nevada Gaming Authorities;
- preventing cheating and fraudulent practices; and
- providing a source of state and local revenue through taxation and licensing fees.

Changes in applicable laws, regulations and procedures could have significant negative effects on our Las Vegas gaming operations and our financial condition and results of operations.

Our subsidiary, Wynn Las Vegas, LLC, the owner and operator of Wynn Las Vegas, is licensed by the Nevada Gaming Authorities to conduct casino gaming operations, including a race book and sports pool, pari-mutuel wagering and the operation of gaming salons. These gaming licenses are not transferable.

Wynn Resorts was found suitable by the NGC to own the equity interests of Wynn Resorts Holdings, LLC ("Wynn Resorts Holdings"), a wholly owned subsidiary of Wynn Resorts, and to be registered by the NGC as a publicly traded corporation, referred to as a registered company, for the purposes of the Nevada Gaming Control Act. Wynn Resorts Holdings was found suitable by the NGC to own the equity interests of Wynn America, LLC ("Wynn America") and to be registered by the NGC as an intermediary company. Wynn America was found suitable by the NGC to own the equity interests of Wynn Las Vegas Holdings, LLC and to be registered by the NGC as an intermediary company. Wynn Las Vegas Holdings, LLC was found suitable by the NGC to own the equity interests of Wynn Las Vegas, LLC and to be registered by the NGC as an intermediary company.

Periodically, we are required to submit detailed financial and operating reports to the NGC and provide any other information that the NGC may require. Substantially all of our material loans, leases, sales of securities and similar financing transactions must be reported to, and/or approved by, the NGC.

No person may become a more than 5% stockholder or member of, or receive any percentage of the profits of, an intermediary company or company licensee without first obtaining licenses and approvals from the Nevada Gaming Authorities. The Nevada Gaming Authorities may investigate any individual who has a material relationship to or material involvement with us to determine whether the individual is suitable or should be licensed as a business associate of a gaming licensee. Certain of our officers, directors and key employees have been or may be required to file applications with the Nevada Gaming Authorities and are or may be required to be licensed or found suitable by the Nevada Gaming Authorities. The Nevada Gaming Authorities may require additional applications and may also deny an application for licensing for any reason which they deem appropriate. A finding of suitability is comparable to licensing, and both require submission of detailed personal and financial information followed by a thorough investigation. An applicant for licensing or an applicant for a finding of suitability must pay or must cause to be paid all the costs of the investigation. Changes in licensed positions must be reported to the Nevada Gaming Authorities and, in addition to their authority to deny an application for a finding of suitability or licensing, the Nevada Gaming Authorities have the jurisdiction to disapprove a change in a corporate position.

If the NGC determines that we or a licensed or registered subsidiary have violated the Nevada Gaming Control Act or any of its regulations, it could limit, condition, suspend or revoke our registrations and gaming license. In addition, we and the persons involved could be subject to substantial fines for each separate violation of the Nevada Gaming Control Act, or of the regulations of the NGC, at the discretion of the NGC. Further, the NGC could appoint a supervisor to operate our Las Vegas Operations and, under specified circumstances, earnings generated during the supervisor's appointment (except for the reasonable rental value of the premises) could be forfeited to the State of Nevada. The limitation, conditioning or suspension of any of our gaming licenses and the appointment of a supervisor could, and revocation of any gaming license would, have a significant negative effect on our gaming operations.

Any beneficial owner of Wynn Resorts' voting or nonvoting securities, regardless of the number of shares owned, may be required to file an application, be investigated and have that person's suitability as a beneficial owner of voting securities determined if the NGC has reason to believe that the ownership would be inconsistent with the declared policies of the State of Nevada. If the beneficial owner of the voting or nonvoting securities of Wynn Resorts who must be found suitable is a corporation, partnership, limited partnership, limited liability company or trust, it must submit detailed business and financial information, including a list of its beneficial owners. The applicant must pay all costs of the investigation incurred by the Nevada Gaming Authorities in conducting any investigation.

The Nevada Gaming Control Act requires any person who acquires more than 5% of our voting securities to report the acquisition to the NGC. The Nevada Gaming Control Act requires beneficial owners of more than 10% of a registered company's voting securities to apply to the NGC for a finding of suitability within 30 days after the Chairman of the NGCB mails the written notice requiring such filing. An "institutional investor" as defined in the Nevada Gaming Control Act which acquires more than 10%, but not more than 25%, of a registered company's voting securities may apply to the NGC for a waiver of a finding of suitability if the institutional investor holds the voting securities for investment purposes only. An institutional investor that has obtained a waiver may hold more than 25% but not more than 29% of a registered company's voting securities and maintain its waiver where the additional ownership results from a stock repurchase by the registered company. An institutional investor which beneficially owns more than 10% but not more than 11% of a registered company's voting securities as a result of a stock repurchase by the registered company may not be required to file such an application. An institutional investor will not be deemed to hold voting securities for investment purposes unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the Board of Directors of the registered company, a change in the corporate charter, bylaws, management, policies or operations of the registered company, or any of its gaming affiliates, or any other action which the NGC finds to be inconsistent with holding the registered company's voting securities for investment purposes only. Activities which are not deemed to be inconsistent with holding voting securities for investment purposes only include:

- voting on all matters voted on by stockholders or interest holders;
- making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in management, policies or operations; and
- other activities that the NGC may determine to be consistent with such investment intent.

The articles of incorporation of Wynn Resorts include provisions intended to assist its implementation of the above restrictions.

Wynn Resorts is required to maintain a current stock ledger in Nevada which may be examined by the Nevada Gaming Authorities at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to the Nevada Gaming Authorities. A failure to make the disclosure may be grounds for finding the record holder unsuitable. We are required to provide maximum assistance in determining the identity of the beneficial owner of any of Wynn Resorts' voting securities. The NGC has the power to require the stock certificates of any registered company to bear a legend indicating that the securities are subject to the Nevada Gaming Control Act. The certificates representing shares of Wynn Resorts' common stock note that the shares are subject to a right of redemption and other restrictions set forth in Wynn Resorts' articles of incorporation and bylaws and that the shares are, or may become, subject to restrictions imposed by applicable gaming laws.

Any person who fails or refuses to apply for a finding of suitability or a license within 30 days after being ordered to do so by the NGC or by the Chairman of the NGCB, or who refuses or fails to pay the investigative costs incurred by the Nevada Gaming Authorities in connection with the investigation of its application may be found unsuitable. The same restrictions apply to a record owner if the record owner, after request, fails to identify the beneficial owner. Any person found unsuitable and who holds, directly or indirectly, any beneficial ownership of any voting security or debt security of a registered company beyond the period of time as may be prescribed by the NGC may be guilty of a criminal offense. We will be subject to disciplinary action if, after we receive notice that a person is unsuitable to hold an equity interest or to have any other relationship with us, we:

- pay that person any dividend or interest upon any voting securities;
- allow that person to exercise, directly or indirectly, any voting right held by that person relating to Wynn Resorts;
- pay remuneration in any form to that person for services rendered or otherwise; or
- fail to pursue all lawful efforts to require the unsuitable person to relinquish such person's voting securities, including, if necessary, the immediate purchase of the voting securities for cash at fair market value.

If the Nevada Gaming Authorities were to find an officer, director or key employee unsuitable for licensing or unsuitable to continue having a relationship with us, we would have to sever all relationships with that person. In addition, the NGC may require us to terminate the employment of any person who refuses to file appropriate applications. Determinations of suitability or questions pertaining to licensing are not subject to judicial review in Nevada.

The NGC may, in its discretion, require the owner of any debt or similar securities of a registered company, to file applications, be investigated and be found suitable to own the debt or other securities of the registered company if the NGC has reason to believe that such ownership would otherwise be inconsistent with the declared policies of the State of Nevada. If the NGC decides that a person is unsuitable to own the securities, then under the Nevada Gaming Control Act, the registered company can be sanctioned, including the loss of its approvals if, without the prior approval of the NGC, it

- pays to the unsuitable person any dividend, interest or any distribution whatsoever;
- recognizes any voting right by the unsuitable person in connection with the securities;
- pays the unsuitable person remuneration in any form; or
- makes any payment to the unsuitable person by way of principal, redemption, conversion, exchange, liquidation or similar transaction.

We may not make a public offering (debt or equity) without the prior approval of the NGC if the proceeds from the offering are intended to be used to construct, acquire or finance gaming facilities in Nevada, or to retire or extend obligations incurred for those purposes or for similar transactions. On March 17, 2016, the NGC granted Wynn Resorts prior approval, subject to certain conditions, to make public offerings for a period of three years (the "Shelf Approval"). We have applied for a new Shelf Approval. The Shelf Approval may be rescinded for good cause without prior notice upon the issuance of an interlocutory stop order by the Chairman of the NGCB.

A registered company must obtain the prior approval of the NGC with respect to a change in control through merger; consolidation; stock or asset acquisitions; management or consulting agreements; or any act or conduct by a person by which the person obtains control of the registered company.

Entities seeking to acquire control of a registered company must satisfy the NGCB and NGC with respect to a variety of stringent standards before assuming control of the registered company. The NGC may also require controlling stockholders, officers,

directors and other persons having a material relationship or involvement with the entity proposing to acquire control to be investigated and licensed as part of the approval process relating to the transaction.

The Nevada legislature has declared that some corporate acquisitions opposed by management, repurchases of voting securities and corporate defense tactics affecting Nevada corporate gaming licensees or affecting registered companies that are affiliated with the operations of Nevada gaming licensees may be harmful to stable and productive corporate gaming. The NGC has established a regulatory scheme to reduce the potential adverse effects of these business practices upon Nevada's gaming industry and to further Nevada's policy in order to:

- assure the financial stability of corporate gaming licensees and their affiliated companies;
- preserve the beneficial aspects of conducting business in the corporate form; and
- promote a neutral environment for the orderly governance of corporate affairs.

Approvals may be required from the NGC before a registered company can make exceptional repurchases of voting securities above its current market price and before a corporate acquisition opposed by management can be consummated. The Nevada Gaming Control Act also requires prior approval of a plan of recapitalization proposed by a registered company's board of directors in response to a tender offer made directly to its stockholders for the purpose of acquiring control.

License fees and taxes, computed in various ways depending on the type of gaming or activity involved, are payable to the State of Nevada and to the counties and cities in which the licensed subsidiaries' respective operations are conducted. Depending upon the particular fee or tax involved, these fees and taxes are payable monthly, quarterly or annually and are based upon a percentage of the gross revenue received; the number of gaming devices operated; or the number of table games operated. A live entertainment tax also is imposed on admission charges where live entertainment is furnished.

Any person who is licensed, required to be licensed, registered, required to be registered in Nevada, or is under common control with such persons (collectively, "licensees"), and who proposes to become involved in a gaming venture outside of Nevada, is required to deposit with the NGCB, and thereafter maintain, a revolving fund in the amount of \$10,000 to pay the expenses of investigation of the NGCB of the licensee's or registrant's participation in such foreign gaming. The revolving fund is subject to increase or decrease at the discretion of the NGC. Licensees and registrants are required to comply with the foreign gaming reporting requirements imposed by the Nevada Gaming Control Act. A licensee or registrant is also subject to disciplinary action by the NGC if it:

- knowingly violates any laws of the foreign jurisdiction pertaining to the foreign gaming operation;
- fails to conduct the foreign gaming operation in accordance with the standards of honesty and integrity required of Nevada gaming operations;
- engages in any activity or enters into any association that is unsuitable because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect, discredit or disrepute upon the State of Nevada or gaming in Nevada, or is contrary to the gaming policies of Nevada;
- engages in activities or enters into associations that are harmful to the State of Nevada or its ability to collect gaming taxes and fees; or
- employs, contracts with or associates with a person in the foreign operation who has been denied a license or finding of suitability in Nevada on the ground of unsuitability.

The conduct of gaming activities and the service and sale of alcoholic beverages at Wynn Las Vegas are subject to licensing, control and regulation by the CCLGLB, which has granted Wynn Las Vegas, LLC licenses for such purposes. In addition to approving Wynn Las Vegas, LLC, the CCLGLB has the authority to approve all persons owning or controlling the stock of any corporation controlling a gaming license. Certain of our officers, directors and key employees have been or may be required to file applications with the CCLGLB. Clark County gaming and liquor licenses are not transferable. The County has full power to limit, condition, suspend or revoke any license. Any disciplinary action could, and revocation would, have a substantial negative impact on our operations.

## **Massachusetts**

The Massachusetts Expanded Gaming Act and the regulations promulgated thereunder (collectively the "Massachusetts Act") subjects the owners and operators of gaming establishments to extensive state licensing and regulatory requirements. We are subject to the Massachusetts Act through our ownership interest in Wynn MA, LLC, ("Wynn MA") which is expected to operate Encore Boston Harbor currently scheduled for completion and opening in mid-2019.

The Massachusetts Act is designed to provide significant benefits to the Commonwealth of Massachusetts by advancing job creation and economic development. The Massachusetts Act allows for up to three destination resort casinos (“Category 1 license”) located in three geographically diverse regions across the Commonwealth and a single slots facility, not pegged to any particular region. The licensing fee for each resort casino is \$85 million and requires a capital investment, to include a hotel facility, of at least \$500 million. The Commonwealth will receive 25% of gross gaming revenues.

The Massachusetts Gaming Commission (“MGC”) is responsible for issuing licenses under the Massachusetts Act and assuring that licenses are not issued or held by unqualified, disqualified or unsuitable persons. The MGC, in particular its Investigations and Enforcement Bureau (“IEB”), has extensive authority to conduct background investigations and to determine whether applicants for Category 1 licenses, affiliated holding or intermediary companies, subsidiaries, directors, managers, officers, financiers and debt holders, associates, key gaming executives and employees, other gaming related employees, and other persons or entities holding a five percent or greater direct or indirect interest in the applicant, are qualified under the Massachusetts Act (with certain exemptions for institutional investors in the discretion of the Massachusetts Commission).

On December 27, 2013, the MGC determined that Wynn MA and all applicable principal individuals and entities were qualified and on September 17, 2014, designated Wynn MA the award winner of the Greater Boston (Region A) gaming license effective November 7, 2014. Wynn Resorts, its relevant subsidiaries, and individual qualifiers required to be qualified were found suitable by the MGC. Additional entities and key employees have been and will be required to file applications with the MGC and are or may be required to be licensed or found suitable by the MGC. A finding of suitability is comparable to licensing, and both require submission of detailed personal and financial information followed by a thorough investigation. Changes in licensed positions must be reported to the MGC.

If the MGC were to find an officer, director or key employee unsuitable for licensing or unsuitable to continue having a relationship with us, we would have to sever all relationships with that person. In addition, the MGC may require us to terminate the employment of any person who refuses to file appropriate applications.

While a Category 1 license has been awarded to Wynn MA, Wynn MA may not conduct gaming activities until an operations certificate has been issued by the MGC, which will be issued upon compliance with applicable provisions of the Massachusetts Act, receipt of all required permits and approvals, compliance with the conditions of Wynn MA’s Category 1 license, and Wynn MA continuing to meet applicable licensing, registration, qualification and other regulatory requirements.

The MGC has responsibility for the continuing regulation and licensing of the licensee and its officers, directors, employees and other designated persons. The MGC retains the authority to suspend, revoke or condition a Category 1 license, or any other license issued under the Massachusetts Act, and the IEB may levy civil penalties for regulatory and other violations. All licenses issued under the Massachusetts Act are expressly deemed a revocable privilege, conditioned on the licensee’s fulfillment of all conditions of licensure, compliance with applicable laws and regulations, and the licensee’s continuing qualification and suitability. Among other things, the MGC is also responsible for the collection of application, license and other fees, conducting investigations of and monitoring applicants and licensees, and reviewing and ruling on complaints, and may conduct inspections of the gaming establishment premises or the licensee’s records and equipment.

Pursuant to the Massachusetts Act, the MGC may grant a gaming beverage license for the sale and distribution of alcoholic beverages for a gaming establishment. The division of gaming liquor enforcement of the Alcoholic Beverage Control Commission has the authority to enforce, regulate and control the distribution of alcoholic beverages in a gaming establishment. The MGC may revoke, suspend, refuse to renew or refuse to transfer a gaming beverage license for violations of the Massachusetts Act that pertain to the sale and distribution of alcohol consumed on the premises and the regulations adopted by the MGC. The MGC has adopted regulations for the issuance of gaming beverage licenses. These regulations and any changes in applicable laws, regulations and procedures could have significant negative effects on our future Massachusetts gaming operations and results of operations.

## **Other Regulations**

In addition to gaming regulations, we are subject to extensive local, state, federal and foreign laws and regulations in the jurisdictions in which we operate. These include, but are not limited to, laws and regulations relating to alcoholic beverages, environmental matters, employment and immigration, currency and other transactions, taxation, zoning and building codes, marketing and advertising, lending, debt collection, privacy, telemarketing, money laundering, laws and regulations administered by the Office of Foreign Assets Control, and anti-bribery laws, including the Foreign Corrupt Practices Act (the "FCPA"). Such laws and regulations could change or could be interpreted differently in the future, or new laws and regulations could be enacted. Any material changes, new laws or regulations, or material differences in interpretations by courts or governmental authorities could adversely affect our business and operating results.

## **Seasonality**

We may experience fluctuations in revenues and cash flows from month to month; however, we do not believe that our business is materially impacted by seasonality.

## **Employees**

As of December 31, 2018, we had approximately 26,000 employees (including approximately 13,700 in Macau and 12,300 in the United States).

Our collective bargaining agreement with the Culinary and Bartenders Union, which covers approximately 5,700 employees at Wynn Las Vegas, expires in July 2021. Our collective bargaining agreement with the Transportation Workers Union, Local 721, which covers approximately 410 of our table games dealers at the Wynn Las Vegas casino, expires in November 2020. On February 19, 2019, the United Auto Workers Union filed a petition with the National Labor Relations Board seeking to replace the Transportation Workers Union as the bargaining representative for the table games dealers. An election will be held in March 2019 to make that determination. In December 2018, employees in the horticulture and transportation departments at Wynn Las Vegas voted to be represented by the International Brotherhood of Teamsters, and the Company is in the process of negotiating a collective bargaining agreement which would cover approximately 190 employees.

## **Intellectual Property**

Among our most important marks are our trademarks and service marks that use the name "WYNN." Wynn Resorts has registered with the U.S. Patent and Trademark Office ("PTO") a variety of WYNN-related trademarks and service marks in connection with a variety of goods and services.

We have also filed applications with various foreign patent and trademark registries, including in Macau, China, Singapore, Hong Kong, Taiwan, Japan, certain European countries and various other jurisdictions throughout the world, to register a variety of WYNN-related trademarks and service marks in connection with a variety of goods and services.

We recognize that our intellectual property assets, including the word and logo version of "WYNN," are among our most valuable assets. As a result, and in connection with expansion of our resorts and gaming activities outside the United States, we have undertaken a program to register our trademarks and other intellectual property rights in relevant jurisdictions. We have retained counsel and intend to take all steps necessary to protect our intellectual property rights against unauthorized use throughout the world.

Pursuant to the Surname Rights Agreement, dated August 6, 2004, Stephen A. Wynn ("Mr. Wynn") granted us our exclusive, fully paid-up, perpetual, worldwide license to use, and to own and register trademarks and service marks incorporating the "Wynn" surname for casino resorts and related businesses, together with the right to sublicense the name and marks to its affiliates. Pursuant to a separation agreement, dated February 15, 2018, by and between Mr. Wynn and the Company, if we cease to use the "Wynn" surname and trademark, we will assign all of our right, title, and interest in the "Wynn" trademark to Mr. Wynn and terminate the Surname Rights Agreement.

We have also registered various domain names with various domain registrars around the world. Our domain registrations extend to various foreign jurisdictions such as ".com.cn" and ".com.hk." We pursue domain related infringement on a case by case basis depending on the infringing domain in question. The information found on these websites is not a part of this Annual Report on Form 10-K or any other report we file or furnish to the SEC.

For more information regarding the Company's intellectual property matters, see Item 1A—"Risk Factors."

## Forward-Looking Statements

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

Forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from those we express in these forward-looking statements, including the risks and uncertainties in Item 1A—"Risk Factors" and other factors we describe from time to time in our periodic filings with the SEC, such as:

- controversy, regulatory action, litigation and investigations related to Mr. Wynn and his separation from the Company;
- extensive regulation of our business (including the Chinese government's ongoing anti-corruption campaign) and the cost of compliance or failure to comply with applicable laws and regulations;
- pending or future legal proceedings, regulatory or enforcement actions or probity investigations (including those related to the former Chairman and CEO of the Company);
- our ability to maintain our gaming licenses and concessions;
- our dependence on key employees;
- general global political and economic conditions, in the U.S. and China, which may impact levels of travel, leisure and consumer spending;
- restrictions or conditions on visitation by citizens of mainland China to Macau;
- the impact on the travel and leisure industry from factors such as an outbreak of an infectious disease, extreme weather patterns or natural disasters, military conflicts and any future security alerts and/or terrorist attacks;
- doing business in foreign locations such as Macau;
- our ability to maintain our customer relationships and collect and enforce gaming receivables;
- our relationships with Macau gaming promoters;
- outcome of any ongoing and future litigation;
- our dependence on a limited number of resorts and locations for all of our cash flow and our subsidiaries' ability to pay us dividends and distributions;
- competition in the casino/hotel and resort industries and actions taken by our competitors, including new development and construction activities of competitors;
- factors affecting the development and success of new gaming and resort properties (including limited labor resources, government labor and gaming policies and transportation infrastructure in Macau; and cost increases, environmental regulation, and our ability to secure necessary permits and approvals in Everett, Massachusetts);
- construction risks (including disputes with and defaults by contractors and subcontractors; construction, equipment or staffing problems; shortages of materials or skilled labor; environment, health and safety issues; and unanticipated cost increases);
- legalization of gaming in other jurisdictions;
- any violations by us of the anti-money laundering laws or Foreign Corrupt Practices Act;
- changes in gaming laws or regulations;
- changes in federal, foreign, or state tax laws or the administration of such laws;
- continued compliance with all provisions in our debt agreements;
- conditions precedent to funding under our credit facilities;
- leverage and debt service (including sensitivity to fluctuations in interest rates);
- cybersecurity risk, including misappropriation of customer information or other breaches of information security;
- data privacy risk, including reputational harm from mishandling private data and penalties for non-compliance with data collection and privacy laws;
- our ability to protect our intellectual property rights; and
- our current and future insurance coverage levels.

Further information on potential factors that could affect our financial condition, results of operations and business are included in this report and our other filings with the SEC. You should not place undue reliance on any forward-looking statements,

which are based only on information available to us at the time this statement is made. We undertake no obligation to update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise.

## **Item 1A. Risk Factors**

You should carefully consider the risk factors set forth below, as well as the other information contained in this Annual Report on Form 10-K, regarding matters that could have an adverse effect, including a material one, on our business, financial condition, results of operations and cash flows. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also have a material adverse effect on our business, financial condition, results of operations and cash flows.

### **Risks Related to our Business**

***The controversy, regulatory action, litigation and investigations related to Stephen A. Wynn and his separation from the Company could significantly harm our business.***

On February 6, 2018, Mr. Wynn resigned as CEO and Chairman of the Board of Directors after allegations of inappropriate personal conduct by Mr. Wynn in the workplace were reported in a January 26, 2018 Wall Street Journal article. The resulting controversy related to Mr. Wynn and his separation from the Company could significantly harm our business in numerous ways, including in ways that we cannot predict. As discussed elsewhere in this Form 10-K, our gaming regulators in Massachusetts and Nevada have investigated the situation. Our Nevada gaming regulators have completed their investigation and, on February 26, 2019, fined the Company \$20.0 million. Each of our regulatory authorities has extensive power to license and oversee the operations of our casino resorts and could take action against the Company and its related licensees, including actions that could affect the ability or terms upon which our subsidiaries hold their gaming licenses and concessions, and the suitability of the Company to continue as a stockholder of those subsidiaries. As discussed in Item 3—"Legal Proceedings" and Item 8—"Financial Statements and Supplementary Data," Note 15, "Commitments and Contingencies," lawsuits have been filed against the Company and our Board of Directors arising out of the allegations against Mr. Wynn, and such claims present a number of risks, including distraction of management, assertions that could affect our reputation, and potential legal liabilities. Additional allegations have been and may in the future be asserted against the Company, and additional regulatory or legal proceedings involving the Company may be commenced in the future. In addition, the Company's integrated resort business model was pioneered by Mr. Wynn. Our business, reputation, and competitive position may now suffer as a result of our prior association with Mr. Wynn, or as a result of his separation from the Company and the loss of his skills and experience.

***We are subject to extensive state and local regulation, and licensing and gaming authorities have significant control over our operations. The cost of compliance or failure to comply with such regulations and authorities could have a negative effect on our business.***

The operations of our resorts are contingent upon our obtaining and maintaining all necessary licenses, permits, approvals, registrations, findings of suitability, orders and authorizations in the jurisdictions in which our resorts are located. The laws, regulations and ordinances requiring these licenses, permits and other approvals generally relate to the responsibility, financial stability and character of the owners and managers of gaming operations, as well as persons financially interested or involved in gaming operations. The NGC may require the holder of any debt or securities that we or Wynn Las Vegas, LLC issue to file applications, be investigated and be found suitable to own Wynn Resorts' securities if it has reason to believe that the security ownership would be inconsistent with the declared policies of the State of Nevada.

The Company's articles of incorporation provide that, to the extent required by the gaming authority making the determination of unsuitability or to the extent the Board of Directors determines, in its sole discretion, that a person is likely to jeopardize the Company's or any affiliate's application for, receipt of, approval for, right to the use of, or entitlement to, any gaming license, shares of Wynn Resorts' capital stock that are owned or controlled by such unsuitable person or its affiliates are subject to redemption by Wynn Resorts. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by the applicable gaming authority and, if not, as Wynn Resorts elects.

Nevada and Massachusetts regulatory authorities have broad powers to request detailed financial and other information, to limit, condition, suspend or revoke a registration, gaming license or related approvals; approve changes in our operations; and levy fines or require forfeiture of assets for violations of gaming laws or regulations. Complying with gaming laws, regulations and license requirements is costly. Any change in the Nevada and Massachusetts laws, regulations or licenses applicable to our business or a violation of any current or future laws or regulations applicable to our business or gaming licenses could require us to make substantial expenditures and forfeit assets, and would negatively affect our gaming operations.



Our Macau Operations are subject to unique risks. Failure to adhere to the regulatory and gaming environment in Macau could result in the revocation of our Macau Operations' concession or otherwise negatively affect its operations in Macau. Moreover, we are subject to the risk that U.S. regulators could determine that Macau's gaming regulatory framework has not developed in a way that would permit us to conduct operations in Macau in a manner consistent with the way in which we intend, or the applicable U.S. gaming authorities require us, to conduct our operations in the United States.

As discussed in Item 8—"Financial Statements and Supplementary Data," Note 15, "Commitments and Contingencies," in connection with the allegations of inappropriate personal conduct by Mr. Wynn in the workplace reported in a January 26, 2018 Wall Street Journal article, gaming regulators in Massachusetts and Nevada conducted investigations. Our Nevada gaming regulators have completed their investigation and, on February 26, 2019, fined the Company \$20.0 million. Each of these regulatory authorities has extensive power to license and oversee the operations of our casino resorts and has taken action and could take action against the Company and its related licensees, including actions that could affect the ability or terms upon which our subsidiaries hold their gaming licenses and concessions, and the suitability of the Company to continue as a stockholder of those affiliates.

***Ongoing investigations, litigation and other disputes could distract management and result in negative publicity and additional scrutiny from regulators.***

On January 26, 2018, the Company's Board of Directors formed a Special Committee comprised solely of independent directors to investigate allegations of inappropriate personal conduct by Mr. Wynn in the workplace. On February 12, 2018, the Special Committee amended and restated its charter to provide for a review of various governance issues regarding knowledge of the allegations and a comprehensive review of the Company's internal policies and procedures with the goal of employing best practices to maintain a safe and respectful workplace for all employees. On August 3, 2018, the Board received the final oral presentation from the Special Committee. The Special Committee provided a written memorialization to the Company's gaming regulators in Massachusetts and Nevada to cooperate with their respective investigations. Our Nevada gaming regulators have completed their investigation and, on February 26, 2019, fined the Company \$20.0 million.

As discussed in Item 3—"Legal Proceedings" and Item 8—"Financial Statements and Supplementary Data," Note 15, "Commitments and Contingencies," lawsuits have been filed against the Company and our Board of Directors arising out of the allegations against Mr. Wynn, and such claims present a number of risks, including distraction of management, assertions that could affect our reputation, and potential legal liabilities. Additional allegations have been and may in the future be asserted against Mr. Wynn and/or the Company, and additional regulatory or legal proceedings involving the Company may be commenced in the future.

The foregoing investigations, litigation and other disputes and any additional such matters that may arise in the future, can be expensive and may divert management's attention from the operations of our businesses. The investigations, litigation and other disputes may also lead to additional scrutiny from regulators, which could lead to investigations relating to, and possibly a negative impact on, the Company's gaming licenses and the Company's ability to bid successfully for new gaming market opportunities. In addition, the actions, litigation and publicity could negatively impact our business, reputation and competitive position and could reduce demand for shares of Wynn Resorts and WML and thereby have a negative impact on the trading prices of their respective shares.

***We depend on the continued services of key managers and employees. If we do not retain our key personnel or attract and retain other highly skilled employees, our business will suffer.***

Our ability to maintain our competitive position is dependent to a large degree on the services of our senior management team. The loss of services of our senior managers or the inability to attract and retain additional senior management personnel could have a material adverse effect on our business.

***Our business is particularly sensitive to reductions in discretionary consumer and corporate spending as a result of global economic conditions.***

Consumer demand for casino/hotel resorts, trade shows and conventions and for the type of luxury amenities that we offer is particularly sensitive to changes in the global economy, which adversely impact discretionary spending on leisure activities. Changes in discretionary consumer spending or consumer preferences brought about by factors such as perceived or actual general global economic conditions, high unemployment, weakness in housing or oil markets, perceived or actual changes in disposable

consumer income and wealth, an economic recession and changes in consumer confidence in the global economy, or fears of war and future acts of terrorism have in the past and could in the future reduce customer demand for the luxury amenities and leisure activities we offer, and may have a significant negative impact on our operating results.

Also, consumer demographics and preferences may evolve over time, which, for example, has resulted in growth in consumer demand for non-gaming offerings. Our success depends in part on our ability to anticipate the preferences of consumers and react to those trends and any failure to do so may negatively impact our operating results.

***Demand for our products and services in Macau and Las Vegas may be negatively impacted by international relations, economic disruptions in mainland China, visa restrictions placed on citizens of mainland China, the anti-corruption campaign, restrictions on international money transfers or similar campaigns.***

A significant amount of our gaming revenues in Macau and Las Vegas come from customers from mainland China. Economic disruption, international relations, contraction and uncertainty in China could impact the number of patrons visiting our Macau and Las Vegas properties or the amount they spend. In addition, policies adopted from time to time by governments, including any travel restrictions imposed on Chinese citizens such as restrictions imposed on exit visas or restrictions on United States visitor visas, could disrupt the number of visitors from mainland China to our properties. It is not known when, or if, policies restricting visitation by mainland Chinese citizens will be put in place and such policies may be adjusted, without notice, in the future. Furthermore, the Chinese government's continuing anti-corruption campaign has influenced the behavior of Chinese consumers and their spending patterns both domestically and abroad. That campaign, as well as mainland Chinese and Macau monetary outflow policies have specifically led to tighter monetary transfer regulations, real-time monitoring of certain financial channels, limitations on cash withdrawals from ATM machines by mainland China citizens, reduction of annual withdrawal limits from bank accounts while the account holder is outside of mainland China, and "know your client" protocols implemented on ATM machines. These policies may affect and impact the number of visitors and the amount of money they spend. The overall effect of the campaign and monetary transfer restrictions may negatively affect our revenues and results of operations.

***Our business is particularly sensitive to the willingness of our customers to travel to and spend time at our resorts. Acts or the threat of acts of terrorism, regional political events and developments in certain countries could cause severe disruptions in air and other travel and may otherwise negatively impact tourists' willingness to visit our resorts. Such events or developments could reduce the number of visitors to our facilities, resulting in a material adverse effect on our business and financial condition, results of operations or cash flows.***

We are dependent on the willingness of our customers to travel. Only a small amount of our business is and will be generated by local residents. Most of our customers travel to reach our Las Vegas and Macau properties. Acts of terrorism or concerns over the possibility of such acts may severely disrupt domestic and international travel, which would result in a decrease in customer visits to Las Vegas and Macau, including our properties. Regional conflicts could have a similar effect on domestic and international travel. Disruptions in air or other forms of travel as a result of any terrorist act, outbreak of hostilities, escalation of war or worldwide infectious disease outbreak would have an adverse effect on our business and financial condition, results of operations and cash flows.

Furthermore, the attack in Las Vegas on October 1, 2017 underscores the possibility that large public facilities could become the target of mass shootings or other attacks in the future. The occurrence or the possibility of attacks could cause all or portions of affected properties to be shut down for prolonged periods, resulting in a loss of income; generally reduce travel to affected areas for tourism and business or adversely affect the willingness of customers to stay in or avail themselves of the services of the affected properties; expose us to a risk of monetary claims arising from death, injury or damage to property caused by any such attack; and result in higher costs for security and insurance premiums, all of which could adversely affect our results.

***Our continued success depends on our ability to maintain the reputation of our resorts.***

Our strategy and integrated resort business model rely on positive perceptions of our resorts and the level of service we provide. Any deterioration in our reputation could have a material adverse effect on our business, results of operations and cash flows. Our reputation could be negatively impacted by our failure to deliver the superior design and customer service for which we are known or by events that are beyond our control. Our reputation may also suffer as a result of negative publicity regarding the Company or our resorts, including as a result of social media reports, regardless of the accuracy of such publicity. The continued expansion of media and social media formats has compounded the potential scope of negative publicity and has made it more difficult to control and effectively manage negative publicity.

***We are entirely dependent on a limited number of resorts for all of our cash flow, which subjects us to greater risks than a gaming company with more operating properties.***

We are currently entirely dependent upon our Macau Operations and Las Vegas Operations for all of our operating cash flow. As a result, we are subject to a greater degree of risk than a gaming company with more operating properties or greater geographic diversification. The risks to which we have a greater degree of exposure include the following:

- changes in local economic and competitive conditions;
- changes in local and state governmental laws and regulations, including gaming laws and regulations, and the way in which those laws and regulations are applied;
- natural and other disasters, including the outbreak of infectious diseases;
- an increase in the cost of maintaining our properties;
- a decline in the number of visitors to Las Vegas or Macau; and
- a decrease in gaming and non-casino activities at our resorts.

Any of the factors outlined above could negatively affect our results of operations and our ability to generate sufficient cash flow to make payments or maintain our covenants with respect to our debt.

***We are a parent company and our primary source of cash is and will be distributions from our subsidiaries.***

We are a parent company with limited business operations of our own. Our main asset is the capital stock of our subsidiaries. We conduct most of our business operations through our direct and indirect subsidiaries. Accordingly, our primary sources of cash are dividends and distributions with respect to our ownership interests in our subsidiaries that are derived from the earnings and cash flow generated by our operating properties. Our subsidiaries might not generate sufficient earnings and cash flow to pay dividends or distributions in the future.

Our subsidiaries' payments to us will be contingent upon their earnings and upon other business considerations. In addition, our subsidiaries' debt instruments and other agreements limit or prohibit certain payments of dividends or other distributions to us. We expect that future debt instruments for the financing of our other developments will contain similar restrictions. An inability of our subsidiaries to pay us dividends and distributions would have a significant negative effect on our liquidity.

***Our casino, hotel, convention and other facilities face intense competition, which may increase in the future.***

The casino/hotel industry is highly competitive. We hold a concession under one of only three gaming concessions and three subconcessions authorized by the Macau government to operate casinos in Macau. The Macau government has had the ability to grant additional gaming concessions since April 2009. If the Macau government were to allow additional competitors to operate in Macau through the grant of additional concessions or subconcessions, we would face additional competition, which could have a material adverse effect on our business, financial condition, results of operations and cash flows. Several of the current concessionaires and subconcessionaires have opened facilities in the Cotai area over the past few years, which has significantly increased gaming and non-gaming offerings in Macau, with continued development and further openings in Cotai expected in the near future.

Our Macau Operations face competition from casinos located in Singapore, the Philippines and Malaysia. We also encounter competition from other major gaming centers located around the world, including Australia and Las Vegas, cruise ships in Asia that offer gaming, and other casinos throughout Asia. Further, if current efforts to legalize gaming in other Asian countries, such as Japan, are successful, we will face additional regional competition.

Our Las Vegas Operations compete with other Las Vegas Strip hotels and with other hotel casinos in Las Vegas on the basis of overall atmosphere, range of amenities, level of service, price, location, entertainment, theme and size, among other factors. Wynn Las Vegas also competes with other casino/hotel facilities in other cities. The proliferation of gaming activities in other areas could significantly harm our business as well. In particular, the legalization or expansion of casino gaming in or near metropolitan areas from which we attract customers could have a negative effect on our business. In addition, new or renovated casinos in Macau or elsewhere in Asia could draw Asian gaming customers away from Wynn Las Vegas.

Increased competition could result in a loss of customers, which may negatively affect our cash flows and results of operations.

***Our business relies on premium, international customers. We often extend credit, and we may not be able to collect gaming receivables from our credit players or credit play may decrease.***

*General.* A significant portion of our table games revenue at our resorts is attributable to the play of a limited number of premium international customers. The loss or a reduction in the play of the most significant of these customers could have a material adverse effect on our business, financial condition, results of operations and cash flows. A downturn in economic conditions in the countries in which these customers reside could cause a reduction in the frequency of visits by and revenue generated from these customers.

We conduct our gaming activities on a credit as well as a cash basis. The casino credit we extend is generally unsecured and due on demand. We will extend casino credit to those customers whose level of play and financial resources, in the opinion of management, warrant such an extension. The collectability of receivables from international customers could be negatively affected by future business or economic trends or by significant events in the countries in which these customers reside.

*Macau Operations.* Although the law in Macau permits casino operators to extend credit to gaming customers, our Macau Operations may not be able to collect all of its gaming receivables from its credit players. We expect that our Macau Operations will be able to enforce these obligations only in a limited number of jurisdictions, including Macau. To the extent our gaming customers are visitors from other jurisdictions, we may not have access to a forum in which we will be able to collect all of our gaming receivables because, among other reasons, courts of many jurisdictions do not enforce gaming debts and we may encounter forums that will refuse to enforce such debts. Our inability to collect gaming debts could have a significant negative impact on our operating results.

Currently, the gaming tax in Macau is calculated as a percentage of gross gaming revenue, including the face value of credit instruments issued. As a result, if we extend credit to our customers in Macau and are unable to collect on the related receivables from them, we remain obligated to pay taxes on the full amount of the credit instrument.

*Las Vegas Operations.* While gaming debts evidenced by a credit instrument, including what is commonly referred to as a "marker," are enforceable under the current laws of Nevada, and judgments on gaming debts are enforceable in all states of the United States under the Full Faith and Credit Clause of the United States Constitution, other jurisdictions may determine that direct or indirect enforcement of gaming debts is against public policy. Although courts of some foreign nations will enforce gaming debts directly and the assets in the United States of foreign debtors may be used to satisfy a judgment, judgments on gaming debts from U.S. courts are not binding on the courts of many foreign nations. We cannot assure that we will be able to collect the full amount of gaming debts owed to us, even in jurisdictions that enforce them. Changes in economic conditions may make it more difficult to assess creditworthiness and more difficult to collect the full amount of any gaming debt owed to us. Our inability to collect gaming debts could have a significant negative impact on our operating results.

***Win rates for our gaming operations depend on a variety of factors, some of which are beyond our control.***

The gaming industry is characterized by an element of chance. In addition to the element of chance, win rates are also affected by other factors, including players' skill and experience, the mix of games played, the financial resources of players, the spread of table limits, the volume of bets played, the amount of time played and undiscovered acts of fraud or cheating. Our gross gaming revenues are mainly derived from the difference between our casino winnings and the casino winnings of our gaming customers. Since there is an inherent element of chance in the gaming industry, we do not have full control over our winnings or the winnings of our gaming customers.

Acts of fraud or cheating through the use of counterfeit chips, covert schemes and other tactics, possibly in collusion with our employees, may be attempted or committed by our gaming customers with the aim of increasing their winnings. Our gaming customers, visitors and employees may also commit crimes such as theft in order to obtain chips not belonging to them. We have taken measures to safeguard our interests including the implementation of systems, processes and technologies to mitigate against these risks, extensive employee training, surveillance, security and investigation operations and adoption of appropriate security features on our chips such as embedded radio frequency identification tags. Despite our efforts, we may not be successful in preventing or detecting such culpable behavior and schemes in a timely manner and the relevant insurance we have obtained may not be sufficient to cover our losses depending on the incident, which could result in losses to our gaming operations and generate negative publicity, both of which could have an adverse effect on our reputation, business, results of operations and cash flows.

In addition, premium gaming is more volatile than other forms of gaming, and variances in win-loss results attributable to high-end gaming may have a positive or negative impact on cash flow and earnings in a particular quarter.

***Our new projects may not be successful.***

In addition to the construction and regulatory risks associated with our current and future construction projects, we cannot assure you that the level of consumer demand for our casino resorts or for the type of luxury amenities that we will offer will meet our expectations. The operating results of our new projects may be materially different than the operating results of our current integrated resorts due to, among other reasons, differences in consumer and corporate spending and preferences in new geographic areas, increased competition from other markets or other developments that may be beyond our control. In addition, our new projects may be more sensitive to certain risks, including risks associated with downturns in the economy, than the resorts we currently operate. The demands imposed by new developments on our managerial, operational and other resources may impact our operation of our existing resorts. If any of these issues were to occur, it could adversely affect our prospects, financial condition, or results of operations.

***We could encounter higher than expected cost increases in the development of our projects.***

We are currently constructing Encore Boston Harbor in Everett, Massachusetts. The total project budget for Encore Boston Harbor, including gaming license fees, construction costs, capitalized interest, pre-opening expenses and land costs, is estimated to be approximately \$2.6 billion. Additionally, the Company is currently constructing approximately 430,000 square feet of additional meeting and convention space at Wynn Las Vegas and has begun design and site preparation for the reconfiguration of the Wynn Las Vegas golf course, which the Company closed in the fourth quarter of 2017. Based on current designs, we estimate the total project budget for the additional meeting and convention space and reconfiguration of the golf course to be approximately \$425 million. We also have other capital expenditure projects, including in Macau, as discussed in Item 1—"Business - Construction and Development Opportunities" for additional details.

The projected development costs for our projects reflect our best estimates and the actual development costs may be higher than expected. Contingencies that have been set aside by us to cover potential cost overruns or potential delays may be insufficient to cover the full amount of such overruns or delays. If these contingencies are not sufficient to cover these costs, or if we are not able to recover damages for these delays and contingencies, we may not have the funds required to pay the excess costs and this project may not be completed. Failure to complete this project may negatively affect our financial condition, our results of operations and our ability to pay our debt.

***Construction projects will be subject to development and construction risks, which could have an adverse effect on our financial condition, results of operations or cash flows.***

Major construction projects of the scope and scale of Encore Boston Harbor and the redevelopment of the Wynn Las Vegas golf course land entail significant risks, including:

- unanticipated cost increases;
- shortages of, and price increases in, materials or skilled labor;
- changes to plans and specifications;
- delays in obtaining or inability to obtain requisite licenses, permits and authorizations from regulatory authorities;
- changes in laws and regulations, or in the interpretation and enforcement of laws and regulations, applicable to gaming, leisure, real estate development or construction projects;
- unforeseen engineering, environmental and/or geological problems;
- labor disputes or work stoppages;
- disputes with and defaults by contractors and subcontractors;
- personal injuries to workers and other persons;
- environment, health and safety issues, including site accidents;
- delays or interference from severe weather or natural disasters;
- geological, construction, excavation, regulatory and equipment problems; and
- unavailability of construction equipment.

Construction, equipment or staffing problems or difficulties in obtaining any of the requisite licenses, permits and authorizations from regulatory authorities could increase the total cost, delay or prevent the construction or opening or otherwise affect the design and features of our projects.

We anticipate that only some of the subcontractors engaged for these projects will post bonds guaranteeing timely completion of the subcontractor's work and payment for all of that subcontractor's labor and materials. These bonds may not be adequate to ensure completion of the work.

Our facilities currently under development may not commence operations on schedule and construction costs for the projects may exceed budgeted amounts. Failure to complete the projects on schedule or within budget may have a significant negative effect on us and on our ability to make payments on our debt.

***We are currently required to commence gaming operations at Encore Boston Harbor by June 2020. If we are unable to meet this deadline, the Massachusetts Gaming Commission may suspend or revoke our gaming license.***

Pursuant to the Gaming Act, the Company is required to commence gaming operations at Encore Boston Harbor approximately one year from our projected opening date of mid-2019. If the Company is unable to meet the June 2020 deadline and is unable to obtain an extension of the deadline from the MGC, the MGC may suspend or revoke our gaming license and, if we are found by the MGC after a hearing to have acted in bad faith, we will be assessed a fine of up to \$50,000,000. Failure to meet the deadline could have an adverse effect on our financial condition, results of operations and cash flows from this planned facility.

***Any violation of applicable Anti-Money Laundering laws or regulations or the Foreign Corrupt Practices Act could adversely affect our business, performance, prospects, value, financial condition, and results of operations.***

We deal with significant amounts of cash in our operations and are subject to various jurisdictions' reporting and anti-money laundering laws and regulations. Both U.S. and Macau governmental authorities focus heavily on the gaming industry and compliance with anti-money laundering laws and regulations. From time to time, the Company receives governmental and regulatory inquiries about compliance with such laws and regulations. The Company cooperates with all such inquiries. Any violation of anti-money laundering laws or regulations could adversely affect our business, performance, prospects, value, financial condition, and results of operations.

Further, we have operations, and a significant portion of our revenue is derived outside of the United States. We are therefore subject to regulations imposed by the FCPA and other anti-corruption laws that generally prohibit U.S. companies and their intermediaries from offering, promising, authorizing or making improper payments to foreign government officials for the purpose of obtaining or retaining business. Violations of the FCPA and other anti-corruption laws may result in severe criminal and civil sanctions as well as other penalties, and the SEC and U.S. Department of Justice have increased their enforcement activities with respect to such laws and regulations.

Internal control policies and procedures and employee training and compliance programs that we have implemented to deter prohibited practices may not be effective in prohibiting our directors, employees, contractors or agents from violating or circumventing our policies and the law. If we or our directors, employees or agents fail to comply with applicable laws or Company policies governing our operations, the Company may face investigations, prosecutions and other legal proceedings and actions, which could result in civil penalties, administrative remedies and criminal sanctions. Any such government investigations, prosecutions or other legal proceedings or actions could adversely affect our business, performance, prospects, value, financial condition, and results of operations.

In February 2012, the Company received a report detailing instances of conduct constituting prima facie violations of the Foreign Corrupt Practices Act (the "FCPA") by Kazuo Okada (formerly the largest beneficial owner of Wynn Resorts' shares) and certain of his affiliates. While the Company's regulators have not taken any action against the Company in connection with the allegations in such report, a finding by regulatory authorities that Mr. Okada violated the FCPA on Company property could result in actions by regulatory authorities against the Company, which could negatively affect the Company's financial condition and results of operations.

***Because we own real property, we are subject to extensive environmental regulation, which creates uncertainty regarding future environmental expenditures and liabilities.***

We have incurred costs to comply with environmental requirements, such as those relating to discharges into the air, water and land, the handling and disposal of solid and hazardous waste and the cleanup of properties affected by hazardous substances. Under these and other environmental requirements we may be required to investigate and clean up hazardous or toxic substances or chemical releases at our property. As an owner or operator, we could also be held responsible to a governmental entity or third

parties for property damage, personal injury and investigation and cleanup costs incurred by them in connection with any contamination.

These laws typically impose cleanup responsibility and liability without regard to whether the owner or operator knew of or caused the presence of the contaminants. The liability under those laws has been interpreted to be joint and several unless the harm is divisible and there is a reasonable basis for allocation of the responsibility. The costs of investigation, remediation or removal of those substances may be substantial, and the presence of those substances, or the failure to remediate a property properly, may impair our ability to use our property.

Contamination has been identified at and in the vicinity of our site in Everett, Massachusetts. The ultimate cost of remediating contaminated sites is difficult to accurately predict and we exceeded our initial estimates. We may be required to conduct additional investigations and remediation with respect to this site. As a result, we also could incur material costs in excess of our estimates as a result of additional cleanup obligations imposed or contamination identified in the future. However, the environmental laws under which we operate are complicated and often increasingly more stringent, and may be applied retroactively. Although our proposed expenditures related to environmental matters are not currently expected to have a material adverse effect on our business, financial condition or results of operations, we may be required to make additional expenditures to remain in, or to achieve compliance with, environmental laws in the future.

***Compliance with changing laws and regulations may result in additional expenses and compliance risks.***

Changing laws and regulations are creating uncertainty for gaming companies. These changing laws and regulations are subject to varying interpretations in many cases due to their lack of specificity, recent issuance and/or lack of guidance. As a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. In addition, further regulation of casinos, financial institutions and public companies is possible. This could result in continuing uncertainty and higher costs regarding compliance matters. Due to our commitment to maintain high standards of compliance with laws and public disclosure, our efforts to comply with evolving laws, regulations and standards have resulted in and are likely to continue to result in increased general and administrative expense. In addition, we are subject to different parties' interpretation of our compliance with these new and changing laws and regulations.

***We are subject to taxation by various governments and agencies. The rate of taxation could change.***

We are subject to taxation by various governments and agencies, both in the U.S. and in Macau. Changes in the laws and regulations related to taxation, including changes in the rates of taxation, the amount of taxes we owe and the time when income is subject to taxation, our ability to claim U.S. foreign tax credits, failure to renew our Macau dividend agreement and Macau income tax exemption on gaming profits and the imposition of foreign withholding taxes could change our overall effective rate of taxation.

***System failure, information leakage and the cost of maintaining sufficient cybersecurity could adversely affect our business.***

We rely on information technology and other systems (including those maintained by third parties with whom we contract to provide data services) to maintain and transmit large volumes of customer financial information, credit card settlements, credit card funds transmissions, mailing lists and reservations information and other personally identifiable information. We also maintain important internal company data such as personally identifiable information about our employees and information relating to our operations. The systems and processes we have implemented to protect customers, employees and company information are subject to the ever-changing risk of compromised security. These risks include cyber and physical security breaches, system failure, computer viruses, and negligent or intentional misuse by customers, company employees, or employees of third-party vendors. The steps we take to deter and mitigate these risks may not be successful and our insurance coverage for protecting against cybersecurity risks may not be sufficient. Our third-party information system service providers face risks relating to cybersecurity similar to ours, and we do not directly control any of such parties' information security operations.

Despite the security measures we currently have in place, our facilities and systems and those of our third-party service providers may be vulnerable to security breaches, acts of vandalism, phishing attacks, computer viruses, misplaced or lost data, programming or human errors and other events. Cyber-attacks are becoming increasingly more difficult to anticipate and prevent due to their rapidly evolving nature and, as a result, the technology we use to protect our systems from being breached or compromised could become outdated due to advances in computer capabilities or other technological developments.

Any perceived or actual electronic or physical security breach involving the misappropriation, loss, or other unauthorized disclosure of confidential or personally identifiable information, including penetration of our network security, whether by us or by a third party, could disrupt our business, damage our reputation and our relationships with our customers or employees, expose us to risks of litigation, significant fines and penalties and liability, result in the deterioration of our customers' and employees' confidence in us, and adversely affect our business, results of operations and financial condition. Since we do not control third-party service providers and cannot guarantee that no electronic or physical computer break-ins and security breaches will occur in the future, any perceived or actual unauthorized disclosure of personally identifiable information regarding our employees, customers or website visitors could harm our reputation and credibility and reduce our ability to attract and retain employees and customers. As these threats develop and grow, we may find it necessary to make significant further investments to protect data and our infrastructure, including the implementation of new computer systems or upgrades to existing systems, deployment of additional personnel and protection-related technologies, engagement of third-party consultants, and training of employees. The occurrence of any of the cyber incidents described above could have a material adverse effect on our business, results of operations and cash flows.

***The failure to protect the integrity and security of company employee and customer information could result in damage to reputation and/or subject us to fines, payment of damages, lawsuits or restrictions on our use or transfer of data.***

Our business uses and transmits large volumes of employee and customer data, including credit card numbers and other personal information in various information systems that we maintain in areas such as human resources outsourcing, website hosting, and various forms of electronic communications. Our customers and employees have a high expectation that we will adequately protect their personal information. Our collection and use of personal data are governed by privacy laws and regulations, and privacy law is an area that changes often and varies significantly by jurisdiction. For example, the European Union (EU)'s General Data Protection Regulation ("GDPR"), which became effective in May 2018 and replaced the old data protection laws of each EU member state, requires companies to meet new and more stringent requirements regarding the handling of personal data. The GDPR captures data processing by non-EU firms with no EU establishment as long as firms' processing relates to "offering goods or services" or the "monitoring" of individuals in the EU. In addition to governmental regulations, there are credit card industry standards or other applicable data security standards we must comply with as well. Compliance with applicable privacy regulations may increase our operating costs and/or adversely impact our ability to market our products, properties and services to our guests. In addition, non-compliance with applicable privacy regulations by us (or in some circumstances non-compliance by third parties engaged by us) or a breach of security on systems storing our data may result in damage of reputation and/or subject us to fines, payment of damages, lawsuits or restrictions on our use or transfer of data. For example, failure to meet the GDPR requirements could result in penalties of up to four percent of worldwide revenue. Any misappropriation of confidential or personally identifiable information gathered, stored or used by us, be it intentional or accidental, could have a material impact on the operation of our business, including severely damaging our reputation and our relationships with our customers, employees and investors.

***Our business could suffer if our computer systems and websites are disrupted or cease to operate effectively.***

We are dependent on our computer systems to record and process transactions and manage and operate our business, including processing payments, accounting for and reporting financial results, and managing our employees and employee benefit programs. Given the complexity of our business, it is imperative that we maintain uninterrupted operation of our computer hardware and software systems. Despite our preventative efforts, our systems are vulnerable to damage or interruption from, among other things, security breaches, computer viruses, technical malfunctions, inadequate system capacity, power outages, natural disasters, and usage errors by our employees or third-party consultants. If our information technology systems become damaged or otherwise cease to function properly, we may have to make significant investments to repair or replace them. Additionally, confidential or sensitive data related to our customers or employees could be lost or compromised. Any material disruptions in our information technology systems could have a material adverse effect on our business, results of operations, and financial condition.

***If a third party successfully challenges our ownership of, or right to use, the Wynn-related trademarks and/or service marks, our business or results of operations could be harmed.***

Our intellectual property assets, especially the logo version of "Wynn," are among our most valuable assets. We have filed applications with the PTO and with various foreign patent and trademark registries including registries in Macau, China, Hong Kong, Singapore, Taiwan, Japan, certain European countries and various other jurisdictions throughout the world, to register a variety of WYNN-related trademarks and service marks in connection with a variety of goods and services. These marks include "WYNN RESORTS," "WYNN DESIGN AND DEVELOPMENT," "WYNN LAS VEGAS," "WYNN MACAU," "WYNN PALACE" and "ENCORE." Some of the applications are based upon ongoing use and others are based upon a bona fide intent to use the marks in the future.



A common element of most of these marks is the use of the surname "WYNN." As a general rule, a surname (or the portion of a mark primarily constituting a surname) is not eligible for registration unless the surname has acquired "secondary meaning." To date, we have been successful in demonstrating to the PTO such secondary meaning for the Wynn name, in certain of the applications, based upon factors including Mr. Wynn's historical prominence as a resort developer, but we cannot assure you that we will be successful with the other pending applications.

Federal registrations are not completely dispositive of the right to such marks. Third parties who claim prior rights with respect to similar marks may nonetheless challenge our right to obtain registrations or our use of the marks and seek to overcome the presumptions afforded by such registrations.

Furthermore, due to the increased use of technology in computerized gaming machines and in business operations generally, other forms of intellectual property rights (such as patents and copyrights) are becoming of increased relevance. It is possible that, in the future, third parties might assert superior intellectual property rights or allege that their intellectual property rights cover some aspect of our operations. The defense of such allegations may result in substantial expenses, and, if such claims are successfully prosecuted, may have a material impact on our business. There has been an increase in the international operation of fraudulent online gambling and investment websites attempting to scam and defraud members of the public. We do not offer online gambling or investment accounts. Websites offering these or similar activities and opportunities that use our names or similar names or images in likeness to ours, are doing so without our authorization and possibly unlawfully and with criminal intent. If our efforts to cause these sites to be shut down through civil action and by reporting these sites to the appropriate authorities (where applicable) are unsuccessful or not timely completed, these unauthorized activities may continue and harm our reputation and negatively affect our business. Efforts we take to acquire and protect our intellectual property rights against unauthorized use throughout the world, which may include retaining counsel and commencing litigation in various jurisdictions, may be costly and may not be successful in protecting and preserving the status and value of our intellectual property assets.

***Labor actions and other labor problems could negatively impact our operations.***

Some of our employees are represented by labor unions. From time to time, we have experienced attempts by labor organizations to organize certain of our non-union employees. These efforts have achieved some success to date. We cannot provide any assurance that we will not experience additional and successful union activity in the future. The impact of any union activity is undetermined and could have a material adverse effect on our business, financial condition, results of operations and cash flows.

***Our insurance coverage may not be adequate to cover all possible losses that we could suffer, including losses resulting from terrorism, and our insurance costs may increase.***

We have comprehensive property and liability insurance policies for our properties with coverage features and insured limits that we believe are customary in their breadth and scope. However, in the event of a substantial loss, the insurance coverage we carry may not be sufficient to pay the full market value or replacement cost of our lost investment or could result in certain losses being totally uninsured. As a result, we could lose some or all of the capital we have invested in a property, as well as the anticipated future revenue from the property, and we could remain obligated for debt or other financial obligations related to the property.

Market forces beyond our control may limit the scope of the insurance coverage we can obtain in the future or our ability to obtain coverage at reasonable rates. Certain catastrophic losses may be uninsurable or too expensive to justify obtaining insurance. As a result, if we suffer such a catastrophic loss, we may not be successful in obtaining future insurance without increases in cost or decreases in coverage levels. Furthermore, our debt instruments and other material agreements require us to maintain a certain minimum level of insurance. Failure to satisfy these requirements could result in an event of default under these debt instruments or material agreements, which would negatively affect our business and financial condition.

## **Risks Associated with our Macau Operations**

### ***Our Macau Operations may be affected by adverse political and economic conditions.***

Our Macau Operations are subject to significant political, economic and social risks inherent in doing business in an emerging market. The future success of our Macau Operations will depend on political and economic conditions in Macau and mainland China. For example, fiscal decline, international relations, and civil, domestic or international unrest in Macau, China or the surrounding region could significantly harm our business, not only by reducing customer demand for casino resorts, but also by increasing the risk of imposition of taxes and exchange controls or other governmental restrictions, laws or regulations that might impede our Macau Operations or our ability to repatriate funds.

### ***Revenues from our Macau gaming operations will end if we cannot secure an extension or renewal of our concession, or a new concession, by June 26, 2022, or if the Macau government exercises its redemption right.***

The term of our concession agreement with the Macau government ends on June 26, 2022. Unless the term of our concession agreement is extended or our concession is renewed, subject to any separate arrangement with the Macau government, all of our gaming operations and related equipment in Macau will be automatically transferred to the Macau government without compensation to us and we will cease to generate any revenues from these operations at the end of the term of our concession agreement. The Macau government has publicly commented that it is studying the process by which concessions and subconcessions may be renewed, extended or issued. Effective June 2017, the Macau government may redeem our concession agreement by providing us at least one year's prior notice. In the event the Macau government exercises this redemption right, we are entitled to fair compensation or indemnity. The amount of such compensation or indemnity will be determined based on the amount of revenue generated during the tax year prior to the redemption multiplied by the remaining years under our concession. We are considering various options to place us in a good position for the renewal, extension or application process; however, we may not be able to extend our concession agreement or renew our concession or obtain a new concession on terms favorable to us or at all. If our concession is redeemed, the compensation paid to us may not be adequate to compensate us for the loss of future revenues. The redemption of or failure to extend or renew our concession or obtain a new concession would have a material adverse effect on our results of operations.

### ***We compete for limited labor resources in Macau and Macau government policies may also affect our ability to employ imported labor.***

The success of our operations in Macau will be affected by our success in hiring and retaining employees. We compete with a large number of casino resorts in Macau for a limited number of qualified employees. In addition, the Macau government requires that we only hire Macau residents as dealers in our casinos. Competition for these individuals in Macau has increased and will continue to increase as other competitors expand their operations. We have to seek employees from other countries to adequately staff our resorts and certain Macau government policies affect our ability to import labor in certain job classifications. Despite our coordination with the Macau labor and immigration authorities to assure that our labor needs are satisfied, we may not be able to recruit and retain a sufficient number of qualified employees for our operations or obtain required work permits for those employees. If we are unable to obtain, attract, retain and train skilled employees, our ability to adequately manage and staff our existing and planned casino and resort properties in Macau could be impaired, which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

### ***The smoking control legislation in Macau could have an adverse effect on our business, financial condition, results of operations and cash flows.***

In 2014, the Macau government approved additional smoking control legislation, which prohibited smoking in casinos starting on October 6, 2014. The legislation, however, permitted casinos to maintain certain limited smoking areas open to VIP patrons if certain stringent conditions were met, as enhanced from time to time. Smoking was also permitted in approved smoking lounges if certain stringent technical standards were met. In 2017, the Macau government approved additional smoking control legislation that came into effect on January 1, 2018 banning smoking in all casino areas other than in approved smoking lounges by December 31, 2018. The new smoking control legislation also requires casinos to upgrade any existing smoking lounges in mass gaming areas and construct new smoking lounges in VIP gaming areas for inspection and approval in accordance with further enhanced technical standards by December 31, 2018. Although we have approved smoking lounges at both Wynn Macau and Wynn Palace, the smoking ban may deter potential gaming customers who are smokers from frequenting casinos in Macau and disrupt the number of patrons visiting or the amount of time visiting patrons spend gaming at our properties, which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

***Macau may not have adequate transportation services, infrastructure and related facilities to accommodate the demand of visitors to Macau.***

Transportation services, infrastructure and related facilities within Macau and between Macau, Hong Kong and mainland China may need to be expanded to accommodate the increased visitation to Macau driven by additional casino projects and attractions that are under construction and to be developed in the future as well as the opening of the Hong Kong-Zhuhai-Macau Bridge which may further strain existing transportation infrastructure. If transportation facilities to and from Macau are inadequate to meet the demands of an increased volume of gaming customers visiting Macau, the desirability of Macau as a gaming destination, as well as the results of operations of our Macau Operations, could be negatively impacted. Furthermore, construction of current and future casino and infrastructure projects, adjacent to our properties could impede access to our properties during construction and development. This may negatively impact the results of our Macau Operations.

***Extreme weather conditions may have an adverse impact on our Macau Operations.***

Macau's subtropical climate and location on the South China Sea are subject to extreme weather conditions including typhoons and heavy rainstorms, such as Typhoon Hato in 2017. Unfavorable weather conditions could negatively affect the profitability of our resorts and prevent or discourage guests from traveling to Macau.

***If our Macau Operations fail to comply with the concession agreement, the Macau government can terminate our concession without compensation to us, which would have a material adverse effect on our business and financial condition.***

The Macau government has the right to unilaterally terminate our concession in the event of our material non-compliance with the basic obligations under the concession and applicable Macau laws. The concession agreement expressly provides that the government of Macau may unilaterally rescind the concession agreement of our Macau Operations if it:

- conducts unauthorized games or activities that are excluded from its corporate purpose;
- suspends gaming operations in Macau for more than seven consecutive days (or more than 14 days in a civil year) without justification;
- defaults in payment of taxes, premiums, contributions or other required amounts;
- does not comply with government inspections or supervision;
- systematically fails to observe its obligations under the concession system;
- fails to maintain bank guarantees or bonds satisfactory to the government;
- is the subject of bankruptcy proceedings or becomes insolvent;
- engages in serious fraudulent activity, damaging to the public interest; or
- repeatedly violates applicable gaming laws.

If the government of Macau unilaterally rescinds the concession agreement, our Macau Operations will be required to compensate the government in accordance with applicable law, and the areas defined as casino space under Macau law and all of the gaming equipment pertaining to our gaming operations will be transferred to the government without compensation. The loss of our concession would prohibit us from conducting gaming operations in Macau, which would have a material adverse effect on our business and financial condition.

***Certain Nevada gaming laws apply to our Macau Operations' gaming activities and associations.***

Certain Nevada gaming laws also apply to gaming activities and associations in jurisdictions outside the State of Nevada. With respect to our Macau Operations, we and our subsidiaries that must be licensed to conduct gaming operations in Nevada are required to comply with certain reporting requirements concerning gaming activities and associations in Macau conducted by our Macau-related subsidiaries. We and our licensed Nevada subsidiaries also will be subject to disciplinary action by the NGC if our Macau-related subsidiaries:

- knowingly violate any Macau laws relating to their Macau gaming operations;
- fail to conduct our Macau Operations in accordance with the standards of honesty and integrity required of Nevada gaming operations;
- engage in any activity or enter into any association that is unsuitable for us because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect discredit or disrepute upon the State of Nevada or gaming in Nevada, or is contrary to Nevada gaming policies;

- engage in any activity or enter into any association that interferes with the ability of the State of Nevada to collect gaming taxes and fees; or
- employ, contract with or associate with any person in the foreign gaming operation who has been denied a license or a finding of suitability in Nevada on the ground of unsuitability, or who has been found guilty of cheating at gambling.

Such disciplinary action could include suspension, conditioning, limitation or revocation of the registration, licenses or approvals held by us and our licensed Nevada subsidiaries, including Wynn Las Vegas, LLC, and the imposition of substantial fines.

In addition, if the Nevada Gaming Control Board determines that any actual or intended activities or associations of our Macau-related subsidiaries may be prohibited pursuant to one or more of the standards described above, the Nevada Gaming Control Board can require us and our licensed Nevada subsidiaries to file an application with the NGC for a finding of suitability of the activity or association. If the NGC finds that the activity or association in Macau is unsuitable or prohibited, our Macau-related subsidiaries will either be required to terminate the activity or association, or will be prohibited from undertaking the activity or association. Consequently, should the NGC find that our Macau-related subsidiary's gaming activities or associations in Macau are unsuitable, those subsidiaries may be prohibited from undertaking their planned gaming activities or associations in Macau, or be required to divest their investment in Macau, possibly on unfavorable terms.

***We depend upon gaming promoters for a significant portion of our gaming revenue. If we are unable to maintain, or develop additional, successful relationships with reputable gaming promoters, our ability to maintain or grow our gaming revenues could be adversely affected.***

We may lose the clientele of our gaming promoters, who generate a significant portion of our gaming revenue. There is intense competition among casino operators in Macau for services provided by gaming promoters, which has intensified as additional casinos open in Macau. If we are unable to maintain, or develop additional, successful relationships with reputable gaming promoters, or lose a significant number of our gaming promoters to our competitors, our ability to maintain or grow our gaming revenues will be adversely affected and we will have to seek alternative ways of developing relationships with VIP customers. In addition, if our gaming promoters are unable to develop or maintain relationships with our VIP customers, our ability to maintain or grow our gaming revenues will be hampered.

***The financial resources of our gaming promoters may be insufficient to allow them to continue doing business in Macau which could adversely affect our business and financial condition. Our gaming promoters may experience difficulty in attracting patrons.***

Economic and political factors in the region may cause our gaming promoters to experience difficulties in their Macau operations, including intensified competition in attracting patrons to come to Macau. Further, gaming promoters may face a decrease in liquidity, limiting their ability to grant credit to their patrons, and difficulties in collecting credit they extended previously. The inability to attract sufficient patrons, grant credit and collect amounts due in a timely manner may negatively affect our gaming promoters' operations, causing gaming promoters to wind up or liquidate their operations or resulting in some of our gaming promoters leaving Macau. Current and any future difficulties could have an adverse impact on our results of operations.

***Increased competition for the services of gaming promoters may require us to pay increased commission rates to gaming promoters.***

Certain gaming promoters have significant leverage and bargaining strength in negotiating operational agreements with casino operators. This leverage could result in gaming promoters negotiating changes to our operational agreements, including higher commissions, or the loss of business to a competitor or the loss of certain relationships with gaming promoters. If we need to increase our commission rates or otherwise change our practices with respect to gaming promoters due to competitive forces, our results of operations could be adversely affected.

***Failure by the gaming promoters with whom we work to comply with Macau gaming laws and high standards of probity and integrity might affect our reputation and ability to comply with the requirements of our concession, Macau gaming laws and other gaming licenses.***

The reputations and probity of the gaming promoters with whom we work are important to our own reputation and to our ability to operate in compliance with our concession, Macau gaming laws and other gaming licenses. We conduct periodic reviews of the probity and compliance programs of our gaming promoters. However, we are not able to control our gaming promoters' compliance with these high standards of probity and integrity, and our gaming promoters may violate provisions in their contracts with us designed to ensure such compliance. In addition, if we enter into a new business relationship with a gaming promoter whose probity is in doubt, this may be considered by regulators or investors to reflect negatively on our own probity. If our gaming promoters are unable to maintain required standards of probity and integrity, we may face consequences from gaming regulators with authority over our operations. Furthermore, if any of our gaming promoters violate the Macau gaming laws while on our premises, the Macau government may, in its discretion, take enforcement action against us, the gaming promoter, or each concurrently, and we may be sanctioned and our reputation could be harmed.

***Unfavorable changes in currency exchange rates may increase our Macau Operations' obligations under the concession agreement and cause fluctuations in the value of our investment in Macau.***

The currency delineated in our Macau Operations' concession agreement with the government of Macau is the Macau pataca. The Macau pataca is linked to the Hong Kong dollar, and the two are often 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 changes in Chinese governmental policies and international economic and political developments.

If the Hong Kong dollar and the Macau pataca are no longer linked to the U.S. dollar, the exchange rate for these currencies may severely fluctuate. The current rate of exchange fixed by the applicable monetary authorities for these currencies may also change.

Because many of our Macau Operations' payment and expenditure obligations are in Macau patacas, in the event of unfavorable Macau pataca or Hong Kong dollar rate changes, our Macau Operations' obligations, as denominated in U.S. dollars, would increase. In addition, because we expect that most of the revenues for any casino that we operate 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 our results of operations, financial condition and ability to service our debt.

***Currency exchange controls and currency export restrictions could negatively impact our Macau Operations.***

Currency exchange controls and restrictions on the export of currency by certain countries may negatively impact the success of our Macau Operations. For example, there are currently existing currency exchange controls and restrictions on the export of the renminbi, the currency of China. Restrictions on the export of the renminbi may impede the flow of gaming customers from China to Macau, inhibit the growth of gaming in Macau and negatively impact our Macau Operations.

***Our Macau subsidiaries' indebtedness is secured by a substantial portion of their assets.***

Subject to applicable laws, including gaming laws, and certain agreed upon exceptions, our Macau subsidiaries' debt is secured by liens on substantially all of their assets. In the event of a default by such subsidiaries under their financing documents, or if such subsidiaries experience insolvency, liquidation, dissolution or reorganization, the holders of such secured debt would first be entitled to payment from their collateral security, and then would the holders of our Macau subsidiaries' unsecured debt be entitled to payment from their remaining assets, and only then would we, as a holder of capital stock, be entitled to distribution of any remaining assets.

***Conflicts of interest may arise because certain of our directors and officers are also directors of Wynn Macau, Limited.***

Wynn Macau, Limited, an indirect majority owned subsidiary of Wynn Resorts and the developer, owner and operator of Wynn Macau and Wynn Palace, listed its ordinary shares of common stock on The Stock Exchange of Hong Kong Limited in October 2009. As of December 31, 2018, Wynn Resorts owns approximately 72% of Wynn Macau, Limited's ordinary shares of common stock. As a result of Wynn Macau, Limited having stockholders who are not affiliated with us, we and certain of our officers and directors who also serve as officers and/or directors of Wynn Macau, Limited may have conflicting fiduciary obligations to our stockholders and to the minority stockholders of Wynn Macau, Limited. Decisions that could have different implications for Wynn Resorts and Wynn Macau, Limited, including contractual arrangements that we have entered into or may in the future enter into with Wynn Macau, Limited, may give rise to the appearance of a potential conflict of interest.

***The Macau government has established a maximum number of gaming tables that can be operated in Macau and has limited the number of new gaming tables at new gaming areas in Macau.***

In connection with the opening of Wynn Palace, the DICJ authorized 100 new table games for operation at Wynn Palace, with 25 additional table games authorized for operation on January 1, 2017, and a further 25 new table games for operation on January 1, 2018, for a total of 150 new table games in the aggregate. In addition, we have and will continue to transfer table games between Wynn Palace and Wynn Macau, subject to the aggregate cap. As of February 20, 2019, we had a total of 320 table games at Wynn Palace and 317 at Wynn Macau. The mix of table games in operation at Wynn Palace and Wynn Macau changes from time to time as a result of marketing and operating strategies in response to changing market demand and industry competition. Failure to shift the mix of our table games in anticipation of market demands and industry trends may negatively impact our operating results.

**Risks Related to Share Ownership and Stockholder Matters**

***Our largest stockholders are able to exert significant influence over our operations and future direction.***

As of December 31, 2018, Elaine P. Wynn was our second largest shareholder and owned 9,539,077 shares, or approximately 9%, of our outstanding common stock. As a result, Elaine P. Wynn may be able to exert significant influence over all matters requiring our stockholders' approval, including the approval of significant corporate transactions.

On August 3, 2018, we entered into a Cooperation Agreement (the "Cooperation Agreement") with Elaine P. Wynn regarding the composition of the Company's Board of Directors and certain other matters, including, among other things, the appointment of Mr. Philip G. Satre to the Company's Board of Directors, standstill restrictions, releases, non-disparagement and reimbursement of expenses. The term of the Cooperation Agreement expires on the day after the conclusion of the 2020 annual meeting of the Company's stockholders, unless earlier terminated pursuant to the circumstances described in the Cooperation Agreement.

***Our stock price may be volatile.***

The trading price of our common stock has been and may continue to be subject to wide fluctuations. Our stock price may fluctuate in response to a number of events and factors, such as general United States, China, and world economic and financial conditions, our own quarterly variations in operating results, increased competition, changes in financial estimates and recommendations by securities analysts, changes in applicable laws or regulations, and changes affecting the travel industry, and other events impacting our business. The stock market in general, and prices for companies in our industry in particular, has experienced extreme volatility that may be unrelated to the operating performance of a particular company. These broad market and industry fluctuations may adversely affect the price of our common stock, regardless of our operating performance.

## **Risks Related to our Indebtedness**

***We are highly leveraged and future cash flow may not be sufficient for us to meet our obligations, and we might have difficulty obtaining more financing.***

We have a substantial amount of consolidated debt in relation to our equity. As of December 31, 2018, we had total outstanding debt of approximately \$9.42 billion, which includes a portion of the funds we expect to need for the development and construction of our current projects. We may, however, incur additional indebtedness in connection with the construction of these projects. See Item 1—Business "Construction and Development Opportunities." In addition, we are permitted to incur additional indebtedness if certain conditions are met, including conditions under our Wynn Macau Credit Facilities, our Wynn America Credit Facilities and our Wynn Las Vegas, LLC indentures in connection with other future potential development plans.

Our indebtedness could have important consequences. For example:

- failure to meet our payment obligations or other obligations could result in acceleration of our indebtedness, foreclosure upon our assets that serve as collateral or bankruptcy and trigger cross defaults under other agreements;
- servicing our indebtedness requires a substantial portion of our cash flow from the operations of our Las Vegas and Macau Operations and reduces the amount of available cash, if any, to fund working capital and other cash requirements or pay for other capital expenditures;
- we may not be able to obtain additional financing, if needed; and
- rates with respect to a portion of the interest we pay will fluctuate with market rates and, accordingly, our interest expense will increase if market interest rates increase.

The interest rates of certain of our credit agreements are tied to the London Interbank Offered Rate, or LIBOR. In July 2017, the head of the United Kingdom Financial Conduct Authority announced the desire to phase out the use of LIBOR by the end of 2021. In addition, the U.S. Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprised of large US financial institutions, is considering replacing U.S. dollar LIBOR with the Secured Overnight Financing Rate, or SOFR, a new index calculated by short-term repurchase agreements, backed by Treasury securities. Although there have been a few issuances utilizing SOFR or the Sterling Over Night Index Average, an alternative reference rate that is based on transactions, it is unknown whether these alternative reference rates will attain market acceptance as replacements for LIBOR. If LIBOR ceases to exist, we may need to renegotiate any of our credit agreements extending beyond 2021 that utilize LIBOR as a factor in determining the interest rate to replace LIBOR with the new standard that is established. There is currently no definitive information regarding the future utilization of LIBOR or of any particular replacement rate. As such, the potential effect of any such event could have on our business and financial condition cannot yet be determined.

Under the terms of the documents governing our debt facilities, subject to certain limitations, we are permitted to incur indebtedness. If we incur additional indebtedness, the risks described above will be exacerbated.

***The agreements governing our debt facilities contain certain covenants that restrict our ability to engage in certain transactions and may impair our ability to respond to changing business and economic conditions.***

Some of our debt facilities require us to satisfy various financial covenants, which include requirements for minimum interest coverage ratios and leverage ratios pertaining to total debt to earnings before interest, tax, depreciation and amortization and a minimum earnings before interest, tax, depreciation and amortization. For more information on financial covenants we are subject to under our debt facilities, see Item 8—"Financial Statements and Supplementary Data," Note 6, "Long-Term Debt." Future indebtedness or other contracts could contain covenants more restrictive than those contained in our existing debt facilities.

The agreements governing our debt facilities also contain restrictions on our ability to engage in certain transactions and may limit our ability to respond to changing business and economic conditions. These restrictions include, among other things, limitations on our ability and the ability of our restricted subsidiaries to:

- pay dividends or distributions or repurchase equity;
- incur additional debt;
- make investments;
- create liens on assets to secure debt;
- enter into transactions with affiliates;

- issue stock of, or member's interests in, subsidiaries;
- enter into sale-leaseback transactions;
- engage in other businesses;
- merge or consolidate with another company;
- undergo a change of control;
- transfer, sell or otherwise dispose of assets;
- issue disqualified stock;
- create dividend and other payment restrictions affecting subsidiaries; and
- designate restricted and unrestricted subsidiaries.

Our ability to comply with the terms of our outstanding facilities may be affected by general economic conditions, industry conditions and other events outside of our control. As a result, we may not be able to maintain compliance with these covenants. If our properties' operations fail to generate adequate cash flow, we may violate those covenants, causing a default under our agreements, which would materially and adversely affect our operating results and our financial condition or result in our lenders or holders of our debt taking action to enforce their security interests in our various assets or cause all outstanding amounts to be due and payable immediately.

**Item 1B. Unresolved Staff Comments**

None.



## Item 2. Properties

The following table presents our significant land holdings. We own or have obtained the right to use these properties. We also own or lease various other improved and unimproved properties associated with our development projects.

Property	Approximate Acres	Location
<b>Macau Operations (1)</b>		
Wynn Palace	51	Located in the Cotai area of Macau.
Wynn Macau	16	Located in downtown Macau's inner harbor.
	67	
<b>Las Vegas Operations</b>		
Wynn Las Vegas (main parcel)	75	Located at the intersection of Las Vegas Boulevard and Sands Avenue.
Golf course land (2)	140	Located adjacent to Wynn Las Vegas.
Employee parking lot and office building	18	Located across Sands Avenue.
Office building	5	Located adjacent to golf course land.
	238	
<b>Encore Boston Harbor (3)</b>	33	Located in Everett, Massachusetts, adjacent to Boston along the Mystic River.
<b>Other (4)</b>	38	Located on the Las Vegas Strip directly across from Wynn Las Vegas.

(1) The government of Macau owns most of the land in Macau. In most cases, private interests in real property located in Macau are obtained through long-term leases known as concessions and other grants of rights to use land from the government. Wynn Palace and Wynn Macau are built on land leased under land concession contracts each with terms of 25 years from May 2012 and August 2004, respectively, which may be renewed with government approval for successive periods.

(2) We own approximately 834 acre-feet of permitted and certificated water rights, which we will use to irrigate the golf course upon opening in the fourth quarter of 2019. We also own approximately 151.5 acre-feet of permitted and certificated water rights for commercial use. There are significant cost savings and conservation benefits associated with using water supplied pursuant to our water rights.

(3) This integrated resort is currently under construction and is expected to open in mid-2019.

(4) During the first quarter of 2018, we acquired approximately 38 acres of land, of which approximately 16 acres are subject to a ground lease that expires in July 2097. As part of this acquisition, we acquired approximately 24 acre-feet of permitted and certificated water rights. We expect to use this land for future development.

## Item 3. Legal Proceedings

We are occasionally party to lawsuits. As with all litigation, no assurance can be provided as to the outcome of such matters and we note that litigation inherently involves significant costs. For information regarding the Company's legal proceedings see Item 8—"Financial Statements and Supplementary Data," Note 15, "Commitments and Contingencies—Litigation" in this Annual Report on Form 10-K, which is incorporated herein by reference, and Item 1A—"Risk Factors" in this Annual Report on Form 10-K.

### CCAC Information Request

In July 2014, Wynn Macau SA was contacted by the Commission Against Corruption of Macau ("CCAC") requesting certain information related to its land in the Cotai area of Macau. Wynn Macau SA has cooperated with CCAC's request.

## Item 4. Mine Safety Disclosures

Not applicable.

**PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities****Market Information**

Our outstanding common stock trades on the Nasdaq Global Select Market under the symbol "WYNN."

**Holders**

There were approximately 152 holders of record of our common stock as of February 15, 2019.

**Issuer Purchases of Equity Securities**

The following table provides information about share repurchases we made of our common stock as part of our equity repurchase program during the quarter ended December 31, 2018:

<b>For the Month Ended</b>	<b>Number of Shares Repurchased</b>	<b>Weighted Average Price Paid Per Share</b>	<b>Shares Repurchased as Part of a Publicly Announced Program</b>	<b>Approximate Dollar Value Remaining Under the Program (in thousands) (1)</b>
October 31, 2018	—	\$ —	—	\$ 1,000,000
November 30, 2018	937,651	\$ 104.74	937,651	901,787
December 31, 2018	540,901	\$ 108.07	540,901	843,332

(1) The Company's Board of Directors authorized an equity repurchase program in April of 2016 of up to \$1 billion of our common stock. Repurchases may be made at the discretion of the Company from time to time on the open market or in privately negotiated transactions. The Company is not obligated to make any repurchases, and the repurchase program may be discontinued at any time. Any shares acquired are available for general corporate purposes. Any shares repurchased during the periods presented are recorded in Treasury Stock.

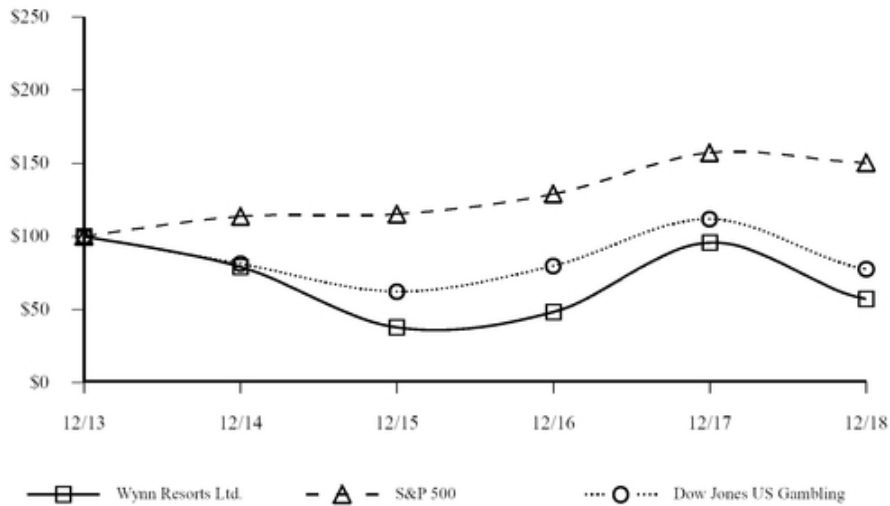
For more information on the Company's publicly announced repurchase program, see Item 8—"Financial Statements and Supplementary Data," Note 7, "Stockholders' Equity." In November 2018, we repurchased 630 shares in satisfaction of tax withholding obligations on vested restricted stock at an average price of \$111.69 per share, for a total amount of approximately \$0.1 million. None of the 630 repurchases that occurred in November 2018 were part of the Company's publicly announced share repurchase program.

### Stock Performance Graph

The graph below compares the five-year cumulative total return on our common stock to the cumulative total return of the Standard & Poor's 500 Stock Index ("S&P 500") and the Dow Jones US Gambling Index. The performance graph assumes that \$100 was invested on December 31, 2013 in each of the Company's common stock, the S&P 500 and the Dow Jones US Gambling Index, and that all dividends were reinvested. The stock price performance shown in this graph is neither necessarily indicative of, nor intended to suggest, future stock price performance.

#### COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\*

Among Wynn Resorts Ltd., the S&P 500 Index,  
and the Dow Jones US Gambling Index



\*\$100 invested on 12/31/13 in stock or index, including reinvestment of dividends. Fiscal year ending December 31.  
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**Item 6. Selected Financial Data**

The following financial information for each of the five years ended December 31, 2018, 2017, 2016, 2015 and 2014 has been derived from our consolidated financial statements. This selected consolidated financial data should be read together with Item 7—"Management's Discussion and Analysis of Financial Condition and Results of Operations," our consolidated financial statements and related notes and other information contained in this Annual Report on Form 10-K. Operating results for the periods presented are not necessarily indicative of the results that may be expected for future years.

	Years Ended December 31,				
	2018 (1) (4)	2017 (2) (4)	2016 (3) (4)	2015 (4)	2014 (4)
(in thousands, except per share amounts)					
<b>Consolidated Statements of Income Data:</b>					
Operating revenues	\$ 6,717,660	\$ 6,070,160	\$ 4,345,797	\$ 4,075,883	\$ 5,433,661
Pre-opening	53,490	26,692	154,717	77,623	30,146
Operating income	735,544	1,055,565	521,662	658,814	1,266,278
Net income	803,084	889,254	302,469	281,524	962,644
Less: net income attributable to noncontrolling interests	(230,654)	(142,073)	(60,494)	(86,234)	(231,090)
Net income attributable to Wynn Resorts, Limited	572,430	747,181	241,975	195,290	731,554
Basic income per share	\$ 5.37	\$ 7.32	\$ 2.39	\$ 1.93	\$ 7.25
Diluted income per share	\$ 5.35	\$ 7.28	\$ 2.38	\$ 1.92	\$ 7.17

	December 31,				
	2018	2017	2016	2015	2014
(in thousands, except per share amounts)					
<b>Consolidated Balance Sheets Data:</b>					
Cash and cash equivalents	\$ 2,215,001	\$ 2,804,474	\$ 2,453,122	\$ 2,080,089	\$ 2,182,164
Construction in progress	1,912,801	1,016,207	299,686	3,217,117	1,666,326
Total assets	13,216,269	12,681,739	11,953,557	10,459,159	9,001,919
Total long-term obligations (5)	9,519,417	9,673,099	10,279,375	9,327,143	7,482,510
Stockholders' equity	1,814,789	1,078,350	257,881	21,845	211,091
Cash dividends declared per common share	\$ 2.75	\$ 2.00	\$ 2.00	\$ 3.00	\$ 6.25

- (1) During the fourth quarter of 2018, we recorded a tax benefit of \$390.9 million related to clarified U.S. tax reform guidance issued by the Internal Revenue Service in the fourth quarter of 2018, which was incremental to the provisional tax benefit recorded during the fourth quarter of 2017. See Item 8—"Financial Statements and Supplementary Data," Note 12, "Income Taxes." Additionally, the Company incurred a litigation settlement expense totaling \$463.6 million in 2018. See Item 8—"Financial Statements and Supplementary Data," Note 15, "Commitments and Contingencies."
- (2) During the fourth quarter of 2017, we recorded a provisional income tax benefit of \$339.9 million related to the enactment of U.S. tax reform. See Item 8—"Financial Statements and Supplementary Data," Note 12, "Income Taxes."
- (3) Wynn Palace opened on August 22, 2016.
- (4) The results presented reflect the Company's adoption of ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)* ("ASC 606"), effective January 1, 2018. 2017 and 2016 operating revenues have been adjusted to reflect the full retrospective adoption of ASC 606, with no impact to operating income or net income. 2015 and 2014 operating revenues were not recast for the adoption of ASC 606 and, as a result, are not comparable to 2016, 2017 and 2018 operating revenues. See Item 8—"Financial Statements and Supplementary Data," Note 2, "Summary of Significant Accounting Policies."
- (5) Includes long-term debt, other long-term liabilities, deferred income tax liabilities, net and the required contract premium payments under our land concession contracts at Wynn Palace.

## Item 7. 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 notes thereto included elsewhere in this Annual Report on Form 10-K. The results presented reflect the Company's adoption of the new accounting guidance for revenue recognition ("ASC 606"), effective January 1, 2018. Certain prior period amounts have been adjusted to reflect the full retrospective adoption of ASC 606, with no impact to operating income, net income or Adjusted Property EBITDA.

### Overview

We are a developer, owner and operator of destination casino resorts (integrated resorts). In Macau, we own approximately 72% of WML, which includes the operations of the Wynn Palace and Wynn Macau resorts. In Las Vegas, Nevada, we operate and, with the exception of certain retail space, own 100% of Wynn Las Vegas. We are currently constructing Encore Boston Harbor, an integrated casino resort in Everett, Massachusetts.

### Key Operating Measures

Certain key operating measures specific to the gaming industry are included in our discussion of our operational performance for the periods for which the Consolidated Statements of Income are presented. These key operating measures are defined below:

- Table drop in mass market for our Macau Operations is the amount of cash that is deposited in a gaming table's drop box plus cash chips purchased at the casino cage.
- Table drop for our Las Vegas Operations is the amount of cash and net markers issued that are deposited in a gaming table's drop box.
- Rolling chips are non-negotiable identifiable chips that are used to track turnover for purposes of calculating incentives within our Macau Operations' VIP program.
- Turnover is the sum of all losing rolling chip wagers within our Macau Operations' VIP program.
- Table games win is the amount of table drop or turnover that is retained and recorded as casino revenues. Table games win is before discounts, commissions and the allocation of casino revenues to rooms, food and beverage and other revenues for services provided to casino customers on a complimentary basis.
- Slot machine win is the amount of handle (representing the total amount wagered) that is retained by us and is recorded as casino revenues. Slot machine win is after adjustment for progressive accruals and free play, but before discounts and the allocation of casino revenues to rooms, food and beverage and other revenues for services provided to casino customers on a complimentary basis.
- Average daily rate ("ADR") is calculated by dividing total room revenues, including complimentary (less service charges, if any), by total rooms occupied.
- Revenue per available room ("REVPAR") is calculated by dividing total room revenues, including complimentary (less service charges, if any), by total rooms available.
- Occupancy is calculated by dividing total occupied rooms, including complimentary rooms, by the total rooms available.

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

In our VIP operations in Macau, customers primarily purchase rolling chips from the casino cage and can only use them to make wagers. Winning wagers are paid in cash chips. The loss of the rolling chips in the VIP operations is recorded as turnover and provides a base for calculating VIP win percentage. It is customary in Macau to measure VIP play using this rolling chip method. We expect our win as a percentage of turnover from these operations to be within the range of 2.7% to 3.0%. In our mass market operations in Macau, customers may purchase cash chips at either the gaming tables or at the casino cage. The measurements from our VIP and mass market operations are not comparable as the measurement method used in our mass market operations tracks the initial purchase of chips at the table and at the casino cage, while the measurement method from our VIP operations tracks the sum of all losing wagers. Accordingly, the base measurement from the VIP operations is much larger than the base measurement from the mass market operations. As a result, the expected win percentage with the same amount of gaming win is lower in the VIP operations when compared to the mass market operations.

In Las Vegas, customers purchase chips at the gaming tables. The cash and net markers used to purchase chips are deposited in the gaming table's drop box. This is the base of measurement that we use for calculating win percentage in Las Vegas. Each type of table game has its own theoretical win percentage. Our expected table games win percentage in Las Vegas is 22% to 26%.

## Results of Operations

### Summary annual results

The following table summarizes our financial results for the periods presented (in thousands, except per share data):

	Years Ended December 31,		
	2018	2017	2016
Operating revenues	\$ 6,717,660	\$ 6,070,160	\$ 4,345,797
Net income attributable to Wynn Resorts, Limited	572,430	747,181	241,975
Diluted net income per share	5.35	7.28	2.38
Adjusted Property EBITDA (1)	2,044,413	1,810,732	1,259,327

(1) See Item 8—"Financial Statements and Supplemental Data," Note 16, "Segment Information," for a reconciliation of Adjusted Property EBITDA to net income attributable to Wynn Resorts, Limited.

For the year ended December 31, 2018, net income attributable to Wynn Resorts, Limited was \$572.4 million, or \$5.35 per diluted share, a decrease of 23.4%, or \$174.8 million, compared to \$747.2 million, or \$7.28 per diluted share, for the same period of 2017. The decrease in net income attributable to Wynn Resorts, Limited was primarily the result of a litigation settlement expense of \$463.6 million, partially offset by an increase in operating income from Wynn Palace. Results for the years ended December 31, 2018 and 2017 results included net tax benefits of \$390.9 million and \$339.9 million, respectively, recorded in connection with U.S. tax reform.

For the year ended December 31, 2018, Adjusted Property EBITDA was \$2.04 billion, an increase of 12.9%, or \$233.7 million, from \$1.81 billion for the same period of 2017. The increase in Adjusted Property EBITDA was the result of an increase of \$316.3 million from Wynn Palace, partially offset by decreases of \$27.5 million and \$55.1 million from Wynn Macau and our Las Vegas Operations, respectively.

For the year ended December 31, 2017, net income attributable to Wynn Resorts, Limited was \$747.2 million, or \$7.28 per diluted share, an increase of 208.8%, or \$505.2 million, compared to \$242.0 million, or \$2.38 per diluted share, for the same period of 2016. The increase in net income attributable to Wynn Resorts, Limited was primarily the result of the provisional income tax benefit of \$339.9 million from U.S. tax reform and increases in operating income from Wynn Palace, Wynn Macau and our Las Vegas Operations, partially offset by increases in the Redemption Note fair value and interest expense as we are no longer capitalizing interest on Wynn Palace. Wynn Palace opened on August 22, 2016, with our results for 2016 including 132 days of operations.

For the year ended December 31, 2017, Adjusted Property EBITDA was \$1.81 billion, an increase of 43.8%, or \$551.4 million, from \$1.26 billion for the same period of 2016. The increase in Adjusted Property EBITDA was the result of increases of \$424.5 million, \$79.2 million, and \$47.7 million from Wynn Palace, Wynn Macau and our Las Vegas Operations, respectively.

### Financial results for the year ended December 31, 2018 compared to the year ended December 31, 2017.

#### Operating revenues

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

	Years Ended December 31,		Increase / (Decrease)	Percent Change
	2018	2017		
<b>Operating Revenues</b>				
Macau Operations:				
Wynn Palace	\$ 2,757,566	\$ 2,030,287	\$ 727,279	35.8
Wynn Macau	2,294,525	2,336,910	(42,385)	(1.8)
<b>Total Macau Operations</b>	<b>5,052,091</b>	<b>4,367,197</b>	<b>684,894</b>	<b>15.7</b>
Las Vegas Operations	1,665,569	1,702,963	(37,394)	(2.2)
	<b>\$ 6,717,660</b>	<b>\$ 6,070,160</b>	<b>\$ 647,500</b>	<b>10.7</b>

The increase in operating revenues was primarily driven by increases in VIP turnover and table drop at Wynn Palace. The increase at Wynn Palace was partially offset by decreases at Wynn Macau and our Las Vegas Operations. The decrease at Wynn Macau was primarily driven by a lower VIP table games win percentage. The decrease at our Las Vegas Operations was primarily driven by a conversion of wholly owned retail outlets to leased retail outlets in December 2017 and lower table games win percentage. The following table presents operating revenues from our casino and non-casino revenues (dollars in thousands):

	<u>Years Ended December 31,</u>		<u>Increase / (Decrease)</u>	<u>Percent Change</u>
	<u>2018</u>	<u>2017</u>		
<b>Operating revenues</b>				
<b>Casino revenues</b>	<b>\$ 4,784,990</b>	<b>\$ 4,244,303</b>	<b>\$ 540,687</b>	<b>12.7</b>
Non-casino revenues:				
Rooms	751,800	670,957	80,843	12.0
Food and beverage	754,128	732,115	22,013	3.0
Entertainment, retail and other	426,742	422,785	3,957	0.9
<b>Total non-casino revenues</b>	<b>1,932,670</b>	<b>1,825,857</b>	<b>106,813</b>	<b>5.9</b>
	<b>\$ 6,717,660</b>	<b>\$ 6,070,160</b>	<b>\$ 647,500</b>	<b>10.7</b>

Casino revenues for the year ended December 31, 2018 were 71.2% of operating revenues, compared to 69.9% for the same period of 2017. Non-casino revenues for the year ended December 31, 2018 were 28.8% of operating revenues, compared to 30.1% for the same period of 2017.

#### *Casino revenues*

Casino revenues increased primarily due to increases in VIP turnover and table drop at Wynn Palace, partially offset by decreases at Wynn Macau and our Las Vegas Operations. The table below sets forth our casino revenues and associated key operating measures for our Macau and Las Vegas Operations (dollars in thousands, except for win per unit per day):

	Years Ended December 31,		Increase/ (Decrease)	Percent Change
	2018	2017		
<b>Macau Operations:</b>				
Wynn Palace:				
Total casino revenues	\$ 2,356,022	\$ 1,714,417	\$ 641,605	37.4
VIP:				
Average number of table games	114	104	10	9.6
VIP turnover	\$ 61,097,527	\$ 52,573,258	\$ 8,524,269	16.2
Table games win	\$ 1,874,189	\$ 1,486,674	\$ 387,515	26.1
VIP win as a % of turnover	3.07%	2.83%	0.24	
Table games win per unit per day	\$ 45,006	\$ 39,325	\$ 5,681	14.4
Mass market:				
Average number of table games	209	202	7	3.5
Table drop	\$ 4,926,347	\$ 3,490,363	\$ 1,435,984	41.1
Table games win	\$ 1,206,244	\$ 795,159	\$ 411,085	51.7
Table games win %	24.5%	22.8%	1.7	
Table games win per unit per day	\$ 15,834	\$ 10,759	\$ 5,075	47.2
Average number of slot machines	1,065	1,026	39	3.8
Slot machine handle	\$ 3,933,064	\$ 3,053,614	\$ 879,450	28.8
Slot machine win	\$ 203,568	\$ 165,754	\$ 37,814	22.8
Slot machine win per unit per day	\$ 524	\$ 443	\$ 81	18.3
Wynn Macau:				
Total casino revenues	\$ 1,994,885	\$ 2,073,793	\$ (78,908)	(3.8)
VIP:				
Average number of table games	111	96	15	15.6
VIP turnover	\$ 57,759,607	\$ 58,303,836	\$ (544,229)	(0.9)
Table games win	\$ 1,588,002	\$ 1,907,625	\$ (319,623)	(16.8)
VIP win as a % of turnover	2.75%	3.27%	(0.52)	
Table games win per unit per day	\$ 39,113	\$ 54,726	\$ (15,613)	(28.5)
Mass market:				
Average number of table games	203	204	(1)	(0.5)
Table drop	\$ 5,058,332	\$ 4,525,727	\$ 532,605	11.8
Table games win	\$ 1,014,484	\$ 880,964	\$ 133,520	15.2
Table games win %	20.1%	19.5%	0.6	
Table games win per unit per day	\$ 13,698	\$ 11,820	\$ 1,878	15.9
Average number of slot machines	877	914	(37)	(4.0)
Slot machine handle	\$ 3,740,096	\$ 3,526,747	\$ 213,349	6.0
Slot machine win	\$ 161,384	\$ 154,425	\$ 6,959	4.5
Slot machine win per unit per day	\$ 504	\$ 463	\$ 41	8.9



	Years Ended December 31,		Increase/ (Decrease)	Percent Change
	2018	2017		
<b>Las Vegas Operations:</b>				
Total casino revenues	\$ 434,083	\$ 456,093	\$ (22,010)	(4.8)
Average number of table games	237	236	1	0.4
Table drop	\$ 1,852,816	\$ 1,804,988	\$ 47,828	2.6
Table games win	\$ 456,021	\$ 465,664	\$ (9,643)	(2.1)
Table games win %	24.6%	25.8%	(1.2)	
Table games win per unit per day	\$ 5,282	\$ 5,415	\$ (133)	(2.5)
Average number of slot machines	1,822	1,856	(34)	(1.8)
Slot machine handle	\$ 3,237,085	\$ 3,183,369	\$ 53,716	1.7
Slot machine win	\$ 213,025	\$ 218,897	\$ (5,872)	(2.7)
Slot machine win per unit per day	\$ 320	\$ 323	\$ (3)	(0.9)

#### Non-casino revenues

Non-casino revenues increased \$85.7 million and \$36.5 million at Wynn Palace and Wynn Macau, partially offset by a decrease of \$15.4 million at our Las Vegas Operations.

Room revenues increased \$80.8 million, primarily driven by increased ADR. The table below sets forth our room revenues and associated key operating measures for our Macau and Las Vegas Operations.

	Years Ended December 31,		Increase/ (Decrease)	Percent Change
	2018	2017		
<b>Macau Operations:</b>				
Wynn Palace:				
Total room revenues (dollars in thousands)	\$ 170,067	\$ 121,710	\$ 48,357	39.7
Occupancy	96.5%	96.2%	0.3	
ADR	\$ 265	\$ 199	\$ 66	33.2
REVPAR	\$ 255	\$ 191	\$ 64	33.5
Wynn Macau:				
Total room revenues (dollars in thousands)	\$ 113,495	\$ 95,871	\$ 17,624	18.4
Occupancy	99.2%	97.5%	1.7	
ADR	\$ 283	\$ 243	\$ 40	16.5
REVPAR	\$ 281	\$ 237	\$ 44	18.6
<b>Las Vegas Operations:</b>				
Total room revenues (dollars in thousands)	\$ 468,238	\$ 453,376	\$ 14,862	3.3
Occupancy	87.5%	86.9%	0.6	
ADR	\$ 314	\$ 303	\$ 11	3.6
REVPAR	\$ 274	\$ 264	\$ 10	3.8

Food and beverage revenues increased \$14.6 million and \$8.3 million at Wynn Palace and Wynn Macau, respectively, driven by increased covers at our restaurants. Food and beverage revenues were relatively flat at our Las Vegas Operations.

Entertainment, retail and other revenues increased \$22.8 million and \$10.6 million at Wynn Palace and Wynn Macau, primarily due to an increase in retail revenues. Additionally, Wynn Palace and Wynn Macau recorded business interruption insurance proceeds of \$5.4 million and \$5.3 million, respectively, related to the full settlement of claims from Typhoon Hato in 2017. Our Las Vegas Operations decreased \$29.4 million, primarily due to a conversion of wholly owned retail outlets to leased retail outlets, and the closure of the golf course in December 2017. We expect to reopen the golf course in the fourth quarter of 2019.

## Operating expenses

	Years Ended December 31,		Increase / (Decrease)	Percent Change
	2018	2017		
<b>Operating expenses:</b>				
Casino	\$ 3,036,907	\$ 2,718,120	\$ 318,787	11.7
Rooms	254,549	244,828	9,721	4.0
Food and beverage	611,706	567,690	44,016	7.8
Entertainment, retail and other	183,113	196,547	(13,434)	(6.8)
General and administrative	761,415	685,485	75,930	11.1
Litigation settlement	463,557	—	463,557	NM
Provision (benefit) for doubtful accounts	6,527	(6,711)	13,238	NM
Pre-opening	53,490	26,692	26,798	100.4
Depreciation and amortization	550,596	552,368	(1,772)	(0.3)
Property charges and other	60,256	29,576	30,680	103.7
<b>Total operating expenses</b>	<b>\$ 5,982,116</b>	<b>\$ 5,014,595</b>	<b>\$ 967,521</b>	<b>19.3</b>

NM - Not meaningful.

Total operating expenses increased primarily due to a litigation settlement expense of \$463.6 million, and an increase of \$408.7 million at Wynn Palace, which primarily related to increased gaming taxes commensurate with increased casino revenues.

Casino expenses increased \$363.0 million at Wynn Palace, partially offset by a decrease of \$45.0 million at Wynn Macau. Our Las Vegas Operations were relatively flat. The increase in casino expenses was primarily driven by gaming taxes commensurate with an increase in casino revenue at Wynn Palace.

Rooms expenses increased \$8.9 million at our Las Vegas Operations and were relatively flat at Wynn Palace and Wynn Macau. The increase at our Las Vegas Operations primarily related to repairs and maintenance expenses and increased payroll costs.

Food and beverage expenses increased \$20.1 million, \$7.8 million and \$16.1 million at Wynn Palace, Wynn Macau, and at our Las Vegas Operations, respectively. The increases at Wynn Palace and Wynn Macau were commensurate with food and beverage revenue increases. The increase at our Las Vegas Operations was primarily driven by increased payroll costs and higher costs for entertainment at Wynn Las Vegas nightclubs.

Entertainment, retail and other expenses increased \$6.9 million and \$1.6 million at Wynn Palace and Wynn Macau, offset by a decrease of \$21.9 million at our Las Vegas Operations. The decrease at our Las Vegas Operations was primarily driven by a conversion of wholly owned retail outlets to leased retail outlets and the closure of the golf course in December of 2017. The increase in expenses at Wynn Palace and Wynn Macau was commensurate with the increase in entertainment, retail and other revenues.

General and administrative expenses increased \$18.8 million, \$9.5 million, and \$12.2 million, at Wynn Palace, Wynn Macau and our Las Vegas Operations, respectively. These increases were attributable to increased payroll costs at our Macau Operations and increased payroll and advertising costs at our Las Vegas Operations. Corporate and other general and administrative expenses increased \$35.4 million, primarily as a result of increased legal expenses and a fine of \$20.0 million assessed by the NGC on February 26, 2019, in connection with the conclusion of an NGCB investigation which had commenced in 2018.

Litigation settlement expense of \$463.6 million was incurred in connection with the repayment of the Redemption Note for claims related to the allegedly below-market interest rate of the Redemption Note. For more information, see Item 8—"Financial Statements and Supplementary Data," Note 15, "Commitments and Contingencies."

The provision for doubtful accounts was \$6.5 million for the year ended December 31, 2018, compared with a benefit of \$6.7 million for the year ended December 31, 2017. The benefit in the prior year was due to the collection of certain casino accounts receivable resulting in the reversal of previously recorded allowance for doubtful accounts. The balance can fluctuate due to the

impact of historical collection patterns and current collection trends, as well as the specific review of customer accounts, on our estimated allowance for the respective periods.

For the year ended December 31, 2018, pre-opening expenses totaled \$53.5 million, including approximately \$51.6 million related to the development of Encore Boston Harbor. For the year ended December 31, 2017, we incurred pre-opening expenses of \$25.9 million related to the development of Encore Boston Harbor.

The table below sets forth our property charges and other expenses (dollars in thousands):

	Years Ended December 31,	
	2018	2017
<b>Macau Operations</b>		
Wynn Palace asset abandonment and retirements	\$ 9,830	\$ 12,663
Wynn Macau asset abandonment and retirements	11,574	6,688
Total Macau Operations property charges and other expenses	21,404	19,351
<b>Las Vegas Operations</b>		
Asset abandonment and retirements	4,412	1,598
Contract termination	2,194	3,000
Employee severance	8,280	—
Total Las Vegas Operations property charges and other expenses	14,886	4,598
<b>Corporate and Other</b>		
Asset abandonment and retirements	9,294	5,627
Loss on disposal of aircraft	14,672	—
Total Corporate and Other property charges and other expenses	23,966	5,627
<b>Total property charges and other expenses</b>	<b>\$ 60,256</b>	<b>\$ 29,576</b>

#### *Interest expense, net of capitalized interest*

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

	Years Ended December 31,		Increase / (Decrease)	Percent Change
	2018	2017		
<b>Interest expense</b>				
Interest cost, including amortization of debt issuance costs and original issue discount and premium	\$ 439,157	\$ 407,098	\$ 32,059	7.9
Capitalized interest	(57,308)	(18,434)	(38,874)	210.9
	<b>\$ 381,849</b>	<b>\$ 388,664</b>	<b>\$ (6,815)</b>	(1.8)
Weighted average total debt balance	\$ 9,155,978	\$ 10,031,005		
Weighted average interest rate	4.80%	4.06%		

Interest costs increased due to an increase in the weighted average interest rate, partially offset by a decrease in the weighted average debt balance. Capitalized interest increased due to Encore Boston Harbor construction activities.

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

We incurred losses of \$69.3 million and \$59.7 million for the years ended December 31, 2018 and 2017, respectively, from the change in fair value of the Redemption Note prior to its repayment in March 2018. For more information on the methodology

and assumptions used in determining the fair value of the Redemption Note, see Item 8—"Financial Statements and Supplementary Data," Note 2, "Summary of Significant Accounting Policies." During the first quarter of 2018, we repaid the \$1.94 billion principal amount of the Redemption Note.

We recorded a \$0.1 million net gain on extinguishment of debt for the year ended December 31, 2018 related to the repayment of the Redemption Note, offset by a loss on debt extinguishment associated with the amendment of the Wynn Macau Credit Facilities. We incurred a loss of \$55.4 million on the extinguishment of debt for the year ended December 31, 2017. During the year ended December 31, 2017, we completed a cash tender offer and subsequent redemption of our 5 3/8% First Mortgage Notes due 2022 (the "2022 Notes") and issued our 5 1/4% Senior Notes due 2027 (the "2027 WLV Notes"). We also completed a cash tender offer and subsequent redemption of our 5 1/4% Senior Notes ("2021 Notes") and issued our 4 7/8% Senior Notes due 2024 (the "2024 WML Notes") and 5 1/2% Senior Notes due 2027 (the "2027 WML Notes"), together (the "WML Notes"). We recorded losses on extinguishment of debt of \$20.8 million in connection with the 2022 Notes and 2027 WLV Notes transactions and \$33.1 million in connection with the WML Notes transactions. Additionally, in connection with an amendment of our Wynn America credit facilities, we recorded a loss on extinguishment of debt of \$1.5 million.

We incurred losses of \$4.1 million and \$21.7 million for the years ended December 31, 2018 and 2017, respectively, from foreign currency remeasurements. The losses were primarily due to the impact of the exchange rate fluctuation of the Macau pataca, in relation to the U.S. dollar, on the remeasurements of U.S. dollar denominated debt and other obligations from our Macau-related entities.

#### *Income Taxes*

For the years ended December 31, 2018 and 2017, we recorded tax benefits of \$497.3 million and \$329.0 million, respectively. During the fourth quarter of 2018, the Company finalized its analysis of U.S. tax reform, which was enacted in the fourth quarter of 2017 and further clarified by guidance issued by the Internal Revenue Service in the fourth quarter of 2018. The guidance addressed the treatment of foreign-sourced royalties and the allocation of interest expense and other expenses to foreign source income. As a result, the Company adjusted its valuation allowance for FTC carryovers in the fourth quarter of 2018 and recorded a net tax benefit of \$390.9 million, which is incremental to the \$339.9 million provisional net tax benefit recorded in 2017 associated with U.S. tax reform.

Wynn Macau SA received a five-year exemption from the Macau Complementary Tax on casino gaming profits through December 31, 2020. For the years ended December 31, 2018 and 2017, we were exempt from the payment of \$96.8 million and \$63.0 million, respectively, in such taxes. Our non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau special gaming tax and other levies together totaling 39% in accordance with our concession agreement.

In August 2016, Wynn Macau SA received an extension of its agreement with the Macau government that provides for an annual payment of 12.8 million Macau patacas (approximately \$1.6 million) as complementary tax due by stockholders on dividend distributions through December 31, 2020.

We have participated in the Internal Revenue Service ("IRS") Compliance Assurance Program ("CAP") for the 2012 through 2018 tax years and will continue to participate in the IRS CAP for the 2019 tax year.

In February 2017 and 2018, the IRS completed an examination of our 2015 and 2016 U.S. tax return, respectively, and had no changes.

In March 2017, the Financial Services Bureau commenced an examination of the 2013 and 2014 Macau income tax returns of Wynn Macau SA. In July 2018, the Financial Services Bureau issued final tax assessments for the Company for the years 2013 and 2014. While no additional tax was due, adjustments were made to the Company's tax loss carryforwards.

In July 2017, the Financial Services Bureau commenced an examination of the 2013 and 2014 Macau income tax returns of Palo Real Estate Company Limited ("Palo"), a subsidiary of Wynn Macau SA. In February 2018, the Financial Services Bureau concluded its examination with no changes.

#### *Net income attributable to noncontrolling interests*

Net income attributable to noncontrolling interests was \$230.7 million, compared to \$142.1 million for the year ended December 31, 2017. These amounts are primarily related to the noncontrolling interests' share of net income from WML.

**Financial results for the year ended December 31, 2017 compared to the year ended December 31, 2016.**
**Operating Revenues**

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

	Years Ended December 31,		Increase / (Decrease)	Percent Change
	2017	2016		
<b>Operating revenues</b>				
Macau Operations:				
Wynn Palace (1)	\$ 2,030,287	\$ 555,574	\$ 1,474,713	265.4
Wynn Macau	2,336,910	2,150,721	186,189	8.7
<b>Total Macau Operations</b>	<b>4,367,197</b>	<b>2,706,295</b>	<b>1,660,902</b>	<b>61.4</b>
Las Vegas Operations	1,702,963	1,639,502	63,461	3.9
	<b>\$ 6,070,160</b>	<b>\$ 4,345,797</b>	<b>\$ 1,724,363</b>	<b>39.7</b>

(1) Wynn Palace opened on August 22, 2016.

The increase in operating revenues was primarily attributable to a full year of operations at Wynn Palace for year ended December 31, 2017, compared to 132 days of operations in the year ended December 31, 2016. The following table presents operating revenues from our casino revenues and non-casino revenues (dollars in thousands):

	Years Ended December 31,		Increase / (Decrease)	Percent Change
	2017	2016		
<b>Operating revenues</b>				
<b>Casino revenues</b>	<b>\$ 4,244,303</b>	<b>\$ 2,750,890</b>	<b>\$ 1,493,413</b>	<b>54.3</b>
Non-casino revenues:				
Rooms	670,957	595,610	75,347	12.7
Food and beverage	732,115	635,411	96,704	15.2
Entertainment, retail and other	422,785	363,886	58,899	16.2
<b>Total non-casino revenues</b>	<b>1,825,857</b>	<b>1,594,907</b>	<b>230,950</b>	<b>14.5</b>
	<b>\$ 6,070,160</b>	<b>\$ 4,345,797</b>	<b>\$ 1,724,363</b>	<b>39.7</b>

Casino revenues for the year ended December 31, 2017 were 69.9% of total operating revenues, compared to 63.3% for the year ended December 31, 2016. Non-casino revenues for the year ended December 31, 2017 were 30.1% of total operating revenues, compared to 36.7% for the year ended December 31, 2016.

**Casino Revenues**

The increase in casino revenues was primarily attributable to the contribution of a full year of operations at Wynn Palace, compared to 132 days of operations in the year ended December 31, 2016. Wynn Macau casino revenues increased primarily due to a 23.9% increase in VIP turnover. Casino revenues at our Las Vegas Operations increased \$18.7 million, driven by increases in table games win percentage and slot machine win. The table below sets forth our casino revenues and associated key operating measures for our Macau and Las Vegas Operations (dollars in thousands, except for win per unit per day).

	Years Ended December 31,		Increase/ (Decrease)	Percent Change
	2017	2016		
<b>Macau Operations:</b>				
Wynn Palace (1):				
Total casino revenues	\$ 1,714,417	\$ 448,006	\$ 1,266,411	282.7
VIP:				
Average number of table games	104	81	23	28.4
VIP turnover	\$ 52,573,258	\$ 14,480,023	\$ 38,093,235	263.1
Table games win	\$ 1,486,674	\$ 396,954	\$ 1,089,720	274.5
VIP win as a % of turnover	2.83%	2.74%	0.09	
Table games win per unit per day	\$ 39,325	\$ 37,009	\$ 2,316	6.3
Mass market:				
Average number of table games	202	245	(43)	(17.6)
Table drop	\$ 3,490,363	\$ 1,000,881	\$ 2,489,482	248.7
Table games win	\$ 795,159	\$ 211,146	\$ 584,013	276.6
Table games win %	22.8%	21.1%	1.7	
Table games win per unit per day	\$ 10,759	\$ 6,527	\$ 4,232	64.8
Average number of slot machines	1,026	962	64	6.7
Slot machine handle	\$ 3,053,614	\$ 738,907	\$ 2,314,707	313.3
Slot machine win	\$ 165,754	\$ 40,664	\$ 125,090	307.6
Slot machine win per unit per day	\$ 443	\$ 320	\$ 123	38.4
Wynn Macau:				
Total casino revenues	\$ 2,073,793	\$ 1,865,512	\$ 208,281	11.2
VIP:				
Average number of table games	96	149	(53)	(35.6)
VIP turnover	\$ 58,303,836	\$ 47,048,754	\$ 11,255,082	23.9
Table games win	\$ 1,907,625	\$ 1,547,261	\$ 360,364	23.3
VIP win as a % of turnover	3.27%	3.29%	(0.02)	
Table games win per unit per day	\$ 54,726	\$ 28,332	\$ 26,394	93.2
Mass market:				
Average number of table games	204	216	(12)	(5.6)
Table drop	\$ 4,525,727	\$ 4,585,476	\$ (59,749)	(1.3)
Table games win	\$ 880,964	\$ 881,797	\$ (833)	(0.1)
Table games win %	19.5%	19.2%	0.3	
Table games win per unit per day	\$ 11,820	\$ 11,131	\$ 689	6.2
Average number of slot machines	914	802	112	14.0
Slot machine handle	\$ 3,526,747	\$ 3,386,973	\$ 139,774	4.1
Slot machine win	\$ 154,425	\$ 145,680	\$ 8,745	6.0
Slot machine win per unit per day	\$ 463	\$ 497	\$ (34)	(6.8)

(1) Wynn Palace opened on August 22, 2016.

	Years Ended December 31,		Increase/ (Decrease)	Percent Change
	2017	2016		
<b>Las Vegas Operations:</b>				
Total casino revenues	\$ 456,093	\$ 437,372	\$ 18,721	4.3
Average number of table games	236	235	1	0.4
Table drop	\$ 1,804,988	\$ 1,838,479	\$ (33,491)	(1.8)
Table games win	\$ 465,664	\$ 465,041	\$ 623	0.1
Table games win %	25.8%	25.3%	0.5	
Table games win per unit per day	\$ 5,415	\$ 5,406	\$ 9	0.2
Average number of slot machines	1,856	1,893	(37)	(2.0)
Slot machine handle	\$ 3,183,369	\$ 3,148,610	\$ 34,759	1.1
Slot machine win	\$ 218,897	\$ 208,024	\$ 10,873	5.2
Slot machine win per unit per day	\$ 323	\$ 300	\$ 23	7.7

#### Non-casino revenues

Non-casino revenues increased \$208.3 million and \$44.7 million at Wynn Palace and our Las Vegas Operations, offset by a decrease of \$22.1 million at Wynn Macau.

Room revenues increased \$75.3 million, primarily due to a full year of operations at Wynn Palace. The table below sets forth our rooms revenue and associated key operating measures for our Macau and Las Vegas Operations:

	Years Ended December 31,		Increase/ (Decrease)	Percent Change
	2017	2016		
<b>Macau Operations:</b>				
Wynn Palace (1):				
Total room revenues (dollars in thousands)	\$ 121,710	\$ 45,112	\$ 76,598	169.8
Occupancy	96.2%	83.2%	13.0	
ADR	\$ 199	\$ 232	\$ (33)	(14.2)
REVPAR	\$ 191	\$ 193	\$ (2)	(1.0)
Wynn Macau:				
Total room revenues (dollars in thousands)	\$ 95,871	\$ 113,014	\$ (17,143)	(15.2)
Occupancy	97.5%	94.4%	3.1	
ADR	\$ 243	\$ 277	\$ (34)	(12.3)
REVPAR	\$ 237	\$ 262	\$ (25)	(9.5)
<b>Las Vegas Operations:</b>				
Total room revenues (dollars in thousands)	\$ 453,376	\$ 437,484	\$ 15,892	3.6
Occupancy	86.9%	85.3%	1.6	
ADR	\$ 303	\$ 297	\$ 6	2.0
REVPAR	\$ 264	\$ 253	\$ 11	4.3

(1) Wynn Palace opened on August 22, 2016.

Food and beverage revenues increased \$68.3 million and \$32.2 million at Wynn Palace and our Las Vegas Operations, partially offset by a decrease of \$3.8 million at Wynn Macau. The increase at Wynn Palace was the result of its first full year of operations, while the increase at our Las Vegas Operations was primarily driven by increased revenues at our nightclubs.

Entertainment, retail and other revenues increased \$63.4 million at Wynn Palace, driven by a full year of operations. Wynn Macau and our Las Vegas Operations decreased \$1.2 million and \$3.4 million, respectively.

### Operating expenses

	Years Ended December 31,		Increase / (Decrease)	Percent Change
	2017	2016		
<b>Operating expenses:</b>				
Casino	\$ 2,718,120	\$ 1,768,320	\$ 949,800	53.7
Rooms	244,828	206,848	37,980	18.4
Food and beverage	567,690	499,202	68,488	13.7
Entertainment, retail and other	196,547	179,150	17,397	9.7
General and administrative	685,485	548,143	137,342	25.1
(Benefit) provision for doubtful accounts	(6,711)	8,203	(14,914)	(181.8)
Pre-opening	26,692	154,717	(128,025)	(82.7)
Depreciation and amortization	552,368	404,730	147,638	36.5
Property charges and other	29,576	54,822	(25,246)	(46.1)
<b>Total operating expenses</b>	<b>\$ 5,014,595</b>	<b>\$ 3,824,135</b>	<b>\$ 1,190,460</b>	<b>31.1</b>

Total operating expenses increased primarily due to increased casino, general and administrative and depreciation and amortization expenses, offset by decreased pre-opening expenses, all primarily related to the opening of Wynn Palace.

Casino expenses increased \$835.7 million and \$116.5 million at Wynn Palace and Wynn Macau, partially offset by a decrease of \$2.5 million at our Las Vegas Operations. The increase at Wynn Macau was driven by gaming taxes, which increased commensurate with the increase in casino revenues.

Rooms expenses increased \$29.6 million and \$8.3 million at Wynn Palace and our Las Vegas Operations, primarily attributable to expenses associated with the increase in occupancy and an increase in labor costs.

Food and beverage expenses increased \$57.9 million and \$16.2 million at Wynn Palace and our Las Vegas Operations, partially offset by Wynn Macau, which decreased \$5.6 million. The increase from our Las Vegas Operations was primarily driven by an increase in labor costs.

Entertainment, retail and other expenses increased primarily due to a full year of operations at Wynn Palace.

General and administrative expenses increased primarily due to a full year of operations at Wynn Palace.

The provision for doubtful accounts was a benefit of \$6.7 million for the year ended December 31, 2017, compared to an expense of \$8.2 million for the year ended December 31, 2016. The change was due to the collection of certain casino accounts receivable that resulted in the reversal of previously recorded allowance for doubtful accounts.

For the year ended December 31, 2017, we incurred pre-opening expenses of \$25.9 million related to Encore Boston Harbor and \$0.2 million related to our Las Vegas Operations. For the year ended December 31, 2016, we incurred \$129.8 million related to Wynn Palace, \$22.7 million related to Encore Boston Harbor, and \$2.3 million related to our Las Vegas Operations.

Depreciation and amortization expense increased primarily due to a full year of depreciation for Wynn Palace, which was placed in service in August 2016.

For the year ended December 31, 2017, we incurred property charges and other expenses of \$12.6 million and \$6.7 million at Wynn Palace and Wynn Macau, respectively, primarily due to abandonment charges and asset retirements associated with various renovation projects and estimated costs related to property damage caused by a typhoon that impacted Macau. In addition, we incurred \$10.6 million in charges from our Las Vegas Operations primarily related to miscellaneous renovations. For the year ended December 31, 2016, we incurred a \$15.5 million exit fee for the right to procure energy for our Las Vegas Operations from



the wholesale energy markets instead of from the local public electric utility, \$14.1 million for the write-down of the carrying value to the purchase price of an aircraft we sold in January 2017, \$10.1 million in abandonment charges related to current construction of additional retail space at our Las Vegas Operations and \$5.5 million for the write-off of show production costs due to the closing of Steve Wynn's ShowStoppers in December 2016.

#### *Interest expense, net of capitalized interest*

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

	Years Ended December 31,		Increase / (Decrease)	Percent Change
	2017	2016		
<b>Interest expense</b>				
Interest cost, including amortization of debt issuance costs and original issue discount and premium	\$ 407,098	\$ 383,497	\$ 23,601	6.2
Capitalized interest	(18,434)	(94,132)	75,698	(80.4)
	<b>\$ 388,664</b>	<b>\$ 289,365</b>	<b>\$ 99,299</b>	<b>34.3</b>
Weighted average total debt balance	\$ 10,031,005	\$ 9,564,845		
Weighted average interest rate	4.06%	4.00%		

For the year ended December 31, 2017, interest costs increased primarily due to an increase in the weighted average total debt balance. The increase in the weighted average total debt balance was primarily driven by borrowings under the Wynn America credit facilities. Capitalized interest decreased primarily due to the completion of Wynn Palace construction activities in August of 2016, and a \$25.6 million out-of-period adjustment recorded in the first quarter of 2016. During the first quarter of 2016, we corrected immaterial amounts of additional interest that should have been capitalized instead of being expensed during the years ended December 31, 2015 and 2014.

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

We recorded a loss of \$59.7 million and a gain of \$65.0 million for the years ended December 31, 2017 and 2016, respectively, from the change in fair value of the Redemption Note. The change in fair value was a result of changes in certain variables used to calculate its estimated fair value.

We recorded a gain of \$1.1 million and a loss of \$0.4 million from the change in the fair value of derivatives for the years ended December 31, 2017 and 2016, respectively.

Interest income was \$31.2 million for the year ended December 31, 2017, compared to \$13.5 million for the same period of 2016. During the years ended December 31, 2017 and 2016, our short-term investment strategy was to preserve capital while retaining sufficient liquidity. The majority of our short-term investment amounts were in fixed deposits and money market accounts with a maturity of three months or less.

#### *Income Taxes*

For the years ended December 31, 2017 and 2016, we recorded a tax expense of \$329.0 million and \$8.1 million, respectively. Our income tax benefit for the year ended December 31, 2017 primarily related to a provisional tax benefit of \$339.9 million resulting from the impact of U.S. tax reform on the Company's deferred taxes. Our income tax expense for the year ended December 31, 2016 primarily related to an increase in our deferred tax liabilities.

Wynn Macau SA received a five-year exemption from the Macau Complementary Tax on casino gaming profits through December 31, 2020. For the years ended December 31, 2017 and 2016, we were exempt from the payment of \$63.0 million and \$27.3 million, respectively, in such taxes. Our non-gaming profits remain subject to the Macau Complementary Tax and casino winnings remain subject to the Macau special gaming tax and other levies together totaling 39% in accordance with our concession agreement.

In August 2016, Wynn Macau SA received an extension of its agreement with the Macau government that provides for an annual payment of 12.8 million Macau patacas (approximately \$1.6 million) as complementary tax due by stockholders on dividend distributions. This agreement on dividends is effective through December 31, 2020.

We have participated in the Internal Revenue Service ("IRS") Compliance Assurance Program ("CAP") for the 2012 through 2018 tax years and will continue to participate in the IRS CAP for the 2019 tax year. In February 2017 and 2018, the IRS completed an examination of our 2015 and 2016 U.S. tax return, respectively, and had no changes.

In March 2017, the Financial Services Bureau commenced an examination of the 2013 and 2014 Macau income tax returns of Wynn Macau SA. As of December 31, 2017, we believed no changes to the unrecognized tax benefits were required.

In July 2017, the Financial Services Bureau commenced an examination of the 2013 and 2014 Macau income tax returns of Palo Real Estate Company Limited ("Palo"), a subsidiary of Wynn Macau SA. In February 2018, the Financial Services Bureau concluded its examination with no changes.

#### *Net income attributable to noncontrolling interests*

Net income attributable to noncontrolling interests was \$142.1 million for the year ended December 31, 2017, compared to \$60.5 million for the year ended December 31, 2016. These amounts are primarily related to the noncontrolling interests' share of net income from WML.

#### **Adjusted Property EBITDA**

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

The following table summarizes Adjusted Property EBITDA (in thousands) for our Macau and Las Vegas Operations as reviewed by management and summarized in Item 8—"Financial Statements and Supplementary Data," Note 16, "Segment Information." That footnote also presents a reconciliation of Adjusted Property EBITDA to net income attributable to Wynn Resorts, Limited.

	Years Ended December 31,		
	2018	2017	2016
Wynn Palace (1)	\$ 843,902	\$ 527,583	\$ 103,036
Wynn Macau	\$ 733,238	\$ 760,752	\$ 681,509
Las Vegas Operations	\$ 467,273	\$ 522,397	\$ 474,766

(1) Wynn Palace opened on August 22, 2016.

Adjusted Property EBITDA at Wynn Palace increased 60.0% for the year ended December 31, 2018, compared to the same period of 2017. Since opening in August 2016, Wynn Palace has experienced significant business volume increases in both VIP and mass market operations during its first two full years of operations. Wynn Palace operated for the final 132 days of 2016, which does not compare meaningfully to 2017.

Adjusted Property EBITDA at Wynn Macau decreased 3.6% for the year ended December 31, 2018, compared to the same period of 2017, primarily due to a decrease in VIP win as a percentage of turnover, partially offset by increases in mass market table games win and slot machine win. Adjusted Property EBITDA at Wynn Macau increased 11.6% for the year ended December 31, 2017, compared to the same period of 2016, primarily due to improved VIP operations driven by a year-over-year increase in VIP turnover.

Adjusted Property EBITDA at our Las Vegas Operations decreased 10.6% for the year ended December 31, 2018, compared to the same period of 2017, primarily due to decreased table and slot win and increased operating expenses. Adjusted Property EBITDA at our Las Vegas Operations increased 10.0% for the year ended December 31, 2017, compared to the same period of 2016, primarily due to improved casino operations and food and beverage operations.

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

## Liquidity and Capital Resources

### Cash Flows - Summary

Our cash flows were as follows (in thousands):

	Years Ended December 31,		
	2018	2017	2016
Net cash provided by operating activities	\$ 961,489	\$ 1,876,577	\$ 970,546
Net cash used in investing activities	(1,222,810)	(957,633)	(1,288,250)
Net cash (used in) provided by financing activities	(324,257)	(754,355)	882,629
Effect of exchange rate on cash, cash equivalents and restricted cash	(1,733)	(3,900)	(1,129)
<b>Increase (decrease) in cash, cash equivalents and restricted cash</b>	<b>\$ (587,311)</b>	<b>\$ 160,689</b>	<b>\$ 563,796</b>

### Operating Activities

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

Net cash provided by operations for the year ended December 31, 2018 was \$961.5 million, compared to \$1.88 billion for the same period of 2017. The decrease was primarily driven by a litigation settlement expense and a reduction in customer deposits at our Macau Operations.

Net cash provided by operations for the year ended December 31, 2017 was \$1.88 billion, compared to \$970.5 million for the same period of 2016. The increase was primarily due to the operations of Wynn Palace, which generated \$424.5 million of additional Adjusted Property EBITDA, and a \$292.8 million increase in customer deposits at Wynn Palace.

### Investing Activities

Net cash used in investing activities for the year ended December 31, 2018 was \$1.22 billion, primarily attributable to \$1.48 billion in capital expenditures, net of construction payables and retention, driven by capital expenditures of \$791.3 million related

to Encore Boston Harbor and \$247.0 million for the acquisition of land on the Las Vegas Strip directly across from Wynn Las Vegas. Capital expenditures were offset by net proceeds from sale or maturity of investment securities of \$325.4 million.

Net cash used in investing activities for the year ended December 31, 2017 was \$957.6 million, which was primarily attributable to \$935.5 million in capital expenditures, net of construction payables and retention, with \$572.8 million related to Encore Boston Harbor and \$150.9 million related to our Macau Operations.

Net cash used in investing activities for the year ended December 31, 2016 was \$1.29 billion, which was primarily attributable to \$1.23 billion in capital expenditures, net of construction payables and retention, with \$838.3 million related to Wynn Palace and \$212.2 million related to Encore Boston Harbor.

### ***Financing Activities***

Net cash used in financing activities for the year ended December 31, 2018 was \$324.3 million. In March 2018, we repaid the Redemption Note principal amount of \$1.94 billion using cash on hand and amounts borrowed under the Bridge Facility and the WA Senior Revolving Credit Facility. In April 2018, we repaid all amounts borrowed under the Bridge Facility and the WA Senior Revolving Credit Facility using net proceeds of \$915.2 million from a registered public equity offering. In addition, we borrowed \$623.9 million under the Macau Senior Revolving Credit Facility, \$615.0 million under the Retail Term Loan, \$500.0 million under the Wynn Resorts Term Loan, and we used cash of \$569.8 million for the payment of dividends and \$305.4 million for distributions to noncontrolling interest holders of the Retail Joint Venture. In the fourth quarter, the Company repurchased 1,478,552 shares of its common stock for approximately \$156.7 million.

Net cash used in financing activities for the year ended December 31, 2017 was \$754.4 million, which was primarily attributable to net repayments of \$340.2 million under our Wynn Macau Credit Facilities, \$320.8 million for dividend payments and \$91.2 million for the payment of financing costs, partially offset by \$180.0 million in proceeds received from Crown for assets contributed to the Retail Joint Venture.

Net cash provided by financing activities for the year ended December 31, 2016 was \$882.6 million, which was primarily attributable to borrowings of \$930.0 million under our Wynn America Credit Facilities and proceeds of \$217.0 million from the sale of a 49.9% ownership interest in a subsidiary, partially offset by dividend payments of \$325.2 million.

### ***Capital Resources***

As of December 31, 2018, we had approximately \$2.22 billion of cash and cash equivalents. Cash and cash equivalents include cash on hand, cash in bank and fixed deposits, investments in money market funds, domestic and foreign bank time deposits, all with original maturities of less than 90 days. Of these amounts, WML and its subsidiaries (of which we own approximately 72%) held \$1.22 billion in cash and cash equivalents. If our portion of this cash and cash equivalents were repatriated to the U.S. on December 31, 2018, it would be subject to minimal U.S. taxes in the year of repatriation. Wynn America, Wynn Las Vegas, LLC and the Retail Joint Venture held cash balances of \$36.2 million, \$124.8 million and \$16.4 million, respectively. Wynn Resorts, Limited (including its subsidiaries other than WML, Wynn America, Wynn Las Vegas, LLC and the Retail Joint Venture), which is not a guarantor of the debt of its subsidiaries but has certain indemnification obligations in connection with the Retail Term Loan, held \$821.1 million of cash and cash equivalents.

The following table summarizes our outstanding borrowings and available borrowing capacity under our credit facilities and Commitment Letter as of December 31, 2018 (in thousands):

	Facility Borrowing Capacity	Borrowings Outstanding	Letters of Credit Outstanding	Facility Availability
<b>Macau Related:</b>				
Wynn Macau Credit Facilities (1):				
Senior Term Loan Facility	\$ 2,296,999	\$ 2,296,999	\$ —	\$ —
Senior Revolving Credit Facility	747,707	623,921	—	123,786
<b>U.S. Related:</b>				
Commitment Letter (2)				
	250,000	—	—	250,000
Wynn America Credit Facilities (3):				
Senior Term Loan Facility	994,780	994,780	—	—
Senior Revolving Credit Facility	375,000	—	17,689	357,311
<b>Total</b>	<b>\$ 4,664,486</b>	<b>\$ 3,915,700</b>	<b>\$ 17,689</b>	<b>\$ 731,097</b>

- (1) Our Macau related credit facilities include a \$2.30 billion equivalent fully funded senior secured term loan facility (the "Wynn Macau Senior Term Loan Facility") and a \$750 million equivalent senior secured revolving credit facility (the "Wynn Macau Senior Revolving Credit Facility," and together with the Wynn Macau Senior Term Loan Facility, the "Wynn Macau Credit Facilities"). The borrower is Wynn Macau SA, an indirect wholly owned subsidiary of WML, and borrowings consist of both United States dollar and Hong Kong dollar tranches. Wynn Macau SA has the ability to upsize the Wynn Macau Credit Facilities by an additional \$1 billion in equivalent senior secured loans upon its satisfaction of various conditions.
- (2) On September 19, 2018, the Company entered into a commitment letter (as subsequently amended and restated to add additional lenders, the "Commitment Letter") to provide for a 364-day term loan facility to the Company in an aggregate principal amount of up to \$750 million. On October 24, 2018, the Company agreed to terminate \$500 million of the lenders' commitments under the Commitment Letter. The remaining commitments of \$250 million expire on April 5, 2019.
- (3) Our U.S. related credit facilities consist of an \$875 million fully funded senior secured term loan facility (the "WA Senior Term Loan Facility I"), a \$125 million fully funded senior term loan facility (the "WA Senior Term Loan Facility II") and a \$375 million senior secured revolving credit facility (the "WA Senior Revolving Credit Facility," and collectively, the "Wynn America Credit Facilities"), under which Wynn America, an indirect wholly owned subsidiary of the Company, is the borrower.

We expect that our future cash needs will relate primarily to operations, funding of development projects and enhancements to our operating resorts, debt service and retirement and general corporate purposes. We expect to meet our cash needs including our contractual obligations with future anticipated cash flow from operations, availability under our bank credit facilities and our existing cash balances. We intend to fund our current development projects, including Encore Boston Harbor, primarily with the available borrowing capacity under our Wynn America Credit Facilities and operating cash flows.

#### **Macau Related Debt**

**2024 WML Notes.** On September 20, 2017, WML issued the \$600 million 2024 WML Notes pursuant to an indenture, dated as of September 20, 2017, between WML and Deutsche Bank Trust Company Americas, as trustee (the "2024 WML Indenture"). The 2024 WML Notes will mature on October 1, 2024 and bear interest at the rate of 4 7/8% per annum. At any time prior to October 1, 2020, WML may redeem the 2024 WML Notes, in whole or in part, at a redemption price equal to the greater of (a) 100% of the principal amount of the WML 2024 Notes or (b) a "make-whole" amount as determined by an independent investment banker in accordance with the terms of the 2024 WML Indenture. In either case, the redemption price would include accrued and unpaid interest. In addition, at any time prior to October 1, 2020, WML may use the net cash proceeds from certain equity offerings to redeem up to 35% of the aggregate principal amount of the 2024 WML Notes at a redemption price equal to 104.875% of the aggregate principal amount of the 2024 WML Notes. On or after October 1, 2020, WML may redeem the 2024 WML Notes, in whole or in part, at a premium decreasing annually from 102.438% of the principal amount to 100% of the principal amount, plus accrued and unpaid interest.

**2027 WML Notes.** On September 20, 2017, WML issued the \$750 million 2027 WML Notes pursuant to an indenture, dated as of September 20, 2017, between WML and Deutsche Bank Trust Company Americas, as trustee (the "2027 WML Indenture" and together with the 2024 WML Indenture, the "WML Indentures"). The 2027 WML Notes bear interest at the rate of 5 1/2% per annum and mature on October 1, 2027. At any time prior to October 1, 2022, WML may redeem the 2027 WML Notes, in whole

or in part, at a redemption price equal to the greater of (a) 100% of the principal amount of the 2027 WML Notes or (b) a "make-whole" amount as determined by an independent investment banker in accordance with the terms of the 2027 WML Indenture. In either case, the redemption price would include accrued and unpaid interest. In addition, at any time prior to October 1, 2020, WML may use the net cash proceeds from certain equity offerings to redeem up to 35% of the aggregate principal amount of the 2027 WML Notes, at a redemption price equal to 105.5% of the aggregate principal amount of the 2027 WML Notes. On or after October 1, 2022, WML may redeem the 2027 WML Notes, in whole or in part, at a premium decreasing annually from 102.75% of the principal amount to 100% of the principal amount, plus accrued and unpaid interest.

If WML undergoes a change of control (as defined in the WML Indentures), it must offer to repurchase the WML Notes at a price equal to 101% of the aggregate principal amount thereof, plus accrued and unpaid interest. In addition, WML may redeem the WML Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount, plus accrued and unpaid interest, in response to any change in or amendment to certain tax laws or tax positions. Further if a holder or beneficial owner of the WML Notes fails to meet certain requirements imposed by any Gaming Authority (as defined in the WML Indentures), WML may require the holder or beneficial owner to dispose of or redeem its WML Notes.

Upon the occurrence of (1) any event after which none of WML or any of its subsidiaries have such licenses, concessions, subconcessions or other permits or authorizations as necessary to conduct gaming activities in substantially the same scope as it does on the date of the WML Notes issuance, for a period of ten consecutive days or more, and such event has a material adverse effect on the financial condition, business, properties, or results of operations of WML and its subsidiaries, taken as a whole, or (2) the termination, rescission, revocation or modification of any such licenses, concessions, subconcessions or other permits or authorizations which has had a material adverse effect on the financial condition, business, properties, or results of operations of WML and its subsidiaries, taken as a whole, each holder of the WML Notes will have the right to require WML to repurchase all or any part of such holders' WML Notes at a purchase price in cash equal to 100% of the principal amount thereof, plus accrued and unpaid interest.

The WML Notes are WML's general unsecured obligations and rank pari passu in right of payment with all of WML's existing and future senior unsecured indebtedness; will rank senior to all of WML's future subordinated indebtedness, if any; will be effectively subordinated to all of WML's future secured indebtedness to the extent of the value of the assets securing such debt; and will be structurally subordinated to all existing and future obligations of WML's subsidiaries, including the Wynn Macau Credit Facilities and the WML Finance Credit Facility. The WML Notes are not registered under the Securities Act of 1933, as amended (the "Securities Act"), and the WML Notes are subject to restrictions on transferability and resale.

The WML Indentures contain covenants limiting WML's (and certain of its subsidiaries') ability to, among other things: merge or consolidate with another company; transfer or sell all or substantially all of its properties or assets; and lease all or substantially all of its properties or assets. The terms of the WML Indentures contain customary events of default, including, but not limited to: default for 30 days in the payment of interest when due on the WML Notes; default in the payment of the principal, or premium, if any, when due on the WML Notes; failure to comply with any payment obligations relating to the repurchase by WML of the WML Notes upon a change of control; failure to comply with certain covenants in the WML Indentures; certain defaults on certain other indebtedness; failure to pay judgments against WML or certain subsidiaries that, in the aggregate, exceed \$50.0 million; and certain events of bankruptcy or insolvency. In the case of an event of default arising from certain events of bankruptcy or insolvency, all WML Notes then outstanding will become due and payable immediately without further action or notice.

Wynn Macau Credit Facilities. In December 2018, Wynn Macau SA amended the Wynn Macau Credit Facilities by entering into the Amended Common Terms Agreement. The Wynn Macau Senior Term Loan Facility was previously repayable in graduating installments of between 2.50% to 7.33% of the principal amount on a quarterly basis commencing December 2018, with a final installment of 50% of the principal amount repayable in September 2021; and the final maturity of any outstanding borrowings from the Wynn Macau Senior Revolving Credit Facility was previously repayable by September 2020. Following the execution of the Amended Common Terms Agreement, the Wynn Macau Senior Term Loan Facility is repayable in graduating installments of between 2.875% to 4.50% of the principal amount on a quarterly basis commencing September 30, 2020, with a final installment of 75% of the principal amount repayable in June 2022. The final maturity of any outstanding borrowings from the Wynn Macau Senior Revolving Credit Facility is in June 2022. The Wynn Macau Credit Facilities bear interest at LIBOR or HIBOR plus a margin of 1.50% to 2.25% per annum based on Wynn Macau SA's Leverage Ratio (as defined in the Wynn Macau Credit Facilities). The commitment fee required to be paid for unborrowed amounts under the Wynn Macau Senior Revolving Credit Facility, if any, is between 0.52% and 0.79%, per annum, based on Wynn Macau SA's Leverage Ratio. The annual commitment fee is payable quarterly in arrears and is calculated based on the daily average of the unborrowed amounts.

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

The Wynn Macau Credit Facilities contain customary covenants restricting certain activities including, but not limited to: the incurrence of additional indebtedness, the incurrence or creation of liens on any of its property, sale and leaseback transactions, the ability to dispose of assets, and making loans or other investments. In addition, Wynn Macau SA is required by the financial covenants to maintain a Leverage Ratio of not greater than 4.75 to 1 for the fiscal year ended December 31, 2018, and an Interest Coverage Ratio (as defined in the Wynn Macau Credit Facilities) of not less than 2.00 to 1 at any time.

Borrowings under the Wynn Macau Credit Facilities will continue to be guaranteed by Palo, and by certain subsidiaries of the Company that own equity interests in Wynn Macau SA, and are secured by substantially all of the assets of Wynn Macau SA and Palo, and the equity interests in Wynn Macau SA. Borrowings under the Wynn Macau Credit Facilities are not guaranteed by the Company or WML.

In connection with the gaming concession contract of Wynn Macau SA, Wynn Macau SA entered into a Bank Guarantee Reimbursement Agreement with BNU for the benefit of the Macau government. This guarantee assures Wynn Macau SA's performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform under the terms of the concession agreement and the payment of any gaming taxes. As of December 31, 2018, the guarantee was in the amount of MOP 300 million (approximately \$37.3 million) and will remain at such amount until 180 days after the end of the term of the concession agreement (2022). BNU, as issuer of the guarantee, is currently secured by a second priority security interest in the senior lender collateral package. From and after repayment of all indebtedness under the Wynn Macau Credit Facilities, Wynn Macau SA is obligated to promptly, upon demand by BNU, repay any claim made on the guarantee by the Macau government. BNU is paid an annual fee for the guarantee of MOP 2.3 million (approximately \$0.3 million).

### ***U.S. and Corporate Related Debt***

**Wynn Resorts Term Loan.** On October 30, 2018, the Company and certain subsidiaries of the Company entered into a credit agreement (the "Credit Agreement") to provide for a \$500 million six-year term loan facility (the "Term Loan"). The Term Loan matures on October 30, 2024 and bears interest at a rate of LIBOR plus 2.25% per year.

The Credit Agreement contains customary representations and warranties, events of default and negative and affirmative covenants, including, among other things, limitations on: indebtedness; investments; restricted payments; mergers and acquisitions; payment of indebtedness; negative pledges; liens; transactions with affiliates and sales of assets. In addition, the Credit Agreement contains a requirement that the Company must make mandatory prepayments of indebtedness equal to 50.0% of excess cash flow if the Consolidated First Lien Secured Leverage Ratio, as defined, as of the last day of the applicable fiscal year is greater than 4.5 to 1 prior to the year of opening of Encore Boston Harbor or is greater than 4 to 1 thereafter. There is no mandatory prepayment in respect of excess cash flow if the Company's Consolidated First Lien Secured Leverage Ratio is equal to or less than 4.5 to 1.

Wynn Group Asia, Inc. and Wynn Resorts Holdings, LLC, each a direct, wholly owned subsidiary of the Company (collectively, the "Guarantors"), guarantee the obligations of the Company under the Credit Agreement. The Company will pledge all of the equity interests in the Guarantors to the extent permitted by applicable law.

**Retail Term Loan.** On July 25, 2018, Wynn/CA Plaza Property Owner, LLC and Wynn/CA Property Owner, LLC (collectively, the "Retail Borrowers"), subsidiaries of the Retail Joint Venture, entered into a term loan agreement (the "Retail Term Loan Agreement") to provide for a term loan facility to the Retail Borrowers of \$615.0 million (the "Retail Term Loan"). The Retail Term Loan is secured by substantially all of the assets of the Retail Borrowers. The Retail Term Loan matures on July 24, 2025 and bears interest at a rate of LIBOR plus 1.70% per annum. In accordance with the Retail Term Loan Agreement, the Retail Borrowers entered into an interest rate collar agreement with a LIBOR floor of 1.00% and a ceiling of 3.75%.

The Retail Term Loan Agreement contains customary representations and warranties, events of default and affirmative and negative covenants for debt facilities of this type, including, among other things, limitations on leasing matters, incurrence of indebtedness, distributions and transactions with affiliates. The Retail Term Loan Agreement also provides for customary sweeps of the Retail Borrowers' excess cash in the event of a default or in the event the Retail Borrowers fail to maintain certain financial ratios as defined in the Retail Term Loan Agreement. In addition, the Company will indemnify the lenders under the Retail Term

Loan and be liable, in each case, for certain customary environmental and non-recourse carve out matters pursuant to a hazardous materials indemnity agreement and a recourse indemnity agreement, each entered into concurrently with the execution of the Retail Term Loan Agreement.

**Commitment Letter.** On September 19, 2018, the Company entered into the Commitment Letter to provide for a 364-day term loan facility to the Company in an aggregate principal amount of up to \$750 million. On October 24, 2018, the Company agreed to terminate \$500 million of the lenders' commitments under the Commitment Letter, in anticipation of entering into the Credit Agreement discussed below. Accordingly, the lenders' remaining commitments under the Commitment Letter are \$250 million. The remaining commitments expire on April 5, 2019 and remained fully available as of December 31, 2018.

**Notes.** Our senior notes rank pari passu in right of payment.

**2023 Notes.** In May 2013, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp., an indirect wholly owned subsidiary of Wynn Resorts ("Capital Corp." and, together with Wynn Las Vegas, LLC, the "Issuers"), issued the \$500 million 4 1/4% Senior Notes due 2023 (the "2023 Notes") pursuant to an indenture, dated as of May 22, 2013 (the "2023 Indenture"), among the Issuers, the Guarantors (as defined below), and the U.S. Bank National Association, as trustee (the "Trustee"). The 2023 Notes will mature on May 30, 2023 and bear interest at the rate of 4 1/4% per annum. The Issuers may, at their option, redeem the 2023 Notes, in whole or in part, at any time or from time to time prior to their stated maturity. The redemption price for the 2023 Notes that are redeemed before February 28, 2023 will include a "make-whole" premium, plus accrued and unpaid interest. In the event of a change of control triggering event (as defined in the 2023 Indenture), the Issuers will be required to offer to repurchase the 2023 Notes at 101% of the principal amount, plus accrued and unpaid interest.

On February 16, 2018, the Issuers commenced a solicitation of consents (the "Consent Solicitation") for a proposed amendment (the "Proposed Amendment") to the 2023 Indenture. The Proposed Amendment would conform the definition of change of control relating to ownership of equity interests in the Company to the terms of the indentures governing the 2025 Notes and 2027 WLV Notes. Adoption of the Proposed Amendment requires the consent of holders of a majority in aggregate principal amount of the 2023 Notes. The Consent Solicitation will expire on March 6, 2018.

**2025 Notes.** In February 2015, the Issuers issued the \$1.8 billion 2025 Notes pursuant to an indenture, dated as of February 18, 2015 (the "2025 Indenture"), among the Issuers, Guarantors (as defined below) and the Trustee. The 2025 Notes will mature on March 1, 2025 and bear interest at the rate of 5 1/2% per annum. The Issuers may, at their option, redeem the 2025 Notes, in whole or in part, at any time or from time to time prior to their stated maturity. The redemption price for the 2025 Notes that are redeemed before December 1, 2024 will include a "make-whole" premium, plus accrued and unpaid interest. In the event of a change of control triggering event (as defined in the 2025 Indenture), the Issuers will be required to offer to repurchase the 2025 Notes at 101% of the principal amount, plus accrued and unpaid interest.

During the first quarter of 2018, Wynn Resorts purchased \$20 million principal amount of the 2025 Notes through open market purchases. As of December 31, 2018, Wynn Resorts holds this debt and has not contributed it to its wholly owned subsidiary, Wynn Las Vegas, LLC.

**2027 WLV Notes.** In May 2017, the Issuers issued the \$900 million 2027 WLV Notes pursuant to an indenture, dated as of May 11, 2017 (the "2027 Indenture"), among the Issuers, the Guarantors (as defined below) and the Trustee. The 2027 WLV Notes will mature on May 15, 2027 and bear interest at the rate of 5 1/4% per annum. The Issuers may, at their option, redeem the 2027 WLV Notes, in whole or in part, at any time or from time to time prior to their stated maturity. The redemption price for the 2027 WLV Notes that are redeemed before February 15, 2027 will include a "make-whole" premium, plus accrued and unpaid interest. In the event of a change of control triggering event (as defined in the 2027 Indenture), the Issuers will be required to offer to repurchase the 2027 WLV Notes at 101% of the principal amount, plus accrued and unpaid interest.

During the first quarter of 2018, Wynn Resorts purchased \$20 million principal amount of the 2027 WLV Notes through open market purchases. As of December 31, 2018, Wynn Resorts holds this debt and has not contributed it to its wholly owned subsidiary, Wynn Las Vegas, LLC.

Each of the 2023 Notes, 2025 Notes and 2027 WLV Notes (collectively, the "WLV Notes") are senior obligations of the Issuers and are unsecured, except for the first priority pledge by Wynn Las Vegas Holdings, LLC of its equity interests in Wynn Las Vegas, LLC. If Wynn Resorts receives an investment grade rating from one or more ratings agencies, the first priority pledge securing the WLV Notes will be released.



The WLV Notes are jointly and severally guaranteed by all of the Issuers' subsidiaries, other than Capital Corp., which was a co-issuer (the "Guarantors"). The guarantees are senior unsecured obligations and rank senior in right of payment to all of their existing and future subordinated debt. The guarantees rank equally in right of payment with all existing and future liabilities of the Issuers' subsidiaries that are not so subordinated and will be effectively subordinated in right of payment to all of such existing and future secured debt (to the extent of the collateral securing such debt).

Each of the WLV Notes' indentures contain negative covenants and financial covenants, including, but not limited to, covenants limiting the Issuers' and the Guarantors' ability to create liens on assets to secure debt; enter into sale-leaseback transactions; and merge or consolidate with another company. These covenants are subject to a number of important and significant limitations, qualifications and exceptions. The 2027 Indenture also provides that Wynn America may assume all of Wynn Las Vegas, LLC's obligations under the 2027 Indenture and the 2027 WLV Notes if certain conditions set forth in the 2027 Indenture are met.

Events of default under each of the WLV Notes' indentures include, among others, the following: default for 30 days in the payment of interest when due on the applicable notes; default in payment of the principal, or premium, if any, when due on the applicable notes; failure to comply with certain covenants in the applicable indenture; and certain events of bankruptcy or insolvency. In the case of an event of default arising from certain events of bankruptcy or insolvency with respect to the Issuers or Guarantors, all notes then outstanding will become due and payable immediately without further action or notice.

The WLV Notes are also subject to mandatory redemption requirements imposed by gaming laws and regulations of gaming authorities in Nevada.

**Wynn America Credit Facilities.** On April 24, 2017, we amended the Wynn America Credit Facilities to, among other things, extend the maturity of portions of the credit facilities. Of the \$875 million WA Senior Term Loan Facility I, \$69.6 million matures in November 2020 with repayments in quarterly installments of \$1.7 million commencing in June 2018 and a final installment of \$52.2 million in November 2020, and \$805.4 million matures in December 2021 with repayment in quarterly installments of \$20.1 million commencing in March 2020 and a final installment of \$664.5 million in December 2021. The WA Senior Term Loan Facility II matures in December 2021 with no required repayments until maturity in December 2021. Of the \$375 million WA Senior Revolving Credit Facility, \$42 million matures in November 2019 and \$333 million matures in December 2021.

Subject to certain exceptions, the Wynn America Credit Facilities bear interest at either base rate plus 0.75% per annum or the reserve adjusted Eurodollar rate plus 1.75% per annum. The annual fee required to pay for unborrowed amounts, if any, is 0.30% per annum, payable quarterly in arrears, calculated based on the daily average of the unborrowed amounts under such credit facilities.

The Wynn America Credit Facilities contain customary representations and warranties, events of default and negative and affirmative covenants, including, among other things, limitations on: indebtedness; investments; restricted payments; mergers and acquisitions; payment of indebtedness; negative pledges; liens; transactions with affiliates and sales of assets. In addition, Wynn America is subject to financial covenants, including maintaining a Maximum Consolidated Senior Secured Net Leverage Ratio and a Minimum Consolidated EBITDA, each as defined in the Wynn America Credit Facilities. Commencing with the second full fiscal quarter ending after the fiscal quarter in which Encore Boston Harbor opens, the Maximum Consolidated Senior Secured Net Leverage Ratio is not to exceed 2.75 to 1. Commencing with the fiscal quarter ending December 31, 2015, the Minimum Consolidated EBITDA is not to be less than \$200.0 million.

We provided a completion guaranty in favor of the lenders under the Wynn America Credit Facilities to support the development and opening of Encore Boston Harbor. Wynn America and the guarantors have entered into a security agreement (as amended from time to time) in favor of the lenders under the Wynn America Credit Facilities pursuant to which, subject to certain exceptions, Wynn America and the guarantors have pledged all equity interests in the guarantors to the extent permitted by applicable law and granted a first priority security interest in substantially all of the other existing and future assets of the guarantors.

#### ***Other Factors Affecting Liquidity***

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

We expect that our Las Vegas Operations will fund Wynn Las Vegas, LLC's and the Retail Borrowers' operations, capital requirements and debt service obligations with existing cash and operating cash flows. However, we cannot assure you that our Las Vegas Operations' operating cash flows will be sufficient to do so. Similarly, we expect that our Macau Operations will fund Wynn Macau SA and WML's debt service obligations with existing cash, operating cash flows and availability under the Wynn Macau Credit Facilities. However, we cannot assure you that our Macau Operations' operating cash flows will be sufficient to do so. We may refinance all or a portion of our indebtedness on or before maturity. We cannot assure you that we will be able to refinance any of the indebtedness on acceptable terms or at all.

Legal proceedings in which we are involved also may impact our liquidity. No assurance can be provided as to the outcome of such proceedings. In addition, litigation inherently involves significant costs. For information regarding legal proceedings, see Item 8—"Financial Statements and Supplementary Data," Note 15, "Commitments and Contingencies."

Our Board of Directors has authorized an equity repurchase program of up to \$1.0 billion. Under the equity repurchase program, we may repurchase the Company's outstanding shares from time to time through open market purchases, in privately negotiated transactions, and under plans complying with Rules 10b5-1 and 10b-18 under the Exchange Act. As of December 31, 2018, we had \$843.3 million in repurchase authority remaining under the program.

We have in the past repurchased, and in the future, we may periodically consider repurchasing our outstanding notes for cash. The amount of any notes to be repurchased, as well as the timing of any repurchases, will be based on business, market and other conditions and factors, including price, contractual requirements or consents, and capital availability.

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

### Off Balance Sheet Arrangements

We have not entered into any transactions with special purpose entities nor do we engage in any derivatives except for an interest rate collar. We do not have any retained or contingent interest in assets transferred to an unconsolidated entity. As of December 31, 2018, we had outstanding letters of credit totaling \$17.7 million.

### Contractual Commitments

The following table summarizes our scheduled contractual commitments as of December 31, 2018 (in thousands):

	Payments Due By Period				
	Less Than 1 Year	1 to 3 Years	4 to 5 Years	After 5 Years	Total
Long-term debt obligations	\$ 11,960	\$ 1,468,703	\$ 2,960,037	\$ 5,100,000	\$ 9,540,700
Fixed interest payments	235,850	471,700	459,304	467,163	1,634,017
Estimated variable interest payments (1)	214,146	407,920	147,907	59,927	829,900
Construction contracts and commitments	575,062	25,000	—	—	600,062
Operating leases	29,126	37,379	32,334	464,838	563,677
Capital leases	989	1,978	1,978	66,743	71,688
Employment agreements	72,893	68,040	3,454	—	144,387
Other (2) (3)	168,646	136,941	32,068	—	337,655
<b>Total contractual commitments</b>	<b>\$ 1,308,672</b>	<b>\$ 2,617,661</b>	<b>\$ 3,637,082</b>	<b>\$ 6,158,671</b>	<b>\$ 13,722,086</b>

- (1) Amounts for all periods represent our estimated future interest payments on our debt facilities based upon amounts outstanding and LIBOR or HIBOR rates as of December 31, 2018. Actual rates will vary.
- (2) Other includes open purchase orders, future charitable contributions, fixed gaming tax payments in Macau, performance contracts and other contracts. As further discussed in Item 8—"Financial Statements and Supplementary Data," Note 12, "Income Taxes," we had \$99.5 million of unrecognized tax benefits as of December 31, 2018. Due to the inherent uncertainty of the underlying tax positions, it is not practicable to assign this liability to any particular year and therefore it is not included in the table above as of December 31, 2018.
- (3) Other excludes community payments associated with the continuing operations of Encore Boston Harbor, which commence upon the opening of the resort. These amounts are approximately \$10.6 million per year with minimal annual increases.

## Critical Accounting Policies and Estimates

The preparation of our consolidated financial statements in conformity with GAAP involves the use of estimates and assumptions that affect the amounts reported in the consolidated financial statements. Certain of our accounting policies require management to apply significant judgment in defining the appropriate assumptions integral to financial estimates and on an ongoing basis, management evaluates those estimates. 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.

### *Development, Construction and Property and Equipment Estimates*

During the construction and development of a resort, pre-opening or start-up costs are expensed when incurred. In connection with the construction and development of our resorts, significant start-up costs are incurred and charged to pre-opening costs through their respective openings. Once our resorts open, expenses associated with the opening of the resorts are no longer charged as pre-opening costs.

During the construction and development stage, direct costs such as those incurred for the design and construction of our resorts, including applicable portions of interest, are capitalized. Accordingly, the recorded amounts of property and equipment increase significantly during construction periods. Depreciation is provided over the estimated useful lives of the assets using the straight-line method. We determine the estimated useful lives based on our experience with similar assets, estimates of the usage of the asset and other factors specific to the asset. Depreciation expense related to capitalized construction costs and fixed assets commence when the related assets are placed in service. The remaining estimated useful lives of assets are periodically reviewed and adjusted as necessary.

Costs of 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 property charges and other.

We also evaluate our property and equipment and other long-lived assets for impairment in accordance with applicable accounting standards. For assets to be disposed of we recognize the asset at the lower of carrying value or fair market value less costs of disposal, as estimated based on comparable asset sales, solicited offers, or a discounted cash flow model. For assets to be held and used, we review for impairment whenever indicators of impairment exist. In reviewing for impairment, we compare the estimated future cash flows of the asset, on an undiscounted basis, to the carrying value of the asset. If the undiscounted cash flows exceed the carrying value, no impairment is indicated. If the undiscounted cash flows do not exceed the carrying value, an impairment is recorded based on the fair value of the asset, typically measured using a discounted cash flow model. If an asset is still under development, future cash flows include remaining construction costs. All recognized impairment losses, whether for assets to be disposed of or assets to be held and used, are recorded as operating expenses.

### *Redemption Price Promissory Note*

We recorded the Redemption Note at its fair value in accordance with applicable accounting guidance. As of December 31, 2017, the fair value of the Redemption Note was \$1.88 billion. We utilized an independent third party valuation to assist in the determination of this fair value. In determining this fair value, we estimated the Redemption Note's present value using discounted cash flows with a probability-weighted expected return for redemption assumptions and a discount rate, which included time value and non-performance risk adjustments commensurate with the risk of the Redemption Note. In determining the appropriate discount rate to be used in the estimated present value, the Redemption Note's subordinated position and credit risk relative to all other debt in our capital structure and credit ratings associated with our traded debt were considered. Observable inputs for the risk-free rate based on Federal Reserve rates for U.S. Treasury securities and credit risk spread based on a yield curve index of similarly rated debt were used. The Company repaid the principal amount in full on March 30, 2018.

### Allowance for Estimated Doubtful Accounts Receivable

A substantial portion of our outstanding receivables relates to casino credit play. Credit play, through the issuance of markers, represents a significant portion of the table games volume at our Las Vegas Operations. While offered, the issuance of credit at our Macau Operations is less significant when compared to Las Vegas. Our goal is to maintain strict controls over the issuance of credit and aggressively pursue collection from those customers who fail to pay their balances in a timely fashion. These collection efforts may include the mailing of statements and delinquency notices, personal contacts, the use of outside collection agencies and litigation. Markers issued at our Las Vegas Operations are generally legally enforceable instruments in the United States, and United States assets of foreign customers may be used to satisfy judgments entered in the United States.

The enforceability of markers and other forms of credit related to gaming debt outside of the United States varies from country to country. Some foreign countries do not recognize the enforceability of gaming related debt, or make enforcement burdensome. We closely consider the likelihood and difficulty of enforceability, among other factors, when issuing credit to customers who are not residents of the United States. In addition to our internal credit and collection departments, located in both Las Vegas and Macau, we have a network of legal, accounting and collection professionals to assist us in our determinations regarding enforceability and our overall collection efforts.

As of December 31, 2018 and 2017, 85.0% and 81.7%, respectively, of our casino accounts receivable were owed by customers from foreign countries, primarily in Asia. In addition to enforceability issues, the collectability of markers given to foreign customers is affected by a number of factors, including changes in currency exchange rates and economic conditions in the customers' home countries.

We regularly evaluate our reserve for bad debts based on a specific review of customer accounts and outstanding gaming promoter accounts as well as management's prior experience with collection trends in the casino industry and current economic and business conditions. In determining our allowance for estimated doubtful accounts receivable, we apply loss factors based on historical marker collection history to aged account balances and we specifically analyze the collectability of each account with a balance over a specified dollar amount, based upon the age, the customer's financial condition, collection history and any other known information.

The following table presents key statistics related to our casino accounts receivable (dollars in thousands):

	December 31,	
	2018	2017
Casino accounts receivable	\$ 229,594	\$ 173,664
Allowance for doubtful casino accounts receivable	31,263	28,841
Allowance as a percentage of casino accounts receivable	13.6%	16.6%

Our reserve for doubtful casino accounts receivable is based on our estimates of amounts collectible and depends on the risk assessments and judgments by management regarding realizability, the state of the economy and our credit policy. Our reserve methodology is applied similarly to credit extended at each of our resorts. As of December 31, 2018 and 2017, 57.9% and 42.4%, respectively, of our outstanding casino accounts receivable balance originated at our Macau Operations.

As of December 31, 2018, a 100 basis point change in the allowance for doubtful accounts as a percentage of casino accounts receivable would change the provision for doubtful accounts by approximately \$2.3 million.

As our customer payment experience evolves, we will continue to refine our estimated reserve for bad debts. Accordingly, the associated provision for doubtful accounts may fluctuate. Because individual customer account balances can be significant, the reserve and the provision can change significantly between periods as we become aware of additional information about a customer or changes occur in a region's economy or legal system.

### Litigation and Contingency Estimates

We are subject to various claims, legal actions and other contingencies, and we accrue for these matters when they are both probable and estimable. For matters that arose on or prior to the balance sheet date, we estimate any accruals based on the relevant facts and circumstances available through the date of issuance of the financial statements. We include the accruals associated with any contingent matters in other accrued liabilities on the consolidated balance sheets.

## *Income Taxes*

We are subject to income taxes in the United States and other foreign jurisdictions where we operate. Accounting standards require the recognition of deferred tax assets, net of applicable reserves, and liabilities for the estimated future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on the income tax provision and deferred tax assets and liabilities generally is recognized in the results of operations in the period that includes the enactment date. Accounting standards require recognition of a future tax benefit to the extent that realization of such benefit is more likely than not. Otherwise, a valuation allowance is applied.

As of December 31, 2018, we have a foreign tax credit ("FTC") carryover of \$3.19 billion and we have recorded a valuation allowance of \$2.49 billion against this asset based on our estimate of future realization. The FTCs are attributable to the Macau special gaming tax, which is 35% of gross gaming revenue in Macau. In the assessment of the valuation allowance, appropriate consideration was given to all positive and negative evidence including recent operating profitability, forecasts of future earnings and the duration of statutory carryforward periods.

Our income tax returns are subject to examination by the IRS and other tax authorities in the locations where we operate. We assess potentially unfavorable outcomes of such examinations based on accounting standards for uncertain income taxes. The accounting standards prescribe a minimum recognition threshold a tax position is required to meet before being recognized in the financial statements.

Uncertain tax position accounting standards apply to all tax positions related to income taxes. These accounting standards utilize a two-step approach for evaluating tax positions. The tax benefit is measured as the largest amount of benefit that is more likely than not to be realized upon settlement.

As applicable, we recognize accrued penalties and interest related to unrecognized tax benefits in the provision for income taxes.

### **Recently Adopted Accounting Standards and Accounting Standards Issued But Not Yet Adopted**

See Item 8—"Financial Statements and Supplementary Data," Note 2, "Summary of Significant Accounting Policies."

### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

In the normal course of business, our financial position is subject to market risk, including, but not limited to, potential losses due to changes in the value of financial instruments including those resulting from adverse changes in interest rates, foreign currency exchange rates and market valuation.

#### ***Interest Rate Risks***

One of our primary exposures to market risk is interest rate risk associated with our debt facilities that bear interest based on floating rates. We attempt to manage interest rate risk by managing the mix of long-term fixed rate borrowings and variable rate borrowings, supplemented by hedging activities as believed by us to be appropriate. We cannot assure you that these risk management strategies have had the desired effect, and interest rate fluctuations could have a negative impact on our results of operations.

The following table provides estimated future cash flow information derived from our best estimates of repayments as of December 31, 2018, of our expected long-term indebtedness and related weighted average interest rates by expected maturity dates. However, we cannot predict the LIBOR or HIBOR rates that will be in effect in the future. Actual rates will vary. The one-month LIBOR and HIBOR rates as of December 31, 2018 of 2.52% and 2.27%, respectively, were used for all variable rate calculations in the table below.

The information is presented in U.S. dollar equivalents as applicable.

	Years Ending December 31,													
	Expected Maturity Date													
	2019	2020	2021	2022	2023	Thereafter	Total							
	(dollars in millions)													
<b>Long-term debt:</b>														
Fixed rate	\$	—	\$	—	\$	—	\$	—	\$	500.0	\$	4,010.0	\$	4,510.0
Average interest rate		—%		—%		—%		—%		4.3%		5.4%		5.2%
Variable rate	\$	12.0	\$	275.0	\$	1,193.7	\$	2,455.0	\$	5.0	\$	1,090.0	\$	5,030.7
Average interest rate		5.5%		4.2%		4.4%		4.2%		4.8%		4.5%		4.3%

#### *Interest Rate Sensitivity*

As of December 31, 2018, approximately 47.3% of the principal amount of our long-term debt was based on fixed rates. Based on our borrowings as of December 31, 2018, an assumed 100 basis point change in the variable rates would cause our annual interest cost to change by \$50.3 million.

#### *Foreign Currency Risks*

The currency delineated in Wynn Macau SA's concession agreement with the government of Macau is the Macau pataca. The Macau pataca, which is not a freely convertible currency, is linked to the Hong Kong dollar, and in many cases the two are used interchangeably in Macau. The Hong Kong dollar is linked to the U.S. dollar and the exchange rate between these two currencies has remained relatively stable over the past several years. However, the exchange linkages of the Hong Kong dollar and the Macau pataca, and the Hong Kong dollar and the U.S. dollar, are subject to potential changes due to, among other things, changes in Chinese governmental policies and international economic and political developments.

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

We expect most of the revenues and expenses for any casino that we operate in Macau will be in Hong Kong dollars or Macau patacas. For any U.S. dollar-denominated debt or other obligations incurred by our Macau-related entities, 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 our results of operations, financial condition and ability to service debt. Based on our balances as of December 31, 2018, an assumed 100 basis point change in the US dollar/Hong Kong dollar exchange rate would cause a foreign currency transaction gain/loss of \$28.1 million.

**Item 8. Financial Statements and Supplementary Data**

*INDEX TO CONSOLIDATED FINANCIAL STATEMENTS*

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Wynn Resorts, Limited and subsidiaries:

### Opinion on Internal Control over Financial Reporting

We have audited Wynn Resorts, Limited and subsidiaries' internal control over financial reporting as of December 31, 2018, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Wynn Resorts, Limited and subsidiaries (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2018, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2018 and 2017, the related consolidated statements of income, comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2018, and the related notes and financial statement schedule listed in the Index at Item 15(a) and our report dated February 28, 2019 expressed an unqualified opinion thereon.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

Las Vegas, Nevada  
February 28, 2019



## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Wynn Resorts, Limited and subsidiaries:

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Wynn Resorts, Limited and subsidiaries (the Company) as of December 31, 2018 and 2017, the related consolidated statements of income, comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2018, and the related notes and financial statement schedule listed in the Index at Item 15(a)2 (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2018 and 2017, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2018, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2018, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated February 28, 2019 expressed an unqualified opinion thereon.

### Change in Accounting Principles

As discussed in Note 2 to the consolidated financial statements, the Company has changed its method for recognizing revenue and the presentation of restricted cash and restricted cash equivalents on the statement of cash flows due to the adoption of new accounting standards. These changes have been applied retrospectively to all periods presented.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2006.

Las Vegas, Nevada  
February 28, 2019

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

	December 31,	
	2018	2017
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 2,215,001	\$ 2,804,474
Investment securities	—	166,773
Receivables, net	276,644	224,128
Inventories	66,627	71,636
Prepaid expenses and other	83,104	156,773
<b>Total current assets</b>	<b>2,641,376</b>	<b>3,423,784</b>
Property and equipment, net	9,385,920	8,498,756
Restricted cash	4,322	2,160
Investment securities	—	160,682
Intangible assets, net	222,506	123,705
Deferred income taxes, net	736,452	240,533
Other assets	225,693	232,119
<b>Total assets</b>	<b>\$ 13,216,269</b>	<b>\$ 12,681,739</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current liabilities:</b>		
Accounts and construction payables	\$ 321,796	\$ 285,437
Customer deposits	955,450	1,049,629
Gaming taxes payable	247,341	211,600
Accrued compensation and benefits	163,966	140,450
Accrued interest	61,595	94,695
Current portion of long-term debt	11,960	62,690
Other accrued liabilities	119,955	85,789
<b>Total current liabilities</b>	<b>1,882,063</b>	<b>1,930,290</b>
Long-term debt	9,411,140	9,565,936
Other long-term liabilities	108,277	107,163
<b>Total liabilities</b>	<b>11,401,480</b>	<b>11,603,389</b>
<b>Commitments and contingencies (Note 15)</b>		
<b>Stockholders' equity:</b>		
Preferred stock, par value \$0.01; 40,000,000 shares authorized; zero shares issued and outstanding	—	—
Common stock, par value \$0.01; 400,000,000 shares authorized; 122,115,585 and 116,391,753 shares issued; 107,232,026 and 103,005,866 shares outstanding, respectively	1,221	1,164
Treasury stock, at cost; 14,883,559 and 13,385,887 shares, respectively	(1,344,012)	(1,184,468)
Additional paid-in capital	2,457,079	1,497,928
Accumulated other comprehensive loss	(1,950)	(1,845)
Retained earnings	921,785	635,067
<b>Total Wynn Resorts, Limited stockholders' equity</b>	<b>2,034,123</b>	<b>947,846</b>
Noncontrolling interests	(219,334)	130,504
<b>Total stockholders' equity</b>	<b>1,814,789</b>	<b>1,078,350</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 13,216,269</b>	<b>\$ 12,681,739</b>

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

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

	Years Ended December 31,		
	2018	2017	2016
		(as adjusted)	(as adjusted)
<b>Operating revenues:</b>			
Casino	\$ 4,784,990	\$ 4,244,303	\$ 2,750,890
Rooms	751,800	670,957	595,610
Food and beverage	754,128	732,115	635,411
Entertainment, retail and other	426,742	422,785	363,886
<b>Total operating revenues</b>	<b>6,717,660</b>	<b>6,070,160</b>	<b>4,345,797</b>
<b>Operating expenses:</b>			
Casino	3,036,907	2,718,120	1,768,320
Rooms	254,549	244,828	206,848
Food and beverage	611,706	567,690	499,202
Entertainment, retail and other	183,113	196,547	179,150
General and administrative	761,415	685,485	548,143
Litigation settlement	463,557	—	—
Provision (benefit) for doubtful accounts	6,527	(6,711)	8,203
Pre-opening	53,490	26,692	154,717
Depreciation and amortization	550,596	552,368	404,730
Property charges and other	60,256	29,576	54,822
<b>Total operating expenses</b>	<b>5,982,116</b>	<b>5,014,595</b>	<b>3,824,135</b>
<b>Operating income</b>	<b>735,544</b>	<b>1,055,565</b>	<b>521,662</b>
<b>Other income (expense):</b>			
Interest income	29,866	31,193	13,536
Interest expense, net of amounts capitalized	(381,849)	(388,664)	(289,365)
Change in derivatives fair value	(4,520)	(1,056)	433
Change in Redemption Note fair value	(69,331)	(59,700)	65,043
Gain (loss) on extinguishment of debt	104	(55,360)	—
Other	(4,074)	(21,709)	(712)
<b>Other income (expense), net</b>	<b>(429,804)</b>	<b>(495,296)</b>	<b>(211,065)</b>
<b>Income before income taxes</b>	<b>305,740</b>	<b>560,269</b>	<b>310,597</b>
Benefit (provision) for income taxes	497,344	328,985	(8,128)
<b>Net income</b>	<b>803,084</b>	<b>889,254</b>	<b>302,469</b>
Less: net income attributable to noncontrolling interests	(230,654)	(142,073)	(60,494)
<b>Net income attributable to Wynn Resorts, Limited</b>	<b>\$ 572,430</b>	<b>\$ 747,181</b>	<b>\$ 241,975</b>
Basic and diluted income per common share:			
Net income attributable to Wynn Resorts, Limited:			
Basic	\$ 5.37	\$ 7.32	\$ 2.39
Diluted	\$ 5.35	\$ 7.28	\$ 2.38
Weighted average common shares outstanding:			
Basic	106,529	102,071	101,445
Diluted	107,032	102,598	101,855

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

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

	Years Ended December 31,		
	2018	2017	2016
<b>Net income</b>	<b>\$ 803,084</b>	<b>\$ 889,254</b>	<b>\$ 302,469</b>
<b>Other comprehensive income (loss):</b>			
Foreign currency translation adjustments, before and after tax	(1,936)	(3,832)	(180)
Change in net unrealized loss (gain) on investment securities, before and after tax	1,292	(563)	522
Redemption Note credit risk adjustment, net of tax of \$2,735	9,211	—	—
<b>Total comprehensive income</b>	<b>811,651</b>	<b>884,859</b>	<b>302,811</b>
Less: comprehensive income attributable to noncontrolling interests	(230,115)	(141,007)	(60,444)
<b>Comprehensive income attributable to Wynn Resorts, Limited</b>	<b>\$ 581,536</b>	<b>\$ 743,852</b>	<b>\$ 242,367</b>

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

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, except share data)

	Common stock			Additional paid-in capital	Accumulated other comprehensive income (loss)	Retained earnings	Total Wynn Resorts, Limited stockholders' equity (deficit)	Noncontrolling interests	Total stockholders' equity
	Shares outstanding	Par value	Treasury stock						
<b>Balances, January 1, 2016</b>	101,571,909	\$ 1,146	\$ (1,152,680)	\$ 983,131	\$ 1,092	\$ 55,332	\$ (111,979)	\$ 133,824	\$ 21,845
Net income	—	—	—	—	—	241,975	241,975	60,494	302,469
Currency translation adjustment	—	—	—	—	(130)	—	(130)	(50)	(180)
Change in net unrealized gain on investment securities	—	—	—	—	522	—	522	—	522
Exercise of stock options	74,000	1	—	3,486	—	—	3,487	—	3,487
Issuance of restricted stock	412,504	4	—	(4)	—	—	—	—	—
Cancellation of restricted stock	(60,000)	(1)	—	1	—	—	—	—	—
Shares repurchased by the company and held as treasury shares	(198,942)	—	(14,017)	—	—	—	(14,017)	—	(14,017)
Shares of subsidiary purchased for share award plan	—	—	—	(5,471)	—	—	(5,471)	(2,109)	(7,580)
Sale of ownership interest in subsidiary, net of income tax of \$49.8 million	—	—	—	224,013	—	—	224,013	15,890	239,903
Cash dividends declared	—	—	—	—	—	(202,210)	(202,210)	(111,716)	(313,926)
Distributions to noncontrolling interest	—	—	—	—	—	—	—	(33)	(33)
Excess tax benefits from stock-based compensation	—	—	—	802	—	—	802	—	802
Stock-based compensation	—	—	—	20,957	—	—	20,957	3,632	24,589
<b>Balances, December 31, 2016</b>	<b>101,799,471</b>	<b>1,150</b>	<b>(1,166,697)</b>	<b>1,226,915</b>	<b>1,484</b>	<b>95,097</b>	<b>157,949</b>	<b>99,932</b>	<b>257,881</b>
Cumulative effect, change in accounting for stock-based compensation	—	—	—	2,807	—	(2,696)	111	—	111
Net income	—	—	—	—	—	747,181	747,181	142,073	889,254
Currency translation adjustment	—	—	—	—	(2,766)	—	(2,766)	(1,066)	(3,832)
Change in net unrealized loss on investment securities	—	—	—	—	(563)	—	(563)	—	(563)
Exercise of stock options	661,800	7	—	61,988	—	—	61,995	214	62,209
Issuance of restricted stock	706,341	7	—	18,565	—	—	18,572	653	19,225
Cancellation of restricted stock	(13,333)	—	—	—	—	—	—	—	—
Shares repurchased by the company and held as treasury shares	(148,413)	—	(17,771)	—	—	—	(17,771)	—	(17,771)
Shares of subsidiary repurchased for share award plan	—	—	—	(283)	—	—	(283)	(109)	(392)
Sale of ownership interest in subsidiary, net of income tax of \$17.8 million	—	—	—	149,259	—	—	149,259	13,238	162,497
Cash dividends declared	—	—	—	—	—	(204,515)	(204,515)	(116,568)	(321,083)
Distributions to noncontrolling interest	—	—	—	—	—	—	—	(11,436)	(11,436)
Stock-based compensation	—	—	—	38,677	—	—	38,677	3,573	42,250
<b>Balances, December 31, 2017</b>	<b>103,005,866</b>	<b>1,164</b>	<b>(1,184,468)</b>	<b>1,497,928</b>	<b>(1,845)</b>	<b>635,067</b>	<b>947,846</b>	<b>130,504</b>	<b>1,078,350</b>
Cumulative effect, change in accounting for credit risk, net of tax of \$2,735	—	—	—	—	(9,211)	9,211	—	—	—
Net income	—	—	—	—	—	572,430	572,430	230,654	803,084
Currency translation adjustment	—	—	—	—	(1,397)	—	(1,397)	(539)	(1,936)
Change in net unrealized loss on investment securities	—	—	—	—	1,292	—	1,292	—	1,292
Redemption Note settlement	—	—	—	—	9,211	—	9,211	—	9,211
Exercise of stock options	261,470	2	—	21,463	—	—	21,465	506	21,971
Issuance of common stock	5,300,000	53	—	915,187	—	—	915,240	—	915,240
Issuance of restricted stock	288,270	3	—	1,295	—	—	1,298	501	1,799
Cancellation of restricted stock	(125,908)	(1)	—	1	—	—	—	—	—
Shares repurchased by the Company and held as treasury shares	(1,497,672)	—	(159,544)	—	—	—	(159,544)	—	(159,544)
Shares of subsidiary repurchased for share award plan	—	—	—	(4,497)	—	—	(4,497)	(1,735)	(6,232)
Cash dividends declared	—	—	—	—	—	(294,923)	(294,923)	(276,528)	(571,451)
Distributions to noncontrolling interest	—	—	—	—	—	—	—	(305,372)	(305,372)
Stock-based compensation	—	—	—	25,702	—	—	25,702	2,675	28,377
<b>Balances, December 31, 2018</b>	<b>107,232,026</b>	<b>\$ 1,221</b>	<b>\$ (1,344,012)</b>	<b>\$ 2,457,079</b>	<b>\$ (1,950)</b>	<b>\$ 921,785</b>	<b>\$ 2,034,123</b>	<b>\$ (219,334)</b>	<b>\$ 1,814,789</b>

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

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

	Years Ended December 31,		
	2018	2017	2016
		(as adjusted)	(as adjusted)
<b>Cash flows from operating activities:</b>			
Net income	\$ 803,084	\$ 889,254	\$ 302,469
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	550,596	552,368	404,730
Deferred income taxes	(498,654)	(310,854)	6,356
Change in Redemption Note fair value	69,331	59,700	(65,043)
Property charges and other	56,974	44,004	42,670
Amortization of debt issuance costs	36,917	25,013	24,326
Stock-based compensation expense	35,040	43,971	43,722
Provision (benefit) for doubtful accounts	6,527	(6,711)	8,203
Change in derivatives fair value	4,520	1,056	(433)
Loss on extinguishment of debt	4,391	55,360	—
Excess tax benefits from stock-based compensation	—	—	(742)
Increase (decrease) in cash from changes in:			
Receivables, net	(59,157)	829	(39,272)
Inventories and prepaid expenses and other	(5,212)	(4,372)	(36,642)
Customer deposits	(92,395)	456,005	163,217
Accounts payable and accrued expenses	49,527	70,954	116,985
<b>Net cash provided by operating activities</b>	<b>961,489</b>	<b>1,876,577</b>	<b>970,546</b>
<b>Cash flows from investing activities:</b>			
Capital expenditures, net of construction payables and retention	(1,475,972)	(935,474)	(1,225,943)
Purchase of intangible and other assets	(126,414)	(13,571)	(14,985)
Proceeds from sale of assets	54,213	20,374	3,872
Proceeds from the sale or maturity of investment securities	359,461	200,366	144,829
Purchase of investment securities	(34,098)	(229,328)	(196,750)
Return of investment in unconsolidated affiliates	—	—	727
<b>Net cash used in investing activities</b>	<b>(1,222,810)</b>	<b>(957,633)</b>	<b>(1,288,250)</b>
<b>Cash flows from financing activities:</b>			
Repayments of long-term debt	(3,032,267)	(2,959,843)	(400,707)
Proceeds from issuance of long-term debt	2,788,925	2,429,988	1,430,313
Payments for financing costs	(48,297)	(91,174)	(5,381)
Payment to acquire derivatives	(3,900)	—	—
Proceeds from issuance of common stock, net of issuance costs	915,240	—	—
Dividends paid	(569,781)	(320,760)	(325,217)
Distribution to noncontrolling interest	(305,372)	(11,436)	(33)
Repurchase of common stock	(159,544)	(17,771)	(14,017)
Proceeds from exercise of stock options	21,971	62,209	3,487
Shares of subsidiary repurchased for share award plan	(6,232)	(392)	(7,580)
Sale of ownership interest in subsidiaries	75,000	180,000	217,000
Income taxes paid from sale of ownership interest of subsidiary	—	(25,176)	—
Payments on long-term land concession obligation	—	—	(15,978)
Excess tax benefits from stock-based compensation	—	—	742
<b>Net cash (used in) provided by financing activities</b>	<b>(324,257)</b>	<b>(754,355)</b>	<b>882,629</b>
<b>Effect of exchange rate on cash</b>	<b>(1,733)</b>	<b>(3,900)</b>	<b>(1,129)</b>
<b>Cash, cash equivalents and restricted cash:</b>			
<b>Increase (decrease) in cash, cash equivalents and restricted cash</b>	<b>(587,311)</b>	<b>160,689</b>	<b>563,796</b>
<b>Balance, beginning of period</b>	<b>2,806,634</b>	<b>2,645,945</b>	<b>2,082,149</b>
<b>Balance, end of period</b>	<b>\$ 2,219,323</b>	<b>\$ 2,806,634</b>	<b>\$ 2,645,945</b>
<b>Supplemental cash flow disclosures</b>			
Cash paid for interest, net of amounts capitalized	\$ 378,023	\$ 367,074	\$ 265,076
Cash paid for income taxes	\$ 1,885	\$ 37,089	\$ 2,040
Property and equipment acquired under capital lease	\$ —	\$ 16,593	\$ —
Stock-based compensation capitalized into construction	\$ 11	\$ 80	\$ 92

Liability settled with shares of common stock	\$	1,800	\$	19,225	\$	—
Change in accounts and construction payables related to property and equipment	\$	35,934	\$	(35,447)	\$	(34,049)
Change in dividends payable on unvested restricted stock included in other accrued liabilities	\$	1,669	\$	323	\$	(11,291)
Note receivable acquired from sale of ownership interest in subsidiary	\$	—	\$	—	\$	72,464

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

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1 - Organization**

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries, "Wynn Resorts" or the "Company") is a developer, owner and operator of destination casino resorts (integrated resorts). In the Macau Special Administrative Region of the People's Republic of China ("Macau"), the Company owns approximately 72% of Wynn Macau, Limited ("WML"), which includes the operations of the Wynn Palace and Wynn Macau resorts (collectively, the "Macau Operations"). In Las Vegas, Nevada, the Company operates and, with the exception of the retail space described below, owns 100% of Wynn Las Vegas, which it also refers to as its Las Vegas Operations.

*Macau Operations*

Wynn Palace, which opened on August 22, 2016, features a luxury hotel tower with 1,706 guest rooms, suites and villas, approximately 424,000 square feet of casino space, 13 food and beverage outlets, approximately 37,000 square feet of meeting and convention space, approximately 106,000 square feet of retail space, public attractions, including a performance lake and floral art displays and recreation and leisure facilities.

Wynn Macau features two luxury hotel towers with a total of 1,008 guest rooms and suites, approximately 273,000 square feet of casino space, 11 food and beverage outlets, approximately 31,000 square feet of meeting and convention space, approximately 59,000 square feet of retail space, a rotunda show and recreation and leisure facilities.

*Las Vegas Operations*

Wynn Las Vegas features two luxury hotel towers with a total of 4,748 guest rooms, suites and villas, approximately 192,000 square feet of casino space, 33 food and beverage outlets, approximately 290,000 square feet of meeting and convention space, approximately 160,000 square feet of retail space (the majority of which is owned and operated under a joint venture of which the Company owns 50.1%), as well as two theaters, three nightclubs and a beach club and recreation and leisure facilities.

In December 2016, the Company entered into a joint venture arrangement (the "Retail Joint Venture") with Crown Acquisitions Inc. ("Crown") to own and operate approximately 88,000 square feet of existing retail space. In November 2017, the Company contributed approximately 74,000 square feet of additional retail space to the Retail Joint Venture. The Company opened the additional retail space during the fourth quarter of 2018. For more information on the Retail Joint Venture, see Note 14, "Retail Joint Venture."

*Development Projects*

The Company is currently constructing Encore Boston Harbor, an integrated resort in Everett, Massachusetts, adjacent to Boston along the Mystic River. The resort will contain a hotel, a waterfront boardwalk, meeting and convention space, casino space, a spa, retail offerings and food and beverage outlets. The Company expects to open Encore Boston Harbor in mid-2019.

The Company is currently constructing approximately 430,000 square feet of additional meeting and convention space at Wynn Las Vegas and has begun design and site preparation for the reconfiguration of the Wynn Las Vegas golf course, which the Company closed in the fourth quarter of 2017. The Company expects to reopen the golf course in the fourth quarter of 2019 and open the additional meeting and convention space in the first quarter of 2020.

**Note 2 - Summary of Significant Accounting Policies***Basis of Presentation and Principles of Consolidation*

The accompanying consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The accompanying consolidated financial statements include the accounts of the Company, its majority-owned subsidiaries and entities the Company identifies as a variable interest entity ("VIE") and of which the Company is determined to be the primary beneficiary. For information on the Company's VIEs, see Note 14, "Retail Joint Venture." All significant intercompany accounts and transactions have been eliminated. Certain amounts in the consolidated financial statements for the previous years have been reclassified to be consistent with current year presentation, including reclassifications related to the adoption of ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)* and ASU No. 2016-18, *Statement of Cash*



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

*Flows - Restricted Cash (Topic 230)*, as further discussed in *Recently Adopted Accounting Standards*. These reclassifications had no effect on previously reported net income.

*Use of Estimates*

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

*Cash, Cash Equivalents and Restricted Cash*

Cash and cash equivalents consist of cash and highly liquid investments with original maturities of three months or less and include both U.S. dollar-denominated and foreign currency-denominated securities. Cash equivalents are carried at cost, which approximates fair value.

Cash, cash equivalents and restricted cash consisted of the following (in thousands):

	December 31, 2018	December 31, 2017
<b>Cash and cash equivalents:</b>		
Cash (1)	\$ 1,455,744	\$ 2,354,244
Cash equivalents (2)	759,257	450,230
<b>Total cash and cash equivalents</b>	<b>2,215,001</b>	<b>2,804,474</b>
Restricted cash (3)	4,322	2,160
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 2,219,323</b>	<b>\$ 2,806,634</b>

(1) Cash consists of cash on hand and bank deposits.

(2) Cash equivalents consist of bank time deposits and money market funds.

(3) Restricted cash consists of cash collateral associated with an obligation and cash held in a trust in accordance with WML's share award plan.

*Investment Securities*

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

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

*Accounts Receivable and Credit Risk*

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of casino accounts receivable. The Company issues credit in the form of "markers" to approved casino customers following investigations of creditworthiness. As of December 31, 2018 and 2017, approximately 85.0% and 81.7%, respectively, of the Company's markers

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

were due from customers residing outside the United States, primarily in Asia. Business or economic conditions or other significant events in these countries could affect the collectability of such receivables.

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

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

	December 31,	
	2018	2017
Casino	\$ 229,594	\$ 173,664
Hotel	22,086	22,487
Other	57,658	58,577
	<b>309,338</b>	<b>254,728</b>
Less: allowance for doubtful accounts	(32,694)	(30,600)
	<b>\$ 276,644</b>	<b>\$ 224,128</b>

#### *Inventories*

Inventories consist of retail merchandise and food and beverage items, which are stated at the lower of cost or market value and certain operating supplies. Cost is determined by the first-in, first-out, weighted average and specific identification methods.

#### *Property and Equipment*

Purchases of property and equipment are stated at cost, and when placed into service, are depreciated over the estimated useful lives of the assets using the straight-line method as follows:

	Estimated Useful Life in Years
Buildings and improvements	10 - 45
Land improvements	10 - 45
Furniture, fixtures and equipment	3 - 20
Leasehold interest in land	25
Airplanes	20

Costs related to improvements are capitalized, while costs of repairs and maintenance are charged to expense as 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 property charges and other.

#### *Capitalized Interest*

The interest cost associated with major development and construction projects is capitalized and included in the cost of the project. Interest capitalization ceases once a project is substantially complete or no longer undergoing construction activities to prepare it for its intended use. When no debt is specifically identified as being incurred in connection with a construction project, the Company capitalizes interest on amounts expended on the project using the weighted average cost of the Company's outstanding borrowings. Interest of \$57.3 million, \$18.4 million and \$94.1 million was capitalized for the years ended December 31, 2018, 2017 and 2016, respectively.

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

### *Intangible Assets*

The Company's indefinite-lived intangible assets consist primarily of water rights acquired as part of the original purchase price of the property on which Wynn Las Vegas is located, and trademarks. Indefinite-lived intangible assets are not amortized, but are reviewed for impairment annually. The Company's finite-lived intangible assets consist primarily of its Macau gaming concession, Massachusetts gaming license and an intangible asset associated with its undeveloped land in Las Vegas. Finite-lived intangible assets are amortized over the shorter of their contractual terms or estimated useful lives.

### *Long-Lived Assets*

Long-lived assets, which are to be held and used, including intangible assets and property and equipment, are periodically reviewed by management for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. If an indicator of impairment exists, the Company compares the estimated future cash flows of the asset, on an undiscounted basis, to the carrying value of the asset. If the undiscounted cash flows exceed the carrying value, no impairment is indicated. If the undiscounted cash flows do not exceed the carrying value, then impairment is measured as the difference between fair value and carrying value, with fair value typically based on a discounted cash flow model. If an asset is still under development, future cash flows include remaining construction costs.

### *Debt Issuance Costs*

Direct and incremental costs and original issue discounts and premiums incurred in connection with the issuance of long-term debt are deferred and amortized to interest expense using the effective interest method or, if the amounts approximate the effective interest method, on a straight-line basis. Debt issuance costs incurred in connection with the issuance of the Company's revolving credit facilities are presented in noncurrent assets on the Consolidated Balance Sheets. All other debt issuance costs are presented as a direct reduction of long-term debt on the Consolidated Balance Sheets. Approximately \$36.9 million, \$25.0 million, and \$24.3 million was amortized to interest expense during the years ended December 31, 2018, 2017 and 2016, respectively.

### *Redemption Price Promissory Note*

On February 18, 2012, pursuant to its articles of incorporation, the Company redeemed and canceled all Aruze USA, Inc.'s ("Aruze") 24,549,222 shares of Wynn Resorts' common stock. In connection with the redemption of the shares, the Company issued a promissory note (the "Redemption Note") with a principal amount of \$1.94 billion, a maturity date of February 18, 2022 and an interest rate of 2% per annum, payable annually in arrears on each anniversary of the date of the Redemption Note. The Redemption Note was recorded at fair value in accordance with applicable accounting guidance. The Company repaid the principal amount in full on March 30, 2018. As of December 31, 2017, the fair value of the Redemption Note was \$1.88 billion.

In determining this fair value, the Company estimated the Redemption Note's present value using discounted cash flows with a probability weighted expected return for redemption assumptions and a discount rate, which included time value and non-performance risk adjustments commensurate with the risk of the Redemption Note.

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

### *Derivative Financial Instruments*

The Company uses derivative financial instruments to manage interest rate exposure. The fair value of derivative financial instruments is recognized as an asset or liability at each balance sheet date, with changes in fair value recorded in earnings as the Company's derivative financial instruments do not qualify for hedge accounting. The fair value approximates the amount the Company would pay if these contracts were settled at the respective valuation dates.

In accordance with the terms of the Retail Term Loan Agreement (as defined in Note 6, "Long-Term Debt"), the Retail Borrowers (as defined in Note 6, "Long-Term Debt") entered into a five-year interest rate collar with a notional value of \$615 million for a cash payment of \$3.9 million in July 2018. The interest rate collar establishes a range whereby the Retail Borrowers will pay the counterparty if one-month LIBOR falls below the established floor rate of 1.00%, and the counterparty will pay the Retail Borrowers if one-month LIBOR exceeds the ceiling rate of 3.75%. The interest rate collar settles monthly commencing in

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

August 2019 through the termination date in August 2024. No payments or receipts are exchanged on interest rate collar contracts unless interest rates rise above or fall below the pre-determined ceiling or floor rate, respectively. The Company measures the fair value of the interest rate collar at each balance sheet date based on a Black-Scholes option pricing model, which incorporates observable market inputs such as market volatility and interest rates, with changes in fair value recorded in earnings. As of December 31, 2018, the fair value of the interest rate collar was a liability of \$0.6 million and was recorded in other long-term liabilities in the accompanying Consolidated Balance Sheet.

#### *Gaming Taxes*

The Company is subject to taxes based on gross gaming revenues in the jurisdictions in which it operates, subject to applicable jurisdictional adjustments. These gaming taxes are recorded as casino expenses in the accompanying Consolidated Statements of Income. These taxes totaled \$2.44 billion, \$2.17 billion and \$1.32 billion for the years ended December 31, 2018, 2017 and 2016, respectively.

#### *Advertising Costs*

The cost of advertising is expensed as incurred, and totaled \$40.6 million, \$37.8 million and \$37.0 million for the years ended December 31, 2018, 2017 and 2016, respectively.

#### *Pre-Opening Expenses*

Pre-opening expenses represent personnel, advertising, and other costs incurred prior to the opening of new ventures and are expensed as incurred. During the years ended December 31, 2018 and 2017, the Company incurred pre-opening expenses primarily in connection with the development of Encore Boston Harbor. During the year ended December 31, 2016 the Company incurred pre-opening expenses primarily in connection with the development of Wynn Palace.

#### *Income Taxes*

The Company is subject to income taxes in the U.S. and foreign jurisdictions where it operates. Accounting standards require the recognition of deferred tax assets, net of applicable reserves, and liabilities for the estimated future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on the income tax provision and deferred tax assets and liabilities generally is recognized in the results of operations in the period that includes the enactment date. Accounting standards also require recognition of a future tax benefit to the extent that realization of such benefit is more likely than not; otherwise, a valuation allowance is applied.

The Company's income tax returns are subject to examination by the Internal Revenue Service ("IRS") and other tax authorities in the locations where it operates. The Company assesses potentially unfavorable outcomes of such examinations based on accounting standards for uncertain income taxes. The accounting standards prescribe a minimum recognition threshold a tax position is required to meet before being recognized in the financial statements.

Uncertain tax position accounting standards apply to all tax positions related to income taxes. These accounting standards utilize a two-step approach for evaluating tax positions. If a tax position, based on its technical merits, is deemed more likely than not to be sustained, then the tax benefit is measured as the largest amount of benefit that is more likely than not to be realized upon settlement.

As applicable, the Company will recognize accrued penalties and interest related to unrecognized tax benefits in the provision for income taxes.

#### *Foreign Currency*

Gains or losses from foreign currency remeasurements are included in other income (expense) in the accompanying Consolidated Statements of Income. Balance sheet accounts are translated at the exchange rate in effect at each balance sheet date and income statement accounts are translated at the average rate of exchange prevailing during the year. Translation adjustments resulting from this process are charged or credited to other comprehensive income (loss).

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

*Comprehensive Income and Accumulated Other Comprehensive Income (Loss)*

Comprehensive income includes net income and all other non-stockholder changes in equity or other comprehensive income (loss). Components of the Company's comprehensive income are reported in the accompanying Consolidated Statements of Stockholders' Equity and Consolidated Statements of Comprehensive Income.

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

	Foreign currency translation	Unrealized loss on investment securities	Redemption Note	Accumulated other comprehensive loss
January 1, 2018	\$ (553)	\$ (1,292)	\$ —	\$ (1,845)
Cumulative credit risk adjustment (1)	—	—	(9,211)	(9,211)
Change in net unrealized gain (loss)	(1,397)	(1,510)	7,690	4,783
Amounts reclassified to net income (2)	—	2,802	1,521	4,323
<b>Other comprehensive income (loss)</b>	<b>(1,397)</b>	<b>1,292</b>	<b>9,211</b>	<b>9,106</b>
<b>December 31, 2018</b>	<b>\$ (1,950)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ (1,950)</b>

(1) On January 1, 2018, the Company adopted Accounting Standards Update ("ASU") No. 2016-01, *Financial Instruments*. The adjustment to the beginning balance represents the cumulative effect of the change in instrument-specific credit risk on the Redemption Note. See "Recently Adopted Accounting Standards—Financial Instruments" below for additional information.

(2) The amounts reclassified to net income include \$1.8 million for other-than-temporary impairment losses and \$1.0 million in realized losses, both related to investment securities, and a \$1.5 million realized gain related to the repayment of the Redemption Note.

*Fair Value Measurements*

The Company measures certain of its financial assets and liabilities, at fair value on a recurring basis pursuant to accounting standards for fair value measurements. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. These accounting standards establish a three-tier fair value hierarchy, which prioritizes the inputs used to measure fair value. These tiers include:

- **Level 1** - Observable inputs such as quoted prices in active markets.
- **Level 2** - Inputs other than quoted prices in active markets that are either directly or indirectly observable.
- **Level 3** - Unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

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

The following table presents assets and liabilities carried at fair value (in thousands):

	December 31, 2018	Fair Value Measurements Using:		
		Quoted Market Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
<b>Assets:</b>				
Cash equivalents	\$ 759,257	\$ —	\$ 759,257	\$ —
Restricted cash	\$ 4,322	\$ 2,015	\$ 2,307	\$ —
<b>Liabilities:</b>				
Interest rate collar	\$ 619	\$ —	\$ 619	\$ —

	December 31, 2017	Fair Value Measurements Using:		
		Quoted Market Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)
<b>Assets:</b>				
Cash equivalents	\$ 450,230	\$ 11,200	\$ 439,030	\$ —
Available-for-sale securities	\$ 327,455	\$ —	\$ 327,455	\$ —
Restricted cash	\$ 2,160	\$ —	\$ 2,160	\$ —
<b>Liabilities:</b>				
Redemption Note	\$ 1,879,058	\$ —	\$ 1,879,058	\$ —

*Earnings Per Share*

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

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

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

	Years Ended December 31,		
	2018	2017	2016
<b>Numerator:</b>			
<b>Net income attributable to Wynn Resorts, Limited</b>	<b>\$ 572,430</b>	<b>\$ 747,181</b>	<b>\$ 241,975</b>
<b>Denominator:</b>			
Weighted average common shares outstanding	106,529	102,071	101,445
Potential dilutive effect of stock options and restricted stock	503	527	410
<b>Weighted average common and common equivalent shares outstanding</b>	<b>107,032</b>	<b>102,598</b>	<b>101,855</b>
Net income attributable to Wynn Resorts, Limited per common share, basic	\$ 5.37	\$ 7.32	\$ 2.39
Net income attributable to Wynn Resorts, Limited per common share, diluted	\$ 5.35	\$ 7.28	\$ 2.38
Anti-dilutive stock options and restricted stock excluded from the calculation of diluted earnings per share	102	106	758

#### *Stock-Based Compensation*

The Company accounts for stock-based compensation in accordance with accounting standards, which require the compensation cost relating to share-based payment transactions be recognized in the Company's Consolidated Statements of Income. The cost is measured at the grant date, based on the estimated fair value of the award using the Black-Scholes option pricing model for stock options, and based on the closing share price of the Company's stock on the grant date for nonvested share awards. The cost is recognized as an expense on a straight-line basis over the employee's requisite service period (the vesting period of the award), and forfeitures are recognized as they occur. The Company's stock-based employee compensation arrangements are more fully discussed in Note 11, "Stock-Based Compensation."

#### *Recently Adopted Accounting Standards*

##### *Revenue Recognition Standard*

In May 2014, the Financial Accounting Standards Board ("FASB") issued ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, which amends the existing revenue recognition guidance and creates a new topic for Revenue from Contracts with Customers. The guidance provides that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods and services. This guidance also substantially revises required interim and annual disclosures. The Company adopted the guidance on January 1, 2018, which resulted in the following significant impacts on its Consolidated Financial Statements:

- The promotional allowances line item was eliminated from the Consolidated Statements of Income with the majority of the amount being netted against casino revenues.
- The estimated cost of providing complimentary goods or services will no longer be allocated primarily to casino expenses from other operating departments as the new guidance requires revenues and expenses associated with providing complimentary goods or services to be classified based on the goods or services provided.
- The portion of junket commissions previously recorded as a casino expense is now recorded as a reduction of casino revenue.
- Mandatory service charges on food and beverage are now recorded on a gross basis with the amount received from the customer recorded as food and beverage revenue and the corresponding amount paid to employees recorded as food and beverage expense.

Certain prior period amounts have been adjusted to reflect the full retrospective adoption of the guidance. There was no impact on the Company's financial condition, operating income or net income.

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

The tables below provides a reconciliation of amounts previously reported and the resulting impacts from the adoption of the new revenue recognition guidance (in thousands):

	December 31, 2017		
	As Previously Reported	Adoption of ASC 606	As Adjusted
Gross revenues	\$ 6,768,246	\$ (698,086)	\$ 6,070,160
Promotional allowances	(461,878)	461,878	—
<b>Operating revenues</b>	<b>6,306,368</b>	<b>(236,208)</b>	<b>6,070,160</b>
Operating expenses	5,250,803	(236,208)	5,014,595
<b>Operating income</b>	<b>\$ 1,055,565</b>	<b>\$ —</b>	<b>\$ 1,055,565</b>

	December 31, 2016		
	As Previously Reported	Adoption of ASC 606	As Adjusted
Gross revenues	\$ 4,836,355	\$ (490,558)	\$ 4,345,797
Promotional allowances	(370,058)	370,058	—
<b>Operating revenues</b>	<b>4,466,297</b>	<b>(120,500)</b>	<b>4,345,797</b>
Operating expenses	3,944,635	(120,500)	3,824,135
<b>Operating income</b>	<b>\$ 521,662</b>	<b>\$ —</b>	<b>\$ 521,662</b>

#### *Financial Instruments*

In January 2016, the FASB issued ASU No. 2016-01, *Financial Instruments - Overall (Subtopic 824-10): Recognition and Measurement of Financial Assets and Financial Liabilities*, which requires equity investments to be measured at fair value with changes in fair value recognized through net income (other than those accounted for under the equity method of accounting or those that result in consolidation of the investee). The update also requires an entity to present separately in other comprehensive income the portion of the total change in the fair value of a liability resulting from a change in the instrument-specific credit risk when the entity has elected to measure the liability at fair value in accordance with the fair value option for financial instruments. This update eliminates the requirement to disclose the methods and significant assumptions used to estimate the fair value that is required to be disclosed for financial instruments measured at amortized cost on the balance sheet for public business entities. The Company adopted this guidance on January 1, 2018, which resulted in a \$9.2 million cumulative unrealized loss, net of tax, being recorded to accumulated other comprehensive loss with a corresponding increase to retained earnings. The adjustment represents the portion of the cumulative change in the Redemption Note fair value resulting from the change in the instrument-specific credit risk previously included in other income (expense) on the Consolidated Statements of Income.

#### *Restricted Cash*

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows - Restricted Cash (Topic 230)*, which amends the existing guidance relating to the disclosure of restricted cash and restricted cash equivalents on the statement of cash flows. The ASU requires that amounts generally described as restricted cash or restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. The Company adopted this guidance on January 1, 2018 on a retrospective basis and the updated disclosures are reflected for the periods presented in the Consolidated Statements of Cash Flows. For the years ended December 31, 2017 and 2016, \$190.6 million of cash inflows and \$190.8 million of cash outflows, respectively, were previously reported within cash flows from financing activities.

#### *Income Taxes*

In October 2016, the FASB issued ASU No. 2016-16, *Income Taxes - Intra-Entity Transfers of Assets Other than Inventory (Topic 740)*, which requires the recognition of the income tax consequences of an intra-entity transfer of an asset, other than inventory, when the transfer occurs, rather than deferring such recognition until the asset is sold to an outside party. The Company adopted the guidance effective January 1, 2018, and this adoption did not have a material effect on its Consolidated Financial Statements.



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

### *Statement of Cash Flows*

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows - Classification of Certain Cash Receipts and Cash Payments (Topic 230)*, which clarifies the classification of certain cash receipts and cash payments on the statement of cash flows. In particular, the new guidance clarifies the classification related to several types of cash flows, including items such as debt extinguishment costs and distributions received from equity method investees. The new guidance also provides a three-step approach for classifying cash receipts and payments that have aspects of more than one class of cash flows. The Company adopted this guidance on January 1, 2018, and this adoption did not have a material effect on its Consolidated Statements of Cash Flows.

### *Accounting Standards Issued But Not Yet Adopted*

#### *Leases*

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*, and subsequent amendments to the initial guidance: ASU No. 2017-13, ASU No. 2018-10, and ASU No. 2018-11 (collectively, "Topic 842"). Topic 842 amends the existing guidance relating to the definition of a lease, recognition of lease assets and lease liabilities on the balance sheet and the disclosure of key information about leasing activities. Under the new guidance, lessees will be required to recognize a right-of-use asset and lease liability on the balance sheet, measured on a discounted basis. Operating leases are currently not recognized on the balance sheet. Lessor accounting will remain largely unchanged, other than certain targeted improvements intended to align lessor accounting with the lessee accounting model and with the updated revenue recognition guidance. Entities are required to adopt Topic 842 using a modified retrospective transition method at one of the following application dates: (1) the later of the beginning of the earliest period presented in the financial statements and the lease commencement date or (2) on the effective date of adoption. The Company will adopt Topic 842 on January 1, 2019 using the effective date transition approach, which will result in a balance sheet presentation that is not comparable to the prior period in the first year of adoption.

Topic 842 provides for transition relief by permitting the election of certain practical expedients. The Company is electing the reassessment package of practical expedients, which permits the Company not to reassess whether (1) any expired or existing contracts as of the adoption date are or contain a lease, (2) lease classification remains appropriate for any expired or existing leases as of the adoption date and (3) previously capitalized costs continue to qualify as initial direct costs on expired or existing leases as of the adoption date. The Company is not electing the hindsight practical expedient, which requires an entity to use hindsight in determining the lease term and in assessing impairment of right-of-use assets.

While the Company is currently assessing the quantitative impact the guidance will have on its Consolidated Financial Statements and related disclosures, the Company expects the most significant changes will be related to the recognition of right-of-use assets and lease liabilities for operating leases on the Company's Consolidated Balance Sheet, with no material impact to net income or cash flows.

#### *Financial Instruments - Credit Losses*

The FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326)* in 2016. The new guidance replaces the incurred loss impairment methodology in current U.S. GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. For trade and other receivables, loans and other financial instruments, the Company will be required to use a forward-looking expected loss model rather than the incurred loss model for recognizing credit losses which reflects losses that are probable. The new guidance will be effective beginning January 1, 2020, with early adoption permitted beginning January 1, 2018. Application of the amendments is through a cumulative-effect adjustment to retained earnings as of the effective date. The Company does not plan to early adopt this ASU, and is currently evaluating the impact of adopting this guidance.

#### *Cloud Computing Arrangement Implementation Costs*

In August 2018, the FASB issued ASU No. 2018-15, *Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*. The ASU is intended to eliminate potential diversity in practice in accounting for costs incurred to implement cloud computing arrangements that are service contracts by requiring customers in such arrangements to follow internal-use software guidance with respect to such costs, with any resulting deferred implementation costs recognized over the term of the contract in the same income statement line item as the fees associated with the hosting element of the arrangement. The ASU will be effective for the Company on January 1, 2020, with early adoption permitted. The Company is

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

currently assessing whether to early adopt and the impact the guidance will have on its Consolidated Financial Statements and related disclosures.

*Changes to the Disclosure Requirements for Fair Value Measurement*

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*. The new guidance amends the disclosure requirements for recurring and nonrecurring fair value measurements by removing, modifying, and adding certain disclosures on fair value measurements in ASC 820. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. The new guidance will be effective beginning January 1, 2020, with early adoption permitted upon issuance of this updated guidance. The Company does not plan to early adopt this ASU, and is currently evaluating the impact of adopting this guidance.

**Note 3 - Investment Securities**

During the year ended December 31, 2018, the Company sold its investment securities for net proceeds of \$325.4 million, and as of December 31, 2018, had no investment securities.

As of December 31, 2017, investment securities consisted of the following (in thousands):

	Amortized cost	Gross unrealized gains	Gross unrealized losses	Fair value (net carrying amount)
<b>As of December 31, 2017</b>				
Domestic and foreign corporate bonds	\$ 328,747	\$ 6	\$ (1,298)	\$ 327,455

The Company assesses for indicators of other-than-temporary impairment on a quarterly basis. The Company determines whether (i) it does not have the intent to sell any of these investments, and (ii) it will not likely be required to sell these investments prior to the recovery of the amortized cost. During the year ended December 31, 2018, the Company determined it had an other-than-temporary impairment and recorded a loss of \$1.8 million.

**Note 4 - Property and Equipment, net**

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

	December 31,	
	2018	2017
Buildings and improvements	\$ 7,707,467	\$ 7,582,611
Land and improvements	1,141,032	853,738
Furniture, fixtures and equipment	2,288,370	2,211,974
Leasehold interests in land	313,516	314,068
Airplanes	110,623	158,840
Construction in progress	1,912,801	1,016,207
	<b>13,473,809</b>	<b>12,137,438</b>
Less: accumulated depreciation	(4,087,889)	(3,638,682)
	<b>\$ 9,385,920</b>	<b>\$ 8,498,756</b>

Depreciation expense for the years ended December 31, 2018, 2017 and 2016 was \$546.1 million, \$547.9 million and \$398.2 million, respectively.

As of December 31, 2018 and 2017, construction in progress consisted primarily of costs capitalized, including interest, for the construction of Encore Boston Harbor.

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

In 2018, the Company sold two airplanes with a total net book value of \$65.3 million for proceeds of \$50.6 million. As a result, the Company recorded the \$14.7 million loss on disposal in Property Charges and Other on the Consolidated Income Statement.

*Land Acquisition*

During the first quarter of 2018, the Company acquired approximately 38 acres of land on the Las Vegas Strip directly across from Wynn Las Vegas for \$336.2 million, approximately 16 acres of which are subject to a ground lease that expires in 2097. The Company expects to use this land for future development.

In accordance with asset acquisition accounting standards, the Company allocated the purchase price to the identifiable assets acquired based on the relative fair value of each component. As a result, the Company recorded \$247.0 million of the purchase price as land and \$89.1 million of the purchase price as a definite-lived intangible asset. For more information regarding the intangible asset and lease, see Note 5, "Intangible Assets, net."

**Note 5 - Intangible Assets, net**

Intangible assets, net consisted of the following (in thousands):

	December 31,	
	2018	2017
<b>Indefinite-lived intangible assets:</b>		
Water rights	\$ 6,760	\$ 6,400
Trademarks and other	1,637	1,387
<b>Total indefinite-lived intangible assets</b>	<b>8,397</b>	<b>7,787</b>
<b>Finite-lived intangible assets:</b>		
Macau gaming concession	42,300	42,300
Less: accumulated amortization	(33,965)	(31,582)
	<b>8,335</b>	<b>10,718</b>
Massachusetts gaming license	117,700	105,200
Less: accumulated amortization	—	—
	<b>117,700</b>	<b>105,200</b>
Undeveloped land - Las Vegas	89,101	—
Less: accumulated amortization	(1,027)	—
	<b>88,074</b>	<b>—</b>
<b>Total finite-lived intangible assets</b>	<b>214,109</b>	<b>115,918</b>
<b>Total intangible assets, net</b>	<b>\$ 222,506</b>	<b>\$ 123,705</b>

Water rights and trademarks are indefinite-lived assets and, accordingly, are not amortized. Water rights primarily reflect the fair value allocation determined in the purchase of the property on which Wynn Las Vegas is located in April 2000. The value of the trademarks and other primarily represents the costs to acquire the "Le Rêve" name.

The Macau gaming concession is a finite-lived intangible asset that is being amortized over the 20-year life of the concession. The Company expects that amortization of the Macau gaming concession will be \$2.4 million each year from 2019 through 2021, and \$1.2 million in 2022.

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

The Massachusetts gaming license cost reflects consideration paid to the Commonwealth of Massachusetts for the license fee and certain costs incurred in connection with and contractually related to obtaining the license. The Company identifies the license as a finite-lived intangible asset and will amortize it over a period of 15 years beginning upon the opening of the resort.

During the first quarter of 2018, the Company acquired approximately 38 acres of land, of which approximately 16 acres are subject to an assumed ground lease that expires in 2097. The assumed ground lease agreement provides for certain minimum lease payments, determined at the time of original lease inception, which the Company determined to be below market when assumed. The ground lease payments are \$3.8 million until 2023 and total payments of \$370.7 million thereafter. In accordance with asset acquisition accounting standards, the Company allocated the purchase price to the identifiable assets acquired based on the relative fair value of each component. As a result, the Company recorded \$89.1 million of the purchase price as a definite-lived intangible asset, which represents the favorable terms of the assumed ground lease relative to the market, to be amortized on a straight-line basis over the remaining term of the lease. The Company expects that amortization of the associated intangible asset will be \$1.1 million each year from 2019 through 2096, and \$0.7 million in 2097.

**Note 6 - Long-Term Debt**

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

	December 31,	
	2018	2017
<b>Macau Related:</b>		
Wynn Macau Credit Facilities:		
Senior Term Loan Facility, due 2022	\$ 2,296,999	\$ 2,298,798
Senior Revolving Credit Facility, due 2022	623,921	—
4 7/8% Senior Notes, due 2024	600,000	600,000
5 1/2% Senior Notes, due 2027	750,000	750,000
<b>U.S. and Corporate Related:</b>		
Wynn America Credit Facilities:		
Senior Term Loan Facility, due 2021	994,780	1,000,000
4 1/4% Senior Notes, due 2023	500,000	500,000
5 1/2% Senior Notes, due 2025	1,780,000	1,800,000
5 1/4% Senior Notes, due 2027	880,000	900,000
Retail Term Loan, due 2025	615,000	—
Wynn Resorts Term Loan, due 2024	500,000	—
Redemption Price Promissory Note, due 2022	—	1,936,443
	<b>9,540,700</b>	<b>9,785,241</b>
Less: Unamortized debt issuance costs and original issue discounts and premium, net	(117,600)	(99,231)
Less: Redemption Note fair value adjustment	—	(57,384)
	<b>9,423,100</b>	<b>9,628,626</b>
Less: Current portion of long-term debt	(11,960)	(62,690)
<b>Total long-term debt, net of current portion</b>	<b>\$ 9,411,140</b>	<b>\$ 9,565,936</b>

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

**Macau Related Debt***Wynn Macau Credit Facilities*

The Company's credit facilities consist of an approximately \$2.30 billion equivalent senior secured term loan facility (the "Wynn Macau Senior Term Loan Facility") and an approximately \$750 million equivalent senior secured revolving credit facility (the "Wynn Macau Senior Revolving Credit Facility" and together with the Wynn Macau Senior Term Loan Facility, the "Wynn Macau Credit Facilities"). The borrower is Wynn Resorts (Macau) S.A. ("Wynn Macau SA"), an indirect subsidiary of WML. Wynn Macau SA has the ability to upsize the Wynn Macau Credit Facilities by an additional \$1 billion in equivalent senior secured loans upon satisfaction of various conditions.

As of December 31, 2018, the Company had available borrowing capacity under the Wynn Macau Senior Revolving Credit Facility of \$123.8 million. Wynn Macau SA borrows and repays its revolving credit facility from time to time as cash needs permit.

In December 2018, Wynn Macau SA amended the Wynn Macau Credit Facilities by entering into the Amended Common Terms Agreement. The Wynn Macau Senior Term Loan Facility was previously repayable in graduating installments of between 2.50% to 7.33% of the principal amount on a quarterly basis commencing December 2018, with a final installment of 50% of the principal amount repayable in September 2021; and the final maturity of any outstanding borrowings from the Wynn Macau Senior Revolving Credit Facility was previously repayable by September 2020. Following the execution of the Amended Common Terms Agreement, the Wynn Macau Senior Term Loan Facility is repayable in graduating installments of between 2.875% to 4.50% of the principal amount on a quarterly basis commencing September 30, 2020, with a final installment of 75% of the principal amount repayable in June 2022; and the final maturity of any outstanding borrowings from the Wynn Macau Senior Revolving Credit Facility is in June 2022. As of December 31, 2018 and 2017, the weighted average interest rate was 4.17% and 3.16%, respectively. The commitment fee required to be paid for unborrowed amounts under the Wynn Macau Senior Revolving Credit Facility, if any, is between 0.52% and 0.79%, per annum, based on Wynn Macau SA's Leverage Ratio. The annual commitment fee is payable quarterly in arrears and is calculated based on the daily average of the unborrowed amounts.

The Wynn Macau Credit Facilities contain a requirement that Wynn Macau SA must make mandatory repayments of indebtedness from specified percentages of excess cash flow. If Wynn Macau SA's Leverage Ratio is greater than 4.5 to 1, then 25% of Excess Cash Flow (as defined in the Wynn Macau Credit Facilities) must be used for prepayment of indebtedness and cancellation of available borrowings under the Wynn Macau Credit Facilities. There is no mandatory prepayment in respect of Excess Cash Flow if Wynn Macau SA's Leverage Ratio is equal to or less than 4.5 to 1. The Wynn Macau Credit Facilities contain customary covenants restricting certain activities including, but not limited to: the incurrence of additional indebtedness, the incurrence or creation of liens on any of its property, sale and leaseback transactions, the ability to dispose of assets, and making loans or other investments. In addition, Wynn Macau SA is required by the financial covenants to maintain a Leverage Ratio of not greater than 4.75 to 1 for the fiscal year ending December 31, 2018, and an Interest Coverage Ratio (as defined in the Wynn Macau Credit Facilities) of not less than 2.00 to 1 at any time.

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

In connection with the gaming concession contract of Wynn Macau SA, Wynn Macau SA entered into a Bank Guarantee Reimbursement Agreement with Banco Nacional Ultramarino, S.A. ("BNU") for the benefit of the Macau government. This guarantee assures Wynn Macau SA's performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform under the terms of the concession agreement and the payment of any gaming taxes. As of December 31, 2018, the guarantee was in the amount of 300 million Macau patacas ("MOP") (approximately \$37.3 million) and will remain at such amount until 180 days after the end of the term of the concession agreement in 2022. BNU, as issuer of the guarantee, is currently secured by a second priority security interest in the senior lender collateral package. From and after repayment of all indebtedness under the Wynn Macau Credit Facilities, Wynn Macau SA is obligated to promptly, upon demand by BNU, repay any claim made on the guarantee by the Macau government. BNU is paid an annual fee for the guarantee of MOP 2.3 million (approximately \$0.3 million).

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

*WML Finance Revolving Credit Facility*

The Company's credit facilities included a HK\$3.87 billion (approximately \$495.2 million) cash-collateralized revolving credit facility ("WML Finance Credit Facility") under which WML Finance I, Limited, an indirect wholly owned subsidiary of WML, was the borrower. The WML Finance Credit Facility bore interest initially at 1.50% per annum, such rate calculated as the interest rate paid by the lender as the deposit bank for the cash collateral deposited and pledged with the lender plus a margin of 0.40%. On July 18, 2018, the WML Finance Credit Facility matured with no outstanding borrowings.

*4 7/8% Senior Notes due 2024 and 5 1/2% Senior Notes due 2027*

On September 20, 2017, WML issued the \$600 million 4 7/8% Senior Notes due 2024 (the "2024 WML Notes") and the \$750 million of 5 1/2% Senior Notes due 2027 (the "2027 WML Notes" and together with the 2024 WML Notes, the "WML Notes"). WML used the net proceeds from the WML Notes and cash on hand to fund the cost of extinguishing the 5 1/4% Senior Notes due 2021 (the "2021 Notes").

The 2024 WML Notes bear interest at the rate of 4 7/8% per annum and mature on October 1, 2024. The 2027 WML Notes bear interest at the rate of 5 1/2% per annum and mature on October 1, 2027. Interest on the WML Notes is payable semi-annually in arrears on April 1 and October 1 of each year, beginning on April 1, 2018.

At any time prior to October 1, 2020 and October 1, 2022, WML may redeem the 2024 WML Notes and 2027 WML Notes, respectively, in whole or in part, at a redemption price equal to the greater of (a) 100% of the principal amount of the WML Notes or (b) a "make-whole" amount as determined by an independent investment banker in accordance with the terms of the indentures for the WML Notes, dated as of September 20, 2017 (the "WML Indentures"). In either case, the redemption price would include accrued and unpaid interest. In addition, at any time prior to October 1, 2020, WML may use the net cash proceeds from certain equity offerings to redeem up to 35% of the aggregate principal amount of the 2024 WML Notes and the 2027 WML Notes, at a redemption price equal to 104.875% of the aggregate principal amount of the 2024 WML Notes and 105.5% of the aggregate principal amount of the 2027 WML Notes, as applicable.

On or after October 1, 2020 and October 1, 2022, WML may redeem the 2024 WML Notes and 2027 WML Notes, respectively, in whole or in part, at a premium decreasing annually from 102.438% and 102.75%, respectively, of the applicable principal amount to 100% of the applicable principal amount, plus accrued and unpaid interest. If WML undergoes a change of control (as defined in the WML Indentures), it must offer to repurchase the WML Notes at a price equal to 101% of the aggregate principal amount thereof, plus accrued and unpaid interest. In addition, WML may redeem the WML Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount, plus accrued and unpaid interest, in response to any change in or amendment to certain tax laws or tax positions. Further, if a holder or beneficial owner of the WML Notes fails to meet certain requirements imposed by any Gaming Authority (as defined in the WML Indentures), WML may require the holder or beneficial owner to dispose of or redeem its WML Notes.

Upon the occurrence of (1) any event after which none of WML or any of its subsidiaries have such licenses, concessions, subconcessions or other permits or authorizations as necessary to conduct gaming activities in substantially the same scope as it does on the date of the WML Notes issuance, for a period of ten consecutive days or more, and such event has a material adverse effect on the financial condition, business, properties, or results of operations of WML and its subsidiaries, taken as a whole, or (2) the termination, rescission, revocation or modification of any such licenses, concessions, subconcessions or other permits or authorizations which has had a material adverse effect on the financial condition, business, properties, or results of operations of WML and its subsidiaries, taken as a whole, each holder of the WML Notes will have the right to require WML to repurchase all or any part of such holders' WML Notes at a purchase price in cash equal to 100% of the principal amount thereof, plus accrued and unpaid interest.

The WML Notes are WML's general unsecured obligations and rank pari passu in right of payment with all of WML's existing and future senior unsecured indebtedness, will rank senior to all of WML's future subordinated indebtedness, if any; will be effectively subordinated to all of WML's future secured indebtedness to the extent of the value of the assets securing such debt; and will be structurally subordinated to all existing and future obligations of WML's subsidiaries, including the Wynn Macau Credit Facilities and the WML Finance Credit Facility. The WML Notes are not registered under the Securities Act of 1933, as amended (the "Securities Act") and the WML Notes are subject to restrictions on transferability and resale.

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

## **U.S. and Corporate Related Debt**

### *Bridge Facility*

On March 28, 2018, the Company entered into a credit agreement to provide for an \$800 million 364-day term loan (the "Bridge Facility"). On April 3, 2018, the Company repaid all amounts borrowed under the Bridge Facility using net proceeds from the issuance of its common stock. See Note 7, "Stockholders' Equity" for additional information on the Company's issuance of common stock. The Bridge Facility bore interest at either LIBOR plus 2.75% per annum or base rate plus 1.75% per annum.

### *Redemption Price Promissory Note*

On March 30, 2018, the Company used the net proceeds from the Bridge Facility, along with cash on hand and borrowings under its WA Senior Revolving Credit Facility (defined below) to repay the Redemption Note principal amount of \$1.94 billion pursuant to the Settlement Agreement and Mutual Release ("Settlement Agreement"). See Note 15, "Commitments and Contingencies" for additional information on the Settlement Agreement.

### *Commitment Letter*

On September 19, 2018, the Company entered into a commitment letter (the "Commitment Letter") to provide for a 364-day term loan facility to the Company of up to \$750 million. On October 24, 2018, the Company agreed to terminate \$500 million of the lenders' commitments under the Commitment Letter, in anticipation of entering into the Credit Agreement discussed below. Accordingly, the lenders' remaining commitments under the Commitment Letter are \$250 million. The remaining commitments expire on April 5, 2019 and remained fully available as of December 31, 2018.

### *Wynn Resorts Term Loan*

On October 30, 2018, the Company and certain subsidiaries of the Company entered into a credit agreement (the "Credit Agreement") to provide for a \$500.0 million six-year term loan facility (the "Term Loan"). The Term Loan bears interest at a rate of LIBOR plus 2.25% per year. As of December 31, 2018, the interest rate was 4.78%. The Company is required to begin making quarterly principal repayments of \$1.3 million beginning in March 2019, with a final installment of \$471.3 million due upon maturity on October 30, 2024. The Company intends to use the net proceeds of the Term Loan for general corporate purposes, including, without limitation, repurchases of the Company's common stock, investments in subsidiaries and/or capital expenditures.

The Credit Agreement contains customary representations and warranties, events of default and negative and affirmative covenants, including, among other things, limitations on: indebtedness; investments; restricted payments; mergers and acquisitions; payment of indebtedness; negative pledges; liens; transactions with affiliates and sales of assets. In addition, the Credit Agreement contains a requirement that the Company must make mandatory prepayments of indebtedness equal to 50.0% of excess cash flow if the Consolidated First Lien Secured Leverage Ratio, as defined, as of the last day of the applicable fiscal year is greater than 4.5 to 1 prior to the year of opening of Encore Boston Harbor or is greater than 4.0 to 1 thereafter. There is no mandatory prepayment in respect of excess cash flow if the Company's Consolidated First Lien Secured Leverage Ratio is equal to or less than 4.5 to 1.

Wynn Group Asia, Inc. and Wynn Resorts Holdings, LLC, each a direct, wholly owned subsidiary of the Company (collectively, the "Guarantors"), guarantee the obligations of the Company under the Credit Agreement. The Company will pledge all of the equity interests in the Guarantors to the extent permitted by applicable law.

### *Wynn America Credit Facilities*

The Company's credit facilities include an \$875 million fully funded senior secured term loan facility (the "WA Senior Term Loan Facility I"), a \$125 million fully funded senior term loan facility (the "WA Senior Term Loan Facility II") and a \$375 million senior secured revolving credit facility (the "WA Senior Revolving Credit Facility," and collectively, the "Wynn America Credit Facilities"). The borrower is Wynn America, LLC ("Wynn America"), an indirect wholly owned subsidiary of Wynn Resorts, Limited.

On April 24, 2017, the Company amended the Wynn America Credit Facilities to, among other things, extend the maturity of portions of the credit facilities. Of the \$875 million WA Senior Term Loan Facility I, \$69.6 million matures in November 2020 with repayments in quarterly installments of \$1.7 million commencing in June 2018 and a final installment of \$52.2 million in November 2020, and \$805.4 million matures in December 2021 with repayments in quarterly installments of \$20.1 million

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

commencing in March 2020 and a final installment of \$664.5 million in December 2021. The WA Senior Term Loan Facility II matures in December 2021 with no required repayments until maturity in December 2021. Of the \$375 million WA Senior Revolving Credit Facility, \$42 million matures in November 2019 and \$333 million matures in December 2021. In connection with the amendment, the Company recorded a loss on extinguishment of debt of \$1.5 million.

As of December 31, 2018, the Company had available borrowing capacity of \$357.3 million, net of \$17.7 million in outstanding letters of credit, under the WA Senior Revolving Credit Facility.

Subject to certain exceptions, the Wynn America Credit Facilities bear interest at either base rate plus 0.75% per annum or LIBOR plus 1.75% per annum. As of December 31, 2018 and 2017, the interest rate was 4.10% and 3.32%, respectively. The annual fee required to pay for unborrowed amounts, if any, is 0.30% per annum, payable quarterly in arrears, calculated based on the daily average of the unborrowed amounts under such credit facilities.

The Wynn America Credit Facilities contain customary representations and warranties, events of default and negative and affirmative covenants, including, among other things, limitations on: indebtedness; investments; restricted payments; mergers and acquisitions; payment of indebtedness; negative pledges; liens; transactions with affiliates and sales of assets. In addition, Wynn America is subject to financial covenants, including maintaining a Maximum Consolidated Senior Secured Net Leverage Ratio and a Minimum Consolidated EBITDA, each as defined in the Wynn America Credit Facilities. Commencing with the second full fiscal quarter ending after the fiscal quarter in which Encore Boston Harbor opens, the Maximum Consolidated Senior Secured Net Leverage Ratio is not to exceed 2.75 to 1. Commencing with the fiscal quarter ending December 31, 2015, the Minimum Consolidated EBITDA is not to be less than \$200.0 million.

The Company has provided a completion guaranty in favor of the lenders under the Wynn America Credit Facilities to support the development of Encore Boston Harbor.

Wynn America and the guarantors have entered into a security agreement (as amended from time to time) in favor of the lenders under the Wynn America Credit Facilities pursuant to which, subject to certain exceptions, Wynn America and the guarantors have pledged all equity interests in the guarantors to the extent permitted by applicable law and granted a first priority security interest in substantially all of the other existing and future assets of the guarantors.

#### *4 1/4% Senior Notes due 2023*

In May 2013, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. ("Capital Corp." and together with Wynn Las Vegas, LLC, the "Issuers") issued the \$500 million 4 1/4% Senior Notes due 2023 (the "2023 Notes") pursuant to an indenture, dated as of May 22, 2013 (the "2023 Indenture"), among the Issuers, the Guarantors (as defined below) and U.S. Bank National Association, as trustee (the "Trustee"). The 2023 Notes were issued at par. The Issuers used the net proceeds from the 2023 Notes to cover the cost of extinguishing the 7 7/8% First Mortgage Notes due November 2017.

The 2023 Notes will mature on May 30, 2023 and bear interest at the rate of 4 1/4% per annum. The Issuers may, at their option, redeem the 2023 Notes, in whole or in part, at any time or from time to time prior to their stated maturity. The redemption price for the 2023 Notes that are redeemed before February 28, 2023 will be equal to the greater of (a) 100% of the principal amount of the 2023 Notes to be redeemed or (b) a "make-whole" amount described in the 2023 Indenture, plus in either case accrued and unpaid interest to, but not including, the redemption date. The redemption price for the 2023 Notes that are redeemed on or after February 28, 2023 will be equal to 100% of the principal amount of the 2023 Notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date. In the event of a change of control triggering event, the Issuers will be required to offer to repurchase the 2023 Notes at 101% of the principal amount, plus accrued and unpaid interest to but not including the repurchase date. The 2023 Notes are also subject to mandatory redemption requirements imposed by gaming laws and regulations of gaming authorities in Nevada.

The 2023 Notes are the Issuers' senior unsecured obligations and rank pari passu in right of payment with the Issuers' 2025 Notes and 2027 WLV Notes (both defined below). The 2023 Notes are unsecured, except by the first priority pledge by Wynn Las Vegas Holdings, LLC ("WLVH"), a direct wholly owned subsidiary of Wynn America, of its equity interests in Wynn Las Vegas, LLC. Such equity interests in Wynn Las Vegas, LLC also secure the Issuers' 2025 Notes and 2027 WLV Notes. If Wynn Resorts receives an investment grade rating from one or more ratings agencies, the first priority pledge securing the 2023 Notes will be released.



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

The 2023 Notes are jointly and severally guaranteed by all of the Issuers' subsidiaries, other than Capital Corp., which was a co-issuer (the "Guarantors"). The guarantees are senior unsecured obligations of the Guarantors and rank senior in right of payment to all of their existing and future subordinated debt. The guarantees rank equally in right of payment with all existing and future liabilities of the Guarantors that are not so subordinated and will be effectively subordinated in right of payment to all of such Guarantors' existing and future secured debt (to the extent of the collateral securing such debt).

The 2023 Indenture contains covenants limiting the Issuers' and the Guarantors' ability to create liens on assets to secure debt; enter into sale-leaseback transactions; and merge or consolidate with another company. These covenants are subject to a number of important and significant limitations, qualifications and exceptions.

Events of default under the 2023 Indenture include, among others, the following: default for 30 days in the payment of interest when due on the 2023 Notes; default in payment of the principal, or premium, if any, when due on the 2023 Notes; failure to comply with certain covenants in the 2023 Indenture; and certain events of bankruptcy or insolvency. In the case of an event of default arising from certain events of bankruptcy or insolvency with respect to the Issuers or any Guarantor, all 2023 Notes then outstanding will become due and payable immediately without further action or notice.

On March 20, 2018, the Issuers executed a second supplemental indenture (the "Supplemental Indenture") to the 2023 Indenture, as supplemented by the 2025 Indenture, relating to the Issuers' 2023 Notes. The Supplemental Indenture amended the 2023 Indenture by conforming the definition of "Change of Control" relating to ownership of equity interests in the Company in the Indenture to the terms of the indentures governing the Issuers' other outstanding notes. As part of executing the Supplemental Indenture, the Issuers paid \$25 million to consenting holders of the 2023 Notes. The Company accounted for this transaction as a modification and recorded the \$25 million as debt issuance costs on the Consolidated Balance Sheet.

*5 1/2% Senior Notes due 2025*

In February 2015, the Issuers issued the \$1.8 billion 5 1/2% Senior Notes due 2025 (the "2025 Notes") pursuant to an indenture, dated as of February 18, 2015 (the "2025 Indenture"), among the Issuers, the Guarantors and the Trustee. The 2025 Notes were issued at par. The Company used the net proceeds from the 2025 Notes to cover the cost of extinguishing the 7 7/8% First Mortgage Notes due May 1, 2020 (the "7 7/8% 2020 Notes") and the 7 3/4% First Mortgage Notes due August 15, 2020 (the "7 3/4% 2020 Notes" and together with the 7 7/8% 2020 Notes, the "2020 Notes") and for general corporate purposes.

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

The 2025 Notes are the Issuers' senior unsecured obligations and rank pari passu in right of payment with the Issuers' 2023 Notes and 2027 WLV Notes. The 2025 Notes are unsecured, except by the first priority pledge by WLVH of its equity interests in Wynn Las Vegas, LLC. Such equity interests in Wynn Las Vegas, LLC also secure the 2023 Notes and 2027 WLV Notes. If Wynn Resorts receives an investment grade rating from one or more ratings agencies, the first priority pledge securing the 2025 Notes will be released.

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

The 2025 Indenture contains covenants limiting the Issuers' and the Guarantors' ability to create liens on assets to secure debt, enter into sale-leaseback transactions and merge or consolidate with another company. These covenants are subject to a number of important and significant limitations, qualifications and exceptions.

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

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

During the first quarter of 2018, Wynn Resorts purchased \$20 million principal amount of the 2025 Notes through open market purchases. As of December 31, 2018, Wynn Resorts holds this debt and has not contributed it to its wholly owned subsidiary, Wynn Las Vegas, LLC.

*5 1/4% Senior Notes due 2027*

In May 2017, the Issuers issued the \$900 million 5 1/4% Senior Notes due 2027 (the "2027 WLV Notes") pursuant to an indenture, dated as of May 11, 2017 (the "2027 Indenture"), among the Issuers, the Guarantors and the Trustee. The 2027 WLV Notes were issued at par. The Issuers used the net proceeds from the 2027 WLV Notes and cash on hand to fund the cost of extinguishing the 5 3/8% First Mortgage Notes due 2022 (the "2022 Notes").

The 2027 WLV Notes will mature on May 15, 2027 and bear interest at the rate of 5 1/4% per annum. The Issuers may, at their option, redeem the 2027 WLV Notes, in whole or in part, at any time or from time to time prior to their stated maturity. The redemption price for 2027 WLV Notes that are redeemed before February 15, 2027 will be equal to the greater of (a) 100% of the principal amount of the 2027 WLV Notes to be redeemed and (b) a "make-whole" amount described in the 2027 Indenture, plus in either case accrued and unpaid interest, if any, to, but not including, the redemption date. The redemption price for the 2027 WLV Notes that are redeemed on or after February 15, 2027 will be equal to 100% of the principal amount of the 2027 WLV Notes to be redeemed, plus accrued and unpaid interest, if any, to, but not including, the redemption date. In the event of a change of control triggering event, the Issuers will be required to offer to repurchase the 2027 WLV Notes at 101% of the principal amount, plus accrued and unpaid interest, if any, to, but not including, the repurchase date. The 2027 WLV Notes are also subject to mandatory redemption requirements imposed by gaming laws and regulations of gaming authorities in Nevada.

The 2027 WLV Notes are the Issuers' senior unsecured obligations and rank pari passu in right of payment with the Issuers' 2023 Notes and 2025 Notes and rank equally in right of payment with the Issuers' guarantee of the Wynn America Credit Facilities, and rank senior in right of payment to all of the Issuers' existing and future subordinated debt. The 2027 WLV Notes are effectively subordinated in right of payment to all of the Issuers' existing and future secured debt (to the extent of the value of the collateral securing such debt), and structurally subordinated to all of the liabilities of any of the Issuers' subsidiaries that do not guarantee the 2027 WLV Notes.

The 2027 WLV Notes are unsecured, except for the first priority pledge by WLVB of its equity interests in Wynn Las Vegas, LLC. Such equity interests in Wynn Las Vegas, LLC also secure the 2023 Notes and 2025 Notes. If Wynn Resorts, Limited receives an investment grade rating from one or more ratings agencies, the first priority pledge securing the 2027 WLV Notes will be released.

The 2027 WLV Notes are jointly and severally guaranteed by all of the Guarantors. The guarantees are senior unsecured obligations of the Guarantors and rank senior in right of payment to all of their existing and future subordinated debt. The guarantees rank equally in right of payment with all existing and future liabilities of the Guarantors that are not so subordinated and will be effectively subordinated in right of payment to all of such Guarantors' existing and future secured debt (to the extent of the collateral securing such debt).

The 2027 Indenture contains covenants limiting the Issuers' and the Guarantors' ability to: create liens on assets to secure debt; enter into sale-leaseback transactions; and merge or consolidate with another company. These covenants are subject to a number of important and significant limitations, qualifications and exceptions. The 2027 Indenture also provides that Wynn America may assume all of Wynn Las Vegas, LLC's obligations under the 2027 Indenture and the 2027 WLV Notes if certain conditions set forth in the 2027 Indenture are met.

Events of default under the 2027 Indenture include, among others, the following: default for 30 days in the payment of interest when due on the 2027 WLV Notes; default in payment of the principal, or premium, if any, when due on the 2027 WLV Notes; failure to comply with certain covenants in the 2027 Indenture; and certain events of bankruptcy or insolvency. In the case of an event of default arising from certain events of bankruptcy or insolvency with respect to the Issuers or any Guarantor, all 2027 WLV Notes then outstanding will become due and payable immediately without further action or notice.

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

During the first quarter of 2018, Wynn Resorts purchased \$20 million principal amount of the 2027 WLW Notes through open market purchases. As of December 31, 2018, Wynn Resorts holds this debt and has not contributed it to its wholly owned subsidiary, Wynn Las Vegas, LLC.

The Issuers and certain of their subsidiaries will guarantee and secure their obligations under the Wynn America Credit Facilities with liens on substantially all of their assets, with such liens limiting the amount of such obligations secured to 15% of their Total Assets (as defined in the indenture for the 2025 Notes).

The 2023 Notes, 2025 Notes and 2027 WLW Notes were offered pursuant to an exemption under the Securities Act. The 2023 Notes, 2025 Notes and 2027 WLW Notes were offered only to qualified institutional buyers in reliance on Rule 144A under the Securities Act or outside the United States to certain persons in reliance on Regulation S under the Securities Act. The 2023 Notes, 2025 Notes and 2027 WLW Notes have not been and will not be registered under the Securities Act or under any state securities laws. Therefore, the 2023 Notes, 2025 Notes and 2027 WLW Notes may not be offered or sold within the United States to, or for the account or benefit of, any United States person unless the offer or sale would qualify for a registration exemption from the Securities Act and applicable state securities laws.

*5 3/8% First Mortgage Notes due 2022*

On May 4, 2017, the Issuers commenced a cash tender offer for any and all of the outstanding 2022 Notes. The Company accepted for purchase valid tenders with respect to \$498.0 million and paid a tender premium of \$14.6 million.

On June 12, 2017, the Issuers redeemed the remaining \$402.0 million of the untendered 2022 Notes and discharged the indenture under which the 2022 Notes were issued. The Company paid a premium of \$10.8 million related to this redemption.

In connection with the 2027 WLW Notes issuance and the 2022 Notes cash tender offer and subsequent redemption, the Company recorded a loss on extinguishment of debt of \$20.8 million.

*Retail Term Loan*

On July 25, 2018, Wynn/CA Plaza Property Owner, LLC and Wynn/CA Property Owner, LLC (collectively, the "Retail Borrowers"), subsidiaries of the Retail Joint Venture, entered into a term loan agreement (the "Retail Term Loan Agreement").

The Retail Term Loan Agreement provides for a term loan facility to the Retail Borrowers of \$615.0 million (the "Retail Term Loan"). The Retail Term Loan is secured by substantially all of the assets of the Retail Borrowers. The Retail Term Loan matures on July 24, 2025 and bears interest at a rate of LIBOR plus 1.70% per annum. As of December 31, 2018, the interest rate was 4.05%. In accordance with the Retail Term Loan Agreement, the Retail Borrowers entered into an interest rate collar agreement with a LIBOR floor of 1.00% and a ceiling of 3.75%. See Note 2, "Summary of Significant Accounting Policies", for additional information on the interest rate collar. The Retail Borrowers distributed approximately \$589 million of the net proceeds of the Retail Term Loan to their members on a proportionate basis to each member's ownership percentage.

The Retail Borrowers may prepay the Retail Term Loan, in whole but not in part, with a premium of 1.70% of the principal amount prorated for the number of days between the prepayment date and July 25, 2019. Any time subsequent to July 25, 2019, the Retail Borrowers may prepay the Retail Term Loan, in whole or in part, with no premium above the principal amount.

The Retail Term Loan Agreement contains customary representations and warranties, events of default and affirmative and negative covenants for debt facilities of this type, including, among other things, limitations on leasing matters, incurrence of indebtedness, distributions and transactions with affiliates. The Retail Term Loan Agreement also provides for customary sweeps of the Retail Borrowers' excess cash in the event of a default or in the event the Retail Borrowers fail to maintain certain financial ratios as defined in the Retail Term Loan Agreement. In addition, the Company will indemnify the lenders under the Retail Term Loan and be liable, in each case, for certain customary environmental and non-recourse carve out matters pursuant to a hazardous materials indemnity agreement and a recourse indemnity agreement, each entered into concurrently with the execution of the Retail Term Loan Agreement.

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

*Debt Covenant Compliance*

As of December 31, 2018, management believes the Company was in compliance with all debt covenants.

*Scheduled Maturities of Long-Term Debt*

Scheduled maturities of long-term debt as of December 31, 2018 were as follows (in thousands):

Years Ending December 31,		
2019	\$	11,960
2020		275,040
2021		1,193,663
2022		2,455,037
2023		505,000
Thereafter		5,100,000
		<b>9,540,700</b>
Unamortized debt issuance costs and original issue discounts and premium, net		(117,600)
	<b>\$</b>	<b>9,423,100</b>

*Fair Value of Long-Term Debt*

The estimated fair value of the Company's long-term debt as of December 31, 2018 and 2017, was approximately \$8.97 billion and \$7.95 billion, respectively, compared to its carrying value, excluding debt issuance costs and original issue discount and premium, of \$9.54 billion and \$7.85 billion, respectively. The estimated fair value as of December 31, 2017 excludes the Redemption Note. See Note 2, "Summary of Significant Accounting Policies" for discussion of the estimated fair value of the Redemption Note. The estimated fair value of the Company's long-term debt is based on recent trades, if available, and indicative pricing from market information (Level 2 inputs).

**Note 7 - Stockholders' Equity**

*Equity Offering*

On April 3, 2018, the Company completed a registered public offering (the "Equity Offering") of 5,300,000 newly issued shares of its common stock, par value \$0.01 per share, at a price of \$175 per share for proceeds of \$915.2 million, net of \$11.7 million in underwriting discounts and \$0.6 million in offering expenses. The Company used the net proceeds from the Equity Offering to repay all amounts borrowed under the Bridge Facility, together with all interest accrued thereon, and used the remaining net proceeds to repay certain other indebtedness of the Company in April 2018.

*Common Stock*

The Company's Board of Directors has authorized an equity repurchase program. As of December 31, 2018, the Company had \$1.0 billion in repurchase authority under the program, which may include repurchases from time to time through open market purchases or negotiated transactions, depending on market conditions. During the year ended December 31, 2018, the Company repurchased 1,478,552 shares at a net cost of \$156.7 million. During the years ended December 31, 2017 and 2016, no repurchases were made under the equity repurchase program. As of December 31, 2018, the Company had \$843.3 million in repurchase authority under the program.

During the years ended December 31, 2018, 2017 and 2016, the Company withheld a total of 19,120 shares, 148,413 shares and 198,942 shares, respectively, in satisfaction of tax withholding obligations on vested restricted stock.

*Dividends*

During the first quarter of 2018, the Company paid a cash dividend of \$0.50 per share and \$0.75 per share for the three subsequent quarters, for annual cash dividends of \$2.75 per share. In each quarter of 2017 and 2016, the Company paid a cash

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

dividend of \$0.50 per share. During the years ended December 31, 2018, 2017 and 2016, the Company recorded \$294.9 million, \$204.5 million and \$202.2 million as a reduction of retained earnings from cash dividends declared.

On January 30, 2019, the Company announced a cash dividend of \$0.75 per share, payable on February 26, 2019, to stockholders of record as of February 15, 2019.

#### *Redemption of Securities*

Wynn Resorts' articles of incorporation provide that, to the extent a gaming authority makes a determination of unsuitability or to the extent the Board of Directors determines, in its sole discretion, that a person is likely to jeopardize the Company or any affiliates application for, receipt of, approval for, right to the use of, or entitlement to, any gaming license, Wynn Resorts may redeem shares of its capital stock that are owned or controlled by an unsuitable person or its affiliates. The redemption price will be the amount, if any, required by the gaming authority or, if the gaming authority does not determine the price, the sum deemed by the Board of Directors to be the fair value of the securities to be redeemed. If Wynn Resorts determines the redemption price, the redemption price will be capped at the closing price of the shares on the principal national securities exchange on which the shares are listed on the trading day before the redemption notice is given. If the shares are not listed on a national securities exchange, the redemption price will be capped at the closing sale price of the shares as quoted on The Nasdaq Global Select Market or if the closing price is not reported, the mean between the bid and ask prices, as quoted by any other generally recognized reporting system. Wynn Resorts' right of redemption is not exclusive of any other rights that it may have or later acquire under any agreement, its bylaws or otherwise. The redemption price may be paid in cash, by promissory note, or both, as required, and pursuant to the terms established by, the applicable Gaming Authority and, if not, as the Board of Directors of Wynn Resorts elects.

Based on the Board of Directors' finding of "unsuitability," on February 18, 2012, Wynn Resorts redeemed and canceled Aruze's 24,549,222 shares of Wynn Resorts' common stock. For more information, see Note 15, "Commitments and Contingencies."

#### **Note 8 - Noncontrolling Interests**

##### *Wynn Macau, Limited*

In October 2009, WML, an indirect wholly owned subsidiary of the Company and the developer, owner and operator of Wynn Macau and Wynn Palace, listed its ordinary shares of common stock on The Stock Exchange of Hong Kong Limited through an initial public offering. The Company currently owns approximately 72% of this subsidiary's common stock. The shares of WML were not and will not be registered under the Securities Act and may not be offered or sold in the United States absent a registration under the Securities Act, or an applicable exception from such registration requirements.

On October 5, 2018, WML paid a cash dividend of HK\$0.75 per share, consisting of an interim dividend of HK\$0.32 per share for the six months ended June 30, 2018 and a special dividend of HK\$0.43 per share, for a total of \$496.6 million. The Company's share of this dividend was \$358.3 million with a reduction of \$138.2 million to noncontrolling interests in the accompanying Consolidated Balance Sheet.

On April 25, 2018, WML paid a cash dividend of HK\$0.75 per share for a total of \$497.1 million. The Company's share of this dividend was \$358.8 million with a reduction of \$138.3 million to noncontrolling interests in the accompanying Consolidated Balance Sheet.

On September 15, 2017, WML paid a dividend of HK\$0.21 per share for a total of \$139.4 million. The Company's share of this dividend was \$100.6 million with a reduction of \$38.8 million to noncontrolling interests in the accompanying Consolidated Balance Sheets.

On June 20, 2017, WML paid a dividend of HK\$0.42 per share for a total of \$279.9 million. The Company's share of this dividend was \$202.0 million with a reduction of \$77.9 million to noncontrolling interests in the accompanying Consolidated Balance Sheets.

On April 27, 2016, WML paid a dividend of HK\$0.60 per share for a total of \$401.9 million. The Company's share of this dividend was \$290.1 million with a reduction of \$111.8 million to noncontrolling interests in the accompanying Consolidated Balance Sheets.

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

*Retail Joint Venture*

During the year ended December 31, 2018 the Retail Joint Venture made aggregate distributions of \$305.4 million to its non-controlling interest holder in connection with the distribution of the net proceeds of the Retail Term Loan and distributions made in the normal course of business. For more information on the Retail Term Loan and on the Retail Joint Venture, see Note 6, "Long-Term Debt," and Note 14, "Retail Joint Venture," respectively.

**Note 9 - Benefit Plans**

*Defined contribution plans*

The Company established a retirement savings plan under Section 401(k) of the Internal Revenue Code covering its U.S. non-union employees in July 2000. The plan allows employees to defer, within prescribed limits, a percentage of their income on a pre-tax basis through contributions to this plan. The Company matches 50% of employee contributions, up to 6% of employees' eligible compensation. During the years ended December 31, 2018, 2017 and 2016, the Company recorded matching contribution expenses of \$6.4 million, \$6.1 million and \$6.1 million, respectively.

Wynn Macau also operates a defined contribution retirement benefits plan (the "Wynn Macau Plan"). Eligible employees are allowed to contribute 5% of their salary to the Wynn Macau Plan and the Company matches any contributions. The assets of the Wynn Macau Plan are held separately from those of the Company in an independently administered fund. The Company's matching contributions vest to the employee at 10% per year with full vesting in ten years. Forfeitures of unvested contributions are used to reduce the Company's liability for its contributions payable. During the years ended December 31, 2018, 2017 and 2016, the Company recorded matching contribution expenses of \$16.6 million, \$15.8 million and \$12.9 million, respectively.

*Multi-employer pension plan*

Wynn Las Vegas, LLC contributes to a multi-employer defined benefit pension plan for certain of its union employees under the terms of the Southern Nevada Culinary and Bartenders Union collective-bargaining agreement, which expires in July 2021. The legal name of the multi-employer pension plan is the Southern Nevada Culinary and Bartenders Pension Plan (the "Plan") (EIN: 88-6016617 Plan Number: 1). The Company recorded expenses of \$11.9 million, \$11.5 million and \$9.3 million for contributions to the Plan for the years ended December 31, 2018, 2017 and 2016, respectively. For the 2017 plan year, the most recent for which plan data is available, the Company's contributions were identified by the Plan to exceed 5% of total contributions for that year. Based on information the Company received from the Plan, it was certified to be in neither endangered nor critical status for the 2017 plan year. Risks of participating in a multi-employer plan differ from single-employer plans for the following reasons: (1) assets contributed to a multi-employer plan by one employer may be used to provide benefits to employees of other participating employers; (2) if a participating employer stops contributing to the plan, the unfunded obligations of the plan may be borne by the remaining participating employers; (3) if a participating employer stops participating, it may be required to pay those plans an amount based on the underfunded status of the plan, referred to as a withdrawal liability; and (4) if the plan is terminated by withdrawal of all employers and if the value of the nonforfeitable benefits exceeds plan assets and withdrawal liability payments, employers are required by law to make up the insufficient difference.

**Note 10 - Revenue**

The Company's revenue from contracts with customers primarily consists of casino wagers and sales of rooms, food and beverage, entertainment, retail and other goods and services.

Gross casino revenues are measured by the aggregate net difference between gaming wins and losses. The Company applies a practical expedient by accounting for its casino wagering transactions on a portfolio basis versus an individual basis as all wagers have similar characteristics. Commissions rebated to customers either directly or indirectly through games promoters and cash discounts and other cash incentives earned by customers are recorded as a reduction of casino revenues. In addition to the wager, casino transactions typically include performance obligations related to complimentary goods or services provided to incentivize future gaming or in exchange for points earned under the Company's loyalty programs.

For casino transactions that include complimentary goods or services provided by the Company to incentivize future gaming, the Company allocates the standalone selling price of each good or service to the appropriate revenue type based on the good or service provided. Complimentary goods or services that are provided under the Company's control and discretion and supplied by third parties are recorded as an operating expense.

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

The Company offers loyalty programs at both its Macau Operations and its Las Vegas Operations. Under the program at its Macau Operations, customers earn points based on their level of table games and slots play, which can be redeemed for free play, gifts and complimentary goods or services provided by the Company. Under the program at its Las Vegas Operations, customers earn points based on their level of slots play, which can be redeemed for free play. For casino transactions that include points earned under the Company's loyalty programs, the Company defers a portion of the revenue by recording the estimated standalone selling price of the earned points that are expected to be redeemed as a liability.

Upon redemption of the points for Company-owned goods or services, the standalone selling price of each good or service is allocated to the appropriate revenue type based on the good or service provided. Upon the redemption of the points with third parties, the redemption amount is deducted from the liability and paid directly to the third party.

After allocating amounts to the complimentary goods or services provided and to the points earned under the Company's loyalty programs, the residual amount is recorded as casino revenue when the wager is settled.

The transaction price for rooms, food and beverage, entertainment, retail and other transactions is the net amount collected from the customer for such goods and services and is recorded as revenue when the goods are provided, services are performed or events are held. Sales tax and other applicable taxes collected by the Company are excluded from revenues. Advance deposits on rooms and advance ticket sales are performance obligations that are recorded as customer deposits until services are provided to the customer. Revenues from contracts with multiple goods or services are allocated to each good or service based on its relative standalone selling price. Entertainment, retail and other revenue also includes lease revenue, which is recognized on a time proportion basis over the lease term. Contingent lease revenue is recognized when the right to receive such revenue is established according to the lease agreements.

*Disaggregation of Revenues*

The Company operates integrated resorts in Macau and Las Vegas and generates revenues at its properties by providing the following types of services and products: gaming, rooms, food and beverage and entertainment, retail and other. Revenues disaggregated by type of revenue and geographic location are as follows (in thousands):

Year Ended December 31, 2018	Macau Operations	Las Vegas Operations	Total
Casino	\$ 4,350,907	\$ 434,083	\$ 4,784,990
Rooms	283,562	468,238	751,800
Food and beverage	187,006	567,122	754,128
Entertainment, retail and other (1)	230,616	196,126	426,742
<b>Total operating revenues</b>	<b>\$ 5,052,091</b>	<b>\$ 1,665,569</b>	<b>\$ 6,717,660</b>

Year Ended December 31, 2017	Macau Operations	Las Vegas Operations	Total
Casino	\$ 3,788,210	\$ 456,093	\$ 4,244,303
Rooms	217,581	453,376	670,957
Food and beverage	164,189	567,926	732,115
Entertainment, retail and other (1)	197,217	225,568	422,785
<b>Total operating revenues</b>	<b>\$ 4,367,197</b>	<b>\$ 1,702,963</b>	<b>\$ 6,070,160</b>

Year Ended December 31, 2016	Macau Operations	Las Vegas Operations	Total
Casino	\$ 2,313,518	\$ 437,372	\$ 2,750,890
Rooms	158,126	437,484	595,610
Food and beverage	99,703	535,708	635,411
Entertainment, retail and other (1)	134,948	228,938	363,886
<b>Total operating revenues</b>	<b>\$ 2,706,295</b>	<b>\$ 1,639,502</b>	<b>\$ 4,345,797</b>

(1) Includes lease revenue accounted for under lease accounting guidance.

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

*Customer Contract Liabilities*

In providing goods and services to its customers, there is often a timing difference between the Company receiving cash and the Company recording revenue for providing services or holding events.

The Company's primary liabilities associated with customer contracts are as follows (in thousands):

	December 31, 2018	December 31, 2017	Increase (decrease)	December 31, 2017	December 31, 2016	Increase (decrease)
Casino outstanding chips and front money deposits (1)	\$ 905,561	\$ 991,957	\$ (86,396)	\$ 991,957	\$ 546,487	\$ 445,470
Advance room deposits and ticket sales (2)	42,197	48,065	(5,868)	48,065	41,583	6,482
Other gaming-related liabilities (3)	12,694	12,765	(71)	12,765	12,033	732
Loyalty program and related liabilities (4)	18,148	18,421	(273)	18,421	7,942	10,479
	<b>\$ 978,600</b>	<b>\$ 1,071,208</b>	<b>\$ (92,608)</b>	<b>\$ 1,071,208</b>	<b>\$ 608,045</b>	<b>\$ 463,163</b>

(1) Casino outstanding chips represent amounts owed to junkets and customers for chips in their possession, and casino front money deposits represent funds deposited by customers before gaming play occurs. These amounts are included in customer deposits on the Consolidated Balance Sheets and may be recognized as revenue or will be redeemed for cash in the future.

(2) Advance room deposits and ticket sales represent cash received in advance for goods or services to be provided in the future. These amounts are included in customer deposits on the Consolidated Balance Sheets and will be recognized as revenue when the goods or services are provided or the events are held. Decreases in this balance generally represent the recognition of revenue and increases in the balance represent additional deposits made by customers. The deposits are expected to primarily be recognized as revenue within one year.

(3) Other gaming-related liabilities generally represent unpaid wagers primarily in the form of unredeemed slot, race and sportsbook tickets or wagers for future sporting events. The amounts are included in other accrued liabilities on the Consolidated Balance Sheets.

(4) Loyalty program and related liabilities represent the deferral of revenue until the loyalty points or other complimentary are redeemed. The amounts are included in other accrued liabilities on the Consolidated Balance Sheets and are expected to be recognized as revenue within one year of being earned by customers.

**Note 11 - Stock-Based Compensation**

*Wynn Resorts, Limited*

The Company's 2002 Stock Incentive Plan, as amended and restated (the "WRL 2002 Plan"), allowed it to grant stock options and nonvested shares of Wynn Resorts' common stock to eligible directors, officers, employees, and consultants of the Company. Under the WRL 2002 Plan, a maximum of 12,750,000 shares of the Company's common stock was reserved for issuance.

On May 16, 2014, the Company adopted the Wynn Resorts, Limited 2014 Omnibus Incentive Plan (the "Omnibus Plan") after approval from its stockholders. The Omnibus Plan allows for the grant of stock options, restricted stock, restricted stock units, stock appreciation rights, performance awards and other share-based awards to the same eligible participants as the WRL 2002 Plan. Under the approval of the Omnibus Plan, no new awards may be made under the WRL 2002 Plan. The outstanding awards under the WRL 2002 Plan were transferred to the Omnibus Plan and will remain pursuant to their existing terms and related award agreements. The Company reserved 4,409,390 shares of its common stock for issuance under the Omnibus Plan. These shares were transferred from the remaining available amount under the WRL 2002 Plan.

The Omnibus Plan is administered by the Compensation Committee (the "Committee") of the Wynn Resorts, Limited Board of Directors. The Committee has discretion under the Omnibus Plan regarding which type of awards to grant, the vesting and service requirements, exercise price and other conditions, in all cases subject to certain limits. For stock options, the exercise price of stock options must be at least equal to the fair market value of the stock on the date of grant and the maximum term of such an award is 10 years.

As of December 31, 2018, the Company had an aggregate of 3,041,051 shares of its common stock available for grant as share-based awards under the Omnibus Plan.



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

*Stock Options*

The summary of stock option activity under the Omnibus Plan for the year ended December 31, 2018 is presented below:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding as of January 1, 2018	644,460	\$ 73.93		
Granted	—	\$ —		
Exercised	(261,470)	\$ 77.07		
Forfeited or expired	(37,200)	\$ 172.07		
<b>Outstanding as of December 31, 2018</b>	<b>345,790</b>	<b>\$ 60.99</b>	<b>1.25</b>	<b>\$ 14,796,122</b>
Fully vested and expected to vest as of December 31, 2018	345,790	\$ 60.99	1.25	\$ 14,796,122
Exercisable as of December 31, 2018	285,790	\$ 63.91	1.44	\$ 11,688,722

The following is provided for stock options under the Omnibus Plan (in thousands, except weighted average grant date fair value):

	Years Ended December 31,		
	2018	2017	2016
Weighted average grant date fair value	\$ —	\$ —	\$ 34.90
Intrinsic value of stock options exercised	\$ 22,387	\$ 29,716	\$ 3,657
Cash received from the exercise of stock options	\$ 20,148	\$ 61,506	\$ 3,487

As of December 31, 2018, there was \$0.6 million of unamortized compensation expense related to stock options, which is expected to be recognized over a weighted average period of 0.34 years.

*Nonvested shares*

The summary of nonvested share activity under the Omnibus Plan for the year ended December 31, 2018 is presented below:

	Shares	Weighted Average Grant Date Fair Value
Nonvested as of January 1, 2018	460,584	\$ 98.21
Granted	288,270	170.13
Vested	(96,559)	121.51
Forfeited	(125,908)	133.76
<b>Nonvested as of December 31, 2018</b>	<b>526,387</b>	<b>\$ 127.84</b>

The following is provided for the share awards under the Omnibus Plan (in thousands, except weighted average grant date fair value):

	Years Ended December 31,		
	2018	2017	2016
Weighted average grant date fair value	\$ 170.13	\$ 109.28	\$ 63.56
Fair value of shares vested	\$ 13,024	\$ 45,801	\$ 39,380

As of December 31, 2018, there was \$49.6 million of unamortized compensation expense related to nonvested shares, which is expected to be recognized over a weighted average period of 3.66 years.

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

*Wynn Macau, Limited*

The Company's majority-owned subsidiary, WML, has two stock-based compensation plans that provide awards based on shares of WML's common stock. The shares available for issuance under these plans are separate and distinct from the common stock of Wynn Resorts' share plan and are not available for issuance for any awards under the Wynn Resorts share plan.

*Share Option Plan*

WML adopted a stock incentive plan, effective September 16, 2009, for the grant of stock options to purchase shares of WML to eligible directors and employees of its subsidiaries (the "Share Option Plan"). The Share Option Plan is administered by WML's Board of Directors, which has the discretion on the vesting and service requirements, exercise price, performance targets to exercise if applicable and other conditions, subject to certain limits. A maximum of 518,750,000 shares have been reserved for issuance under the Share Option Plan. As of December 31, 2018, there were 507,244,000 shares available for issuance under the Share Option Plan.

The summary of stock option activity under the Share Option Plan for the year ended December 31, 2018 is presented below:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding as of January 1, 2018	7,006,000	\$ 2.32		
Granted	4,494,000	\$ 2.65		
Exercised	(941,600)	\$ 1.94		
<b>Outstanding as of December 31, 2018</b>	<b>10,558,400</b>	<b>\$ 2.49</b>	<b>7.80</b>	<b>\$ 1,403,732</b>
Fully vested and expected to vest as of December 31, 2018	10,558,400	\$ 2.49	7.80	\$ 1,403,732
Exercisable as of December 31, 2018	3,302,800	\$ 2.72	5.20	\$ 484,717

The following is provided for stock options under the Share Option Plan (in thousands, except weighted average grant date fair value):

	Years Ended December 31,		
	2018	2017	2016
Weighted average grant date fair value	\$ 0.57	\$ 0.56	\$ 0.31
Intrinsic value of stock options exercised	\$ 1,715	\$ 369	\$ —
Cash received from the exercise of stock options	\$ 1,823	\$ 703	\$ —

As of December 31, 2018, there was \$3.4 million of unamortized compensation expense related to stock options, which is expected to be recognized over a weighted average period of 4.30 years.

*Share Award Plan*

On June 30, 2014, the Company's majority-owned subsidiary, WML, approved and adopted the WML Employee Ownership Scheme (the "Share Award Plan"). The Share Award Plan allows for the grant of nonvested shares of WML's common stock to eligible employees. The Share Award Plan is administered by WML's Board of Directors and has been mandated under the plan to allot, issue and process the transfer of a maximum of 50,000,000 shares. The Board of Directors has discretion on the vesting and service requirements, exercise price and other conditions, subject to certain limits. As of December 31, 2018, there were 33,362,988 shares available for issuance under the Share Award Plan.

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

The summary of nonvested share activity under the Share Award Plan for the year ended December 31, 2018 is presented below:

	Shares	Weighted Average Grant Date Fair Value
Nonvested as of January 1, 2018	11,842,707	\$ 2.24
Granted	3,256,630	\$ 3.07
Vested	(3,565,245)	\$ 3.56
Forfeited	(1,780,825)	\$ 2.03
<b>Nonvested as of December 31, 2018</b>	<b>9,753,267</b>	<b>\$ 2.07</b>

The weighted average grant date fair value for shares granted during the year and the total fair value of shares vested under the Share Award Plan is presented below (in thousands, except weighted average grant date fair value):

	Years Ended December 31,		
	2018	2017	2016
Weighted average grant date fair value	\$ 3.07	\$ 2.22	\$ 1.38
Fair value of shares vested	\$ 1,309	\$ 6,884	\$ —

As of December 31, 2018, there was \$12.7 million of unamortized compensation expense, which is expected to be recognized over a weighted average period of 2.82 years.

#### Compensation Cost

The total compensation cost for stock-based compensation plans was recorded as follows (in thousands):

	Years Ended December 31,		
	2018	2017	2016
Casino	\$ 5,946	\$ 6,954	\$ 11,304
Rooms	437	655	374
Food and beverage	1,125	1,466	1,060
Entertainment, retail and other	111	147	82
General and administrative	28,872	34,749	30,398
Pre-opening	750	—	504
Property charges and other (1)	(2,201)	—	—
<b>Total stock-based compensation expense</b>	<b>35,040</b>	<b>43,971</b>	<b>43,722</b>
Total stock-based compensation capitalized	11	80	92
<b>Total stock-based compensation costs</b>	<b>\$ 35,051</b>	<b>\$ 44,051</b>	<b>\$ 43,814</b>

(1) In 2018, reflects the reversal of compensation cost previously recognized for awards forfeited in connection with the departure of an employee.

For the year ended December 31, 2018, the Company recorded an expense of approximately \$5.8 million in connection with the departure of the Company's general counsel and the related accelerated vesting of previously granted share-based awards and a \$1.8 million one-time cash payment.

Certain members of the Company's executive management team receive a portion of their annual incentive bonus in shares of the Company's stock. The number of shares is determined based on the closing stock price on the date the annual incentive bonus is settled. As the number of shares is variable, the Company records a liability for the fixed monetary amount over the service period. The Company recorded stock-based compensation expense associated with these awards of \$6.7 million, \$23.7 million and \$19.2 million, for the year ended December 31, 2018, 2017 and 2016, respectively. The Company settled the obligation for the 2018 annual incentive bonus by issuing vested shares in January 2019. The Company settled the obligation for the 2017 annual incentive bonus by issuing vested shares in December 2017 and January 2018.

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

During the years ended December 31, 2018, 2017 and 2016, the Company recognized income tax benefits in the Consolidated Statements of Income of \$5.7 million, \$10.8 million and \$10.4 million, respectively, related to stock-based compensation expense. Additionally, during the years ended December 31, 2018, 2017 and 2016, the Company realized tax benefits of \$4.6 million, \$25.4 million and \$6.7 million, respectively, related to stock option exercises and restricted stock vesting that occurred in those years.

The Company uses the Black-Scholes option pricing model to determine the estimated fair value for stock options. Dividend yield is based on the estimate of annual dividends expected to be paid at the time of the grant. Expected volatility is based on implied and historical factors related to the Company's common stock. The risk-free interest rate used for each period presented is based on the U.S. Treasury yield curve for stock options issued under the Omnibus Plan and the Hong Kong Exchange Fund rates for stock options issued under the Share Option Plan, both at the time of grant for the period equal to the expected term. Expected term represents the weighted average time between the option's grant date and its exercise date. The Company uses historical award exercise activity and termination activity in estimating the expected term for the Omnibus Plan and Share Option Plan.

There were no stock options granted under the Omnibus Plan during the years ended December 31, 2018 and 2017. The fair value of stock options granted under the Omnibus Plan during the year ended December 31, 2016 was estimated on the date of grant using an expected dividend yield of 2.0%, expected volatility of 45.4%, a risk-free interest rate of 1.1% and an expected term of 6.0 years.

The fair value of stock options granted under WML's Share Option Plan was estimated on the date of grant using the following weighted average assumptions:

	Years Ended December 31,		
	2018	2017	2016
Expected dividend yield	5.7%	5.7%	6.3%
Expected volatility	40.2%	41.5%	42.6%
Risk-free interest rate	2.3%	1.1%	1.0%
Expected term (years)	6.5	6.5	6.5

**Note 12 - Income Taxes**

Consolidated income (loss) before taxes for United States ("U.S.") and foreign operations consisted of the following (in thousands):

	Years Ended December 31,		
	2018	2017	2016
United States	\$ (491,523)	\$ 90,206	\$ 90,900
Foreign	797,263	470,063	219,697
<b>Total</b>	<b>\$ 305,740</b>	<b>\$ 560,269</b>	<b>\$ 310,597</b>

The income tax (benefit) provision attributable to income before income taxes is as follows (in thousands):

	December 31,		
	2018	2017	2016
<b>Current</b>			
U.S. Federal	\$ (637)	\$ (19,856)	\$ 60
U.S. State	198	51	79
Foreign	1,749	1,674	1,633
<b>Total</b>	<b>1,310</b>	<b>(18,131)</b>	<b>1,772</b>
<b>Deferred</b>			
U.S. Federal	(483,681)	(309,423)	5,081
U.S. State	(14,973)	(1,431)	1,275
<b>Total</b>	<b>(498,654)</b>	<b>(310,854)</b>	<b>6,356</b>
<b>Total income tax benefit</b>	<b>\$ (497,344)</b>	<b>\$ (328,985)</b>	<b>\$ 8,128</b>

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

The reconciliation of the U.S. federal statutory tax rate to the actual tax rate is as follows:

	December 31,		
	2018	2017	2016
U.S. Federal statutory rate	21.0 %	35.0 %	35.0 %
Foreign tax credits, net of valuation allowance	(154.9)%	(136.1)%	(61.5)%
Non-taxable foreign income	(48.8)%	(20.1)%	(20.7)%
Foreign tax rate differential	(20.8)%	(17.0)%	(14.5)%
Global intangible low-taxed income	28.3 %	— %	— %
Change in tax rate	— %	(11.8)%	— %
Repatriation of foreign earnings	— %	81.0 %	51.6 %
Valuation allowance, other	9.3 %	5.9 %	7.5 %
Other, net	3.2 %	4.4 %	5.2 %
<b>Effective income tax rate</b>	<b>(162.7)%</b>	<b>(58.7)%</b>	<b>2.6 %</b>

Wynn Macau SA received a five-year exemption from Macau's 12% Complementary Tax on casino gaming profits through December 31, 2020. Accordingly, for the years ended December 31, 2018, 2017 and 2016, the Company was exempt from the payment of such taxes totaling \$96.8 million, \$63.0 million and \$27.3 million or \$0.90, \$0.61 and \$0.27 per diluted share, respectively. The Company's non-gaming profits remain subject to the Macau Complementary Tax and its casino winnings remain subject to the Macau special gaming tax and other levies in accordance with its concession agreement.

Wynn Macau SA also entered into an agreement with the Macau government that provides for an annual payment of MOP 12.8 million (approximately \$1.6 million) as complementary tax otherwise due by stockholders of Wynn Macau SA on dividend distributions through 2020. As a result of the stockholder dividend tax agreements, income tax expense includes \$1.6 million for each of the years ended December 31, 2018, 2017 and 2016.

The Macau special gaming tax is 35% of gross gaming revenue. U.S. tax laws only allow a foreign tax credit ("FTC") up to 21% of foreign source income. In February 2010, the Company and the IRS entered into a Pre-Filing Agreement ("PFA") providing that the Macau special gaming tax qualifies as a tax paid in lieu of an income tax and could be claimed as a U.S. FTC.

In December 2017, the U.S. Tax Cuts and Jobs Act ("U.S. tax reform") was enacted. Also in December 2017, the SEC staff issued Staff Accounting Bulletin No. 118, Income Tax Accounting Implications of the Tax Cuts and Jobs Act, which allowed the Company to record provisional amounts during a measurement period not to extend beyond one year from the enactment date. For the year ended December 31, 2017, the Company recorded a provisional net tax benefit of \$339.9 million based on the Company's initial analysis of the U.S. tax reform. During the fourth quarter of 2018, the Company finalized its analysis of U.S. tax reform, which was further clarified by guidance issued by the Internal Revenue Service in the fourth quarter of 2018. The guidance addressed the treatment of foreign-sourced royalties and the allocation of interest expense and other expenses to foreign source income. As a result, the Company adjusted its valuation allowance for FTC carryovers and recorded a net tax benefit of \$390.9 million, which is incremental to the \$339.9 million provisional net tax benefit recorded in 2017.

During the years ended December 31, 2018, 2017 and 2016, the Company recognized tax benefits of \$82.8 million, \$746.6 million and \$170.5 million, respectively (net of valuation allowance and uncertain tax positions), for FTCs generated from the earnings of Wynn Macau SA.

Accounting standards require recognition of a future tax benefit to the extent that realization of such benefit is more likely than not; otherwise, a valuation allowance is applied. During the years ended December 31, 2018 and 2017, the aggregate valuation allowance for deferred tax assets decreased by \$746.6 million and increased by \$103.7 million, respectively. The 2018 decrease is primarily related to the expiration of FTCs. The 2017 increase is primarily related to FTC carryforwards and other foreign deferred tax assets that are not considered more likely than not realizable.

The Company recorded tax benefits resulting from the exercise of nonqualified stock options and the value of vested restricted stock and accrued dividends of \$2.0 million, \$2.6 million and \$0.8 million for the years ended December 31, 2018, 2017 and 2016, respectively, in excess of the amounts reported for such items as compensation costs under accounting standards related to stock-based compensation.

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

The tax effects of significant temporary differences representing net deferred tax assets and liabilities consisted of the following (in thousands):

	December 31,	
	2018	2017
<b>Deferred tax assets—U.S.:</b>		
Foreign tax credit carryforwards	\$ 3,187,797	\$ 3,616,872
Disallowed interest expense carryforward	67,368	—
Construction in progress	42,528	5,009
Receivables, inventories, accrued liabilities and other	10,878	19,356
Stock-based compensation	5,477	5,084
Other tax credit carryforwards	4,946	1,999
Intangibles and related other	489	3,486
Other	2,279	86
	<b>3,321,762</b>	<b>3,651,892</b>
Less: valuation allowance	(2,500,027)	(3,273,292)
	<b>821,735</b>	<b>378,600</b>
<b>Deferred tax liabilities—U.S.:</b>		
Property and equipment	(70,560)	(111,988)
Redemption Note fair value	—	(13,139)
Prepaid insurance, maintenance and taxes	(12,430)	(10,391)
Other	(2,293)	(2,549)
	<b>(85,283)</b>	<b>(138,067)</b>
<b>Deferred tax assets—Foreign:</b>		
Net operating loss carryforwards	94,244	74,345
Property and equipment	41,520	36,299
Pre-opening expenses	8,421	10,717
Other	651	1,493
	<b>144,836</b>	<b>122,854</b>
Less: valuation allowance	(143,872)	(117,175)
	<b>964</b>	<b>5,679</b>
<b>Deferred tax liabilities—Foreign:</b>		
Property and equipment	(964)	(5,679)
	<b>(964)</b>	<b>(5,679)</b>
<b>Net deferred tax asset</b>	<b>\$ 736,452</b>	<b>\$ 240,533</b>

FTC carryforwards of \$545.7 million expired as of December 31, 2018. As of December 31, 2018, the Company had FTC carryforwards (net of uncertain tax positions) of \$3.19 billion. Of this amount, \$110.9 million will expire in 2019, \$530.4 million in 2020, \$540.3 million in 2021, \$756.0 million in 2023, \$710.7 million in 2024, \$47.2 million in 2025 and \$492.4 million in 2027. The Company has a disallowed interest carryforward of \$294.2 million which does not expire. The Company has no U.S. tax loss carryforwards. The Company incurred foreign tax losses of \$340.0 million, \$319.1 million and \$317.3 million during the tax years ended December 31, 2018, 2017 and 2016, respectively. These foreign tax loss carryforwards expire in 2021, 2020 and 2019, respectively.

In assessing the need for a valuation allowance, the Company considered whether it is more likely than not that the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. In the assessment of the valuation allowance, appropriate consideration was given to all positive and negative evidence including recent operating profitability, forecast of future earnings and the duration of statutory carryforward periods.

As of December 31, 2018 and 2017, the Company had valuation allowances of \$2.49 billion and \$3.27 billion, respectively, provided on FTCs expected to expire unutilized and valuation allowances of \$5.3 million and \$3.5 million provided on other U.S.

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

deferred tax assets. As of December 31, 2018 and 2017, the Company had valuation allowances of \$143.9 million and \$117.2 million, respectively, provided on its foreign deferred tax assets.

The Company had the following activity for unrecognized tax benefits as follows (in thousands):

	December 31,		
	2018	2017	2016
Balance at beginning of period	\$ 95,236	\$ 90,523	\$ 88,314
Increases based on tax positions of the current year	8,926	8,520	5,930
Reductions due to lapse in statutes of limitations	(4,692)	(3,807)	(3,721)
<b>Balance at end of period</b>	<b>\$ 99,470</b>	<b>\$ 95,236</b>	<b>\$ 90,523</b>

As of December 31, 2018, 2017 and 2016, unrecognized tax benefits of \$99.5 million, \$95.2 million and \$90.3 million, respectively, were recorded as reductions in deferred income taxes, net. As of December 31, 2016, \$0.2 million of unrecognized tax benefits were recorded in other long-term liabilities. The Company had no unrecognized tax benefits recorded in other long-term liabilities as of December 31, 2018 and 2017.

As of December 31, 2018, 2017 and 2016, \$31.0 million, \$26.9 million and \$22.6 million, respectively, of unrecognized tax benefits would, if recognized, impact the effective tax rate.

The Company recognizes penalties and interest related to unrecognized tax benefits in the provision for income taxes. During the year ended December 31, 2018, the Company recognized no interest and penalties. During each of the years ended December 31, 2017 and 2016, the Company recognized \$0.9 million in interest in the provision for income taxes.

The Company anticipates that the 2014 statute of limitations will expire in the next 12 months for certain foreign tax jurisdictions. Also, the Company's unrecognized tax benefits include certain income tax accounting methods, which govern the timing and deductibility of income tax deductions. As a result, the Company's unrecognized tax benefits could increase up to \$5.1 million over the next 12 months.

The Company files income tax returns in the U.S. federal jurisdiction, various states and foreign jurisdictions. The Company's income tax returns are subject to examination by the IRS and other tax authorities in the locations where it operates. The Company's 2002 to 2014 domestic income tax returns remain subject to examination by the IRS to the extent tax attributes carryforward to future years. The Company's 2015 to 2017 domestic income tax returns also remain subject to examination by the IRS. The Company's 2014 to 2017 Macau income tax returns remain subject to examination by the Financial Services Bureau.

The Company has participated in the IRS Compliance Assurance Program ("CAP") for the 2012 through 2018 tax years and will continue to participate in the IRS CAP for the 2019 tax year.

In February 2017 and 2018, the Company received notification that the IRS completed its examination of the Company's 2015 and 2016 U.S. income tax returns, respectively. There were no changes in its unrecognized tax benefits as a result of the completion of these examinations.

On December 31, 2016, the statute of limitations for the 2011 Macau Complementary tax return expired. As a result of the expiration of the statute of limitations for the Macau Complementary Tax return, the total amount of unrecognized tax benefits decreased by \$3.7 million.

In April 2016, the Financial Services Bureau commenced an examination of the 2011 and 2012 Macau income tax returns of Palo. In June 2016, the Financial Services Bureau concluded its examination with no changes.

On December 31, 2017, the statute of limitations for the 2012 Macau Complementary tax return expired. As a result of the expiration of the statute of limitations for the Macau Complementary Tax return, the total amount of unrecognized tax benefits decreased by \$3.8 million.

On December 31, 2018, the statute of limitations for the 2013 Macau Complementary tax return expired. As a result of the expiration of the statute of limitations for the Macau Complementary Tax return, the total amount of unrecognized tax benefits decreased by \$4.7 million.

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

In March 2017, the Financial Services Bureau commenced an examination of the 2013 and 2014 Macau income tax returns of Wynn Macau SA. In July 2018, the Financial Services Bureau issued final tax assessments for the Company for the years 2013 and 2014. While no additional tax was due, adjustments were made to the Company's tax loss carryforwards.

In July 2017, the Financial Services Bureau commenced an examination of the 2013 and 2014 Macau income tax returns of Palo. In February 2018, the Financial Services Bureau concluded its examination with no changes.

**Note 13 - Related Party Transactions**

*Agreements with Stephen A. Wynn*

On February 6, 2018, Stephen A. Wynn ("Mr. Wynn"), resigned as Chairman of the Board of Directors and Chief Executive Officer of Wynn Resorts and on February 15, 2018, Mr. Wynn entered into a separation agreement with the Company specifying the terms of his termination of service with the Company (the "Separation Agreement"). The Separation Agreement terminated Mr. Wynn's employment agreement with the Company and confirmed that Mr. Wynn is not entitled to any severance payment or other compensation from the Company under his employment agreement.

Under the Separation Agreement, Mr. Wynn agreed not to compete against the Company for a period of two years and to provide reasonable cooperation and assistance to the Company in connection with any private litigation or arbitration and to the Board of Directors of the Company or any committee of the Board of Directors in connection with any investigation by the Company related to his service with the Company. The Separation Agreement provided that (i) Mr. Wynn's lease of his personal residence at Wynn Las Vegas would terminate not later than June 1, 2018 and until such date Mr. Wynn would continue to pay rent at its fair market value, unless Mr. Wynn elected to terminate the lease before such date, (ii) Mr. Wynn's current healthcare coverage would terminate on December 31, 2018, and (iii) administrative support for Mr. Wynn would terminate on May 31, 2018. Additionally, in order to conduct sales of Company shares in an orderly fashion, the Company agreed to enter into a registration rights agreement with Mr. Wynn, with Mr. Wynn to reimburse the Company for its reasonable expenses.

As a result of Mr. Wynn's resignation and the Separation Agreement, an aircraft purchase option that gave Mr. Wynn the right to purchase any or all of the aircraft owned by the Company or its direct wholly owned subsidiaries terminated on February 6, 2018. Further, 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" surname for casino resorts and related businesses, together with the right to sublicense the name and marks to its affiliates. Pursuant to the Separation Agreement, if the Company ceases to use the "Wynn" surname and trademark, the Company will assign all of its right, title, and interest in the "Wynn" trademark to Mr. Wynn and terminate the Surname Rights Agreement. The lease of Mr. Wynn's residence was terminated by agreement of the parties on April 10, 2018.

On March 20, 2018, the Company entered into a registration rights agreement with Mr. Wynn, the Wynn Family Limited Partnership, a Delaware limited partnership (together with Mr. Wynn, the "Selling Stockholder") and each holder from time to time a party thereto (the "Registration Rights Agreement"), pursuant to the Separation Agreement. The Selling Stockholder subsequently sold all of its holdings of the Company's common stock through open market transactions pursuant to Rule 144 under the Securities Act of 1933, as amended, and certain privately negotiated transactions. Pursuant to the Registration Rights Agreement, without the Company's prior written consent, the Selling Stockholder was not permitted to sell more than an aggregate of 4,043,903 shares of Common Stock in any quarter. The Company provided written consent permitting the Selling Stockholder to undertake the registered sales.

*Home Purchase*

In May 2010, the Company entered into an employment agreement with Linda Chen ("Ms. Chen"), who is the President and Chief Operating Officer of Wynn Macau SA. The term of the employment agreement is through February 24, 2020. Under the terms of the employment agreement, the Company purchased a home in Macau for use by Ms. Chen and has made renovations to the home with total costs of \$10.0 million through December 31, 2018. Upon the occurrence of certain events set forth below, Ms. Chen has the option to purchase the home at the then fair market value of the home (as determined by an independent appraiser) less a discount equal to ten percentage points multiplied by each anniversary of the term of the agreement that has occurred (the "Discount Percentage"). The option is exercisable for (a) no consideration at the end of the term, (b) \$1.00 in the event of termination of Ms. Chen's employment without "cause" or termination of Ms. Chen's employment for "good reason" following a "change of control" or (c) at a price based on the applicable Discount Percentage in the event Ms. Chen terminates the agreement due to



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

material breach by the Company. Upon Ms. Chen's termination for "cause," Ms. Chen will be deemed to have elected to purchase the Macau home based on the applicable Discount Percentage unless the Company determines to not require Ms. Chen to purchase the home. If Ms. Chen's employment terminates for any other reason before the expiration of the term (e.g., because of her death or disability or due to revocation of her gaming license), the option will terminate.

#### *Cooperation Agreement*

On August 3, 2018, the Company entered into a Cooperation Agreement (the "Cooperation Agreement") with Elaine P. Wynn regarding the composition of the Company's Board of Directors and certain other matters, including, among other things, the appointment of Mr. Philip G. Satre to the Company's Board of Directors, standstill restrictions, releases, non-disparagement, reimbursement of expenses and the grant of certain complimentary privileges. The term of the Cooperation Agreement expires on the day after the conclusion of the 2020 annual meeting of the Company's stockholders, unless earlier terminated pursuant to the circumstances described in the Cooperation Agreement.

#### *Amounts Due to Officers, Directors and Former Directors*

The Company periodically provides services to certain executive officers, directors or former directors of the Company, including the personal use of employees, construction work and other personal services, for which the officers, directors or former directors reimburse the Company. The Company requires prepayment for any such services, which amounts are replenished on an ongoing basis as needed. As of December 31, 2018, these net deposit balances with the Company were immaterial, as were the services provided. As of December 31, 2017, the officers and directors had a net deposit balance with the Company of \$0.4 million.

#### **Note 14 - Retail Joint Venture**

In December 2016, the Company entered into the Retail Joint Venture with Crown to own and operate approximately 88,000 square feet of existing retail space at Wynn Las Vegas. In connection with the transaction, the Company transferred certain assets and liabilities with a net book value of \$31.8 million associated with the existing Wynn Las Vegas retail stores from Wynn Las Vegas, LLC, to the Retail Joint Venture. The Company sold Crown a 49.9% ownership interest in the Retail Joint Venture for consideration of \$292.0 million, which consisted of \$217.0 million in cash and a \$75.0 million interest-free note that matured in full on January 3, 2018. As of December 31, 2017 and 2016, the present value of the note was \$75.0 million included in prepaid expenses and other and \$72.5 million included in other assets, respectively, on the Consolidated Balance Sheets. Wynn Las Vegas, LLC transferred all interests as lessor in third-party retail store leases to the Retail Joint Venture as part of the transaction and the majority of the retail stores previously operated by Wynn Las Vegas, LLC are now operated under a master lease agreement between a newly formed retail entity owned by Wynn Resorts, as lessee, and the Retail Joint Venture, as lessor. The Company maintains a 50.1% ownership in the Retail Joint Venture and is the managing member.

In November 2017, the Company contributed approximately 74,000 square feet of additional retail space to the Retail Joint Venture. The Company opened the additional retail space during the fourth quarter of 2018. In connection with this transaction, the Company contributed certain assets with a net book value of \$25.4 million, consisting primarily of construction in progress for the additional retail space, to the Retail Joint Venture, and received cash of \$180.0 million from Crown. After this additional transaction, the Company maintains a 50.1% ownership in the Retail Joint Venture and remains the managing member. The Company's responsibilities with respect to the Retail Joint Venture include day-to-day business operations, property management services and a role in the leasing decisions of the retail space.

The Company assessed its ownership in the Retail Joint Venture based on consolidation accounting guidance with an evaluation being performed to determine if the Retail Joint Venture is a VIE, if the Company has a variable interest in the Retail Joint Venture and if the Company is the primary beneficiary of the Retail Joint Venture. The primary beneficiary is the party who has the power to direct the activities of a VIE that most significantly impact the entity's economic performance and who has an obligation to absorb losses of the entity or a right to receive benefits from the entity that could potentially be significant to the entity.

The Company concluded that the Retail Joint Venture is a VIE and the Company is the primary beneficiary based on its involvement in the leasing activities of the Retail Joint Venture. As a result, the Company consolidates all of the Retail Joint Venture's assets, liabilities and results of operations. The Company will evaluate its primary beneficiary designation on an ongoing basis and will assess the appropriateness of the Retail Joint Venture's VIE status when changes occur.

As of December 31, 2018 and 2017, the Retail Joint Venture had total assets of \$85.0 million and \$59.7 million, respectively, and total liabilities of \$619.6 million and \$0.9 million, respectively. The Retail Joint Venture's total liabilities as of December 31,

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

2018 included long-term debt of \$611.1 million, net of debt issuance costs, related to the outstanding borrowings under the Retail Term Loan.

**Note 15 - Commitments and Contingencies**

*Encore Boston Harbor Development*

On April 28, 2017, Wynn MA, LLC ("Wynn MA"), an indirect wholly owned subsidiary of the Company, entered into an agreement concerning the construction of Encore Boston Harbor, which, among other things, confirmed the guaranteed maximum price for the construction work undertaken by the general contractor. The general contractor is obligated to substantially complete the project by June 24, 2019 for a guaranteed maximum price of \$1.32 billion. Both the contract time and guaranteed maximum price are subject to further adjustment under certain conditions. The performance of the general contractor is backed by a payment and performance bond in the amount of \$350.0 million.

*Wynn Las Vegas Meeting and Convention Expansion*

Wynn Golf, LLC, a direct wholly owned subsidiary of the Company, entered into an agreement concerning the construction of approximately 430,000 square feet of additional meeting and convention space at Wynn Las Vegas, which, among other things, confirmed the guaranteed maximum price for the construction work undertaken by the general contractor. The general contractor is obligated to substantially complete the project by December 19, 2019 for a guaranteed maximum price of \$286.8 million. Both the contract time and guaranteed maximum price are subject to further adjustment under certain conditions.

**Leases**

*Lessor Arrangements*

The Company is the lessor under leases for retail space at its resorts. The lease agreements include minimum base rents with contingent rental clauses primarily based on percentage of net sales exceeding minimum base rents.

The following table presents the future minimum rentals to be received under the operating leases (in thousands):

<b>Years Ending December 31,</b>		
2019	\$	132,249
2020		130,731
2021		69,272
2022		48,024
2023		29,784
Thereafter		79,868
<b>Total future minimum rentals</b>	<b>\$</b>	<b>489,928</b>

The total future minimum rentals do not include contingent rentals. Contingent rentals were \$53.8 million, \$38.6 million and \$34.6 million for the years ended December 31, 2018, 2017 and 2016, respectively.

*Lessee Arrangements*

The Company is the lessee under leases for office space, warehouse facilities, certain office equipment and various parcels of land, including the land that Wynn Macau and Wynn Palace are built on. As of December 31, 2018, capital leases reflected in property and equipment, net on the Consolidated Balance Sheet were \$16.5 million. The future minimum lease payments for capital leases are discounted to their present value in the table below and are included in other long-term liabilities on the Consolidated Balance Sheet.

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

As of December 31, 2018, the Company was obligated under non-cancelable leases to make future minimum lease payments as follows (in thousands):

Years Ending December 31,	Operating Leases	Capital Leases
2019	\$ 29,126	\$ 989
2020	20,153	989
2021	17,226	989
2022	16,466	989
2023	15,868	989
Thereafter	464,838	66,743
<b>Total minimum lease payments</b>	<b>563,677</b>	<b>71,688</b>
Less: Amount representing interest	—	(55,140)
	<b>\$ 563,677</b>	<b>\$ 16,548</b>

Rent expense for the years ended December 31, 2018, 2017 and 2016 was \$27.1 million, \$18.3 million and \$17.9 million, respectively.

#### *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 and typically indicate a base salary and often contain provisions for discretionary 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). As of December 31, 2018, the Company was obligated to make future payments of \$72.9 million, \$49.0 million, \$19.1 million, \$2.9 million and \$0.5 million during the years ending December 31, 2019, 2020, 2021, 2022 and 2023, respectively.

#### *Other Commitments*

The Company has additional commitments for gaming tax payments in Macau and performance and other miscellaneous contracts. As of December 31, 2018, the Company was obligated under these arrangements, to make future minimum payments as follows (in thousands):

2019	\$ 168,646
2020	80,548
2021	56,393
2022	27,088
2023	4,980
Thereafter	—
<b>Total minimum payments</b>	<b>\$ 337,655</b>

The above table does not include community payments associated with the continuing operations of Encore Boston Harbor, which commence upon the opening of the resort. These amounts are approximately \$10.6 million per year with minimal annual increases.

#### *Letters of Credit*

As of December 31, 2018, the Company had outstanding letters of credit of \$17.7 million.

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

### ***Litigation***

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

#### ***Determination of Unsuitability and Redemption of Aruze and Affiliates***

On February 18, 2012, Wynn Resorts' Gaming Compliance Committee received an independent report by Freeh, Sporkin & Sullivan, LLP (the "Freeh Report") detailing a pattern of misconduct by the Okada Parties. Based on the findings in the Freeh Report, the Board of Directors of Wynn Resorts determined that the Okada Parties were "unsuitable persons" under Article VII of the Company's articles of incorporation. On that same day, Wynn Resorts redeemed and canceled Aruze's 24,549,222 shares of Wynn Resorts' common stock, and, pursuant to its articles of incorporation, Wynn Resorts issued the Redemption Note to Aruze in redemption of the shares.

#### ***Redemption Action and Counterclaim***

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

On March 12, 2012, the Okada Parties filed an answer denying the claims and a counterclaim purporting to assert claims against the Company, certain individuals who were members of the Company's Board of Directors (other than Mr. Okada) and Wynn Resorts' former General Counsel, Kimmie Sinatra ("Ms. Sinatra"), related to the redemption, the determination of fair value of the redeemed shares and rescission of the Amended and Restated Stockholders Agreement, dated as of January 6, 2010, by and among Aruze, Mr. Wynn, and Elaine P. Wynn (the "Stockholders Agreement").

On March 8, 2018, the Company entered into the Settlement Agreement by and between the Company, Mr. Wynn, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, D. Boone Wayson, Allan Zeman, and Ms. Sinatra (collectively, the "Wynn Parties"), and Universal Entertainment Corp. and Aruze (collectively with Universal Entertainment Corp., the "Universal Parties"). The Settlement Agreement resolved legal proceedings pending between the settling parties in the Redemption Action as well as other claims. Pursuant to the Settlement Agreement, the Company paid the principal amount of the \$1.94 billion Redemption Note on March 30, 2018. On March 30, 2018, the Company also paid an additional \$463.6 million with respect to the Universal Parties' claims related to the allegedly below-market interest rate of the Redemption Note and stipulated to the release to Aruze of \$232.4 million in accrued interest held in escrow. The Company recorded the \$463.6 million as a litigation settlement expense on the Consolidated Statements of Income. Under the Settlement Agreement, the Wynn Parties and the Universal Parties mutually agreed to unconditionally release all claims against each other relating to or arising out of the Redemption Action, as well as any claims which relate to or arise out of any other litigation or claims in any other jurisdiction. As a result, the Universal Parties will not claim that Aruze remains a party to the Stockholders Agreement. The Universal Parties further released any claims against the Wynn Parties and their affiliates in any other jurisdiction, including but not limited to the proceeding pending in Macau against Wynn Resorts (Macau) S.A. and certain related individuals ("Macau Litigation"). As a result of the Settlement Agreement, the parties to the agreement dismissed all litigation between the Universal Parties and the Company and its then-directors and executives with respect to the redemption, including the Redemption Action and the Macau Litigation, but the Settlement Agreement did not release claims against any parties to such litigation who are not parties to the Settlement Agreement, including but not limited to Kazuo Okada and Elaine P. Wynn.

On March 12, 2018, the Company voluntarily dismissed its claim for breach of fiduciary duty against Kazuo Okada, which was the last and only remaining claim between Wynn Resorts, Kazuo Okada, and the Universal Parties in the Redemption Action.

On June 19, 2012, Elaine P. Wynn asserted in the Redemption Action a cross claim against Mr. Wynn and a counterclaim against Aruze seeking a declaration that, among other things, the Stockholders Agreement should be rescinded given the redemption of Aruze's shares. On March 28, 2016, Elaine P. Wynn filed an amended cross claim against Mr. Wynn, as well as Wynn Resorts and Wynn Resorts' former General Counsel (together with Mr. Wynn, the "Wynn Cross Defendants") as cross defendants, which repeated her earlier allegations and further alleged that Mr. Wynn engaged in acts of misconduct that, with the Wynn Cross

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

Defendants, resulted in Mr. Wynn allegedly breaching the Stockholders Agreement and violating alleged duties under the Stockholders Agreement by preventing Elaine P. Wynn from being nominated and elected to serve as one of Wynn Resorts' directors.

On March 14, 2018, Mr. Wynn and Elaine P. Wynn entered into a stipulation declaring the Stockholders Agreement invalid and unenforceable, and on April 16, 2018, the Company entered into a Settlement Agreement and Mutual Release by and between the Company, Mr. Wynn, Elaine P. Wynn, and the Company's former General Counsel, which, among other things, resolved and unconditionally released the parties from all claims and cross claims asserted among the parties in a legal proceeding involving the Stockholders Agreement. Neither the Company nor the Company's former General Counsel made any payment under the terms of such settlement agreement.

*Litigation Commenced by Kazuo Okada*

On July 3, 2015, WML announced that the Okada Parties filed a complaint in the Court of First Instance of Macau ("Macau Court") against Wynn Macau SA and certain individuals who are or were directors of Wynn Macau SA and or WML (collectively, the "Wynn Macau Parties"). The principal allegations in the lawsuit are that the redemption of the Okada Parties' shares in Wynn Resorts was improper and undervalued, that the previously disclosed payment by Wynn Macau SA to an unrelated third party in consideration of relinquishment by that party of certain rights in and to any future development on the land in Cotai where Wynn Palace is located was unlawful and that the previously disclosed donation by Wynn Resorts to the University of Macau Development Foundation was unlawful. The plaintiffs sought dissolution of Wynn Macau SA and compensatory damages. On July 11, 2017, the Macau Court dismissed all claims by the Okada Parties as unfounded, fined the Okada Parties, and ordered the Okada Parties to pay for court costs and the Wynn Macau Parties' attorney's fees. On or about October 16, 2017, the Okada Parties filed formal appeal papers in Macau, which Wynn Macau SA received on November 21, 2017. Wynn Macau SA filed its response on December 21, 2017. In March 2018, pursuant to the Settlement Agreement, the Universal Parties voluntarily withdrew from the Macau Litigation, leaving Mr. Okada as the sole claimant. On February 21, 2019, the Macau Appellate Panel rejected Mr. Okada's appeal.

*Derivative Litigation Related to Redemption Action*

Two state derivative actions were commenced against the Company and all members of its Board of Directors in the Eighth Judicial District Court of Clark County, Nevada. These state court actions brought by the following plaintiffs have been consolidated: (1) IBEW Local 98 Pension Fund and (2) Danny Hinson (collectively, the "Derivative Plaintiffs"). The Derivative Plaintiffs filed a consolidated complaint on July 20, 2012 asserting claims for (1) breach of fiduciary duty; (2) abuse of control; (3) gross mismanagement; and (4) unjust enrichment. The claims are against the Company and all Company directors during the applicable period, including Mr. Okada, as well as the Company's Chief Financial Officer who signed financial disclosures filed with the SEC during the applicable periods. The Derivative Plaintiffs claim that the individual defendants failed to disclose to the Company's stockholders the investigation into, and the dispute with director Okada as well as the alleged potential violations of the FCPA related to, the University of Macau Development Foundation donation. The Derivative Plaintiffs seek unspecified monetary damages (compensatory and punitive), disgorgement, reformation of corporate governance procedures, an order directing the Company to internally investigate the donation, as well as attorney's fees and costs. On June 18, 2014, the court entered a stipulation between the parties that provides for a stay of the action and directs the parties, within 45 days of the conclusion of the Redemption Action, to discuss how the derivative action should proceed and to file a joint report with the court. In May 2018, the parties (except Elaine P. Wynn) filed a joint report given the conclusion of the Redemption Action. On May 14, 2018, the court extended the stay of the case due to plaintiff Danny Hinson's claim that he intended to send a demand letter to the Company. On May 30, 2018, plaintiff Danny Hinson sent a demand letter to the Company requesting the Board to investigate the University of Macau Development Foundation donation, the removal of Mr. Okada from the Board and the terms of the Redemption Note. On January 3, 2019, the Company responded to Mr. Hinson, explaining that after investigating the allegations contained in his demand letter, which were previously investigated in response to a prior separate demand the Company received in December 2014, the Board determined that pursuing any such litigation would not be in the best interests of the Company or its shareholders.

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

*Massachusetts Gaming License Related Actions*

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

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

Suffolk Action:

On September 17, 2018, Sterling Suffolk Racecourse, LLC, owner of the property proposed for location of a casino by an unsuccessful bidder for the Greater Boston (Region) A gaming license filed a complaint in the United States District Court, District of Massachusetts, against Wynn Resorts, Wynn MA, certain current and former officers of Wynn Resorts, FBT Everett Realty, LLC, former owner of the land on which Encore Boston Harbor is located ("FBT") and Paul Lohnes, a member of FBT. The complaint alleges, among other things, the defendants engaged in conduct in violation of the Racketeer Influenced Corrupt Organizations Act ("RICO"), conspired to circumvent the application process for the Greater Boston (Region A) gaming license and violated Massachusetts law with respect to unfair methods of competition. The plaintiff seeks \$1 billion in compensatory damages and treble damages pursuant to applicable law. All defendants filed motions to dismiss the complaint, and several separately filed special motions to dismiss pursuant to the Massachusetts Anti-SLAPP statute. In response to the various dispositive motions, on February 15, 2019, the plaintiff filed an amended complaint that substantially repeats its earlier allegations and adds new allegations in support of its existing claims against the defendants.

The Company will vigorously defend against the claims asserted. This action is in preliminary stages and management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of this action or the range of reasonably possible loss, if any.

Revere Action:

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

On July 1, 2015, the MGC filed motions to dismiss Mohegan's and the City of Revere's complaints. On December 3, 2015, the court granted the motion to dismiss the claims asserted in the Revere Action. Also on December 3, 2015, the court granted the motion to dismiss three of the four counts asserted by Mohegan but denied the motion as to Mohegan's certiorari claim. The City of Revere and IBEW sought immediate appellate review of the dismissal of their claims and the MGC requested immediate appellate review of the court's denial of the MGC's motion to dismiss Mohegan's certiorari claim. All three petitions for interlocutory review were denied. The parties then appealed to the Massachusetts Supreme Judicial Court ("SJC"). On March 10, 2017, the SJC affirmed the trial court's dismissal of the City of Revere's claims and IBEW's claims. The SJC affirmed the court's dismissal of Mohegan's claims except for the certiorari claim, which the SJC remanded to the Suffolk Superior Court. Mohegan filed a motion for judgment on the pleadings on November 3, 2017, and oral argument will be re-scheduled from its originally scheduled date of April 5, 2018.

The SJC reversed the trial court's dismissal of the individual plaintiffs' open meeting law claim and remanded that claim to the Suffolk Superior Court. The parties are currently in the discovery phase. The MGC has filed a motion for summary judgment and oral argument is scheduled for March 29, 2019.

Wynn MA was not named in the Revere Action. The MGC retained private legal representation at its own nontaxpayer-funded expense.

*Actions Related to Mr. Wynn*

Investigations:

On January 26, 2018, the Company's Board of Directors formed a Special Committee comprised solely of independent directors to investigate allegations of inappropriate personal conduct by Mr. Wynn in the workplace. On February 12, 2018, the Special Committee amended and restated its charter to provide for a review of various governance issues regarding knowledge of the allegations and a comprehensive review of the Company's internal policies and procedures with the goal of employing best practices to maintain a safe and respectful workplace for all employees. On August 3, 2018, the Board received an oral final

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

presentation from the Special Committee. The Special Committee provided a written memorialization of its investigation to the Company's gaming regulators in Massachusetts and Nevada, which have been investigating these matters, including suitability with respect to the Company and its related licensees, and the Company is cooperating with these regulatory reviews.

On January 25, 2019, the Nevada Gaming Control Board completed its investigation which commenced in 2018 and filed a complaint against the Company and its indirect subsidiary, Wynn Las Vegas, LLC ("NGCB Respondents"). Also on January 25, 2019, the NGCB Respondents entered into a Stipulation for Settlement with the Nevada Gaming Control Board in connection with its complaint, under which, among other things, the NGCB Respondents agreed to pay a fine in an amount to be determined by the Nevada Gaming Commission, and the Nevada Gaming Control Board agreed not to seek to revoke or limit the NGCB Respondents' licenses, findings of suitability or any other approvals of the Nevada Gaming Commission. On February 26, 2019, the Nevada Gaming Commission approved the Stipulation for Settlement and fined the Company \$20.0 million, which is included in other accrued liabilities as of December 31, 2018 on the accompanying Consolidated Balance Sheet.

On January 31, 2018, the Investigations & Enforcement Bureau ("IEB") of the Massachusetts Gaming Commission announced it had commenced an investigation into the Company's ongoing suitability as a gaming licensee in that jurisdiction. The Company has fully cooperated with the IEB's investigation, and is awaiting the completion of the IEB's investigation and scheduling of an adjudicatory hearing before the Massachusetts Gaming Commission.

Derivative Litigation:

A number of stockholder derivative actions have been filed purportedly on behalf of the Company in state and federal court located in Clark County, Nevada against certain current and former members of the Company's Board of Directors and, in some cases, the Company's current and former officers. Each of the complaints alleges, among other things, breach of fiduciary duties in failing to detect, prevent and remedy alleged inappropriate personal conduct by Mr. Wynn in the workplace. On September 19, 2018, the Board established a Special Litigation Committee (the "SLC") to investigate the allegations in the State Derivative Case (as defined below).

The actions filed in the Eighth Judicial District Court of Clark County, Nevada have been consolidated as *In re Wynn Resorts, Ltd. Derivative Litigation* ("State Derivative Case"). In September 2018, the court denied the Company's motion to dismiss, and the Company filed a writ petition appealing the denial to the Nevada Supreme Court. In October 2018, the Nevada Supreme Court denied the Company's writ petition. On October 26, 2018, the SLC filed a motion to intervene and stay the case pending completion of its investigation. On November 14, 2018, the court granted the SLC's motion and stayed the case, with the exception of limited document requests, for a period of 120 days. The SLC's investigation is ongoing.

The actions filed in the United States District Court, District of Nevada have been consolidated as *In re Wynn Resorts, Ltd. Derivative Litigation* ("Federal Derivative Case"), which also claim corporate waste and violation of Section 14(a) of the Exchange Act. In June 2018, the Company filed a motion to dismiss and a motion to stay pending resolution of the Securities Action. The motions are fully-briefed and awaiting a decision from the court.

Each of the actions seeks to recover for the Company unspecified damages, including restitution and disgorgement of profits, and also seeks to recover attorneys' fees, costs and related expenses for the plaintiff. Additional demands have been made to the Company that it commence similar actions and additional lawsuits may be filed in the future.

Securities Action:

On February 20, 2018, a putative securities class action was filed against the Company and certain current and former officers of the Company in the United States District Court, Southern District of New York (which was subsequently transferred to the United States District Court, District of Nevada) by John V. Ferris and Joann M. Ferris on behalf of all persons who purchased the Company's common stock between February 28, 2014 and January 25, 2018. The complaint alleges, among other things, certain violations of federal securities laws and seeks to recover unspecified damages as well as attorneys' fees, costs and related expenses for the plaintiffs. The Company is awaiting the lead plaintiffs' filing of an amended complaint.

The defendants in these actions will vigorously defend against the claims pleaded against them. These actions are in preliminary stages and management has determined that based on proceedings to date, it is currently unable to determine the probability of the outcome of these actions or the range of reasonably possible loss, if any.

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

**Note 16 - Segment Information**

The Company reviews the results of operations for each of its operating segments. Wynn Macau and Encore, an expansion at Wynn Macau, are managed as a single integrated resort and have been aggregated as one reportable segment ("Wynn Macau"). Wynn Palace is presented as a separate reportable segment and is combined with Wynn Macau for geographical presentation. Wynn Las Vegas, Encore, an expansion at Wynn Las Vegas, and the Retail Joint Venture are managed as a single integrated resort and have been aggregated as one reportable segment ("Las Vegas Operations"). The Company identifies each resort as a reportable segment considering operations within each resort have similar economic characteristics, type of customers, types of services and products, the regulatory environment of the operations and the Company's organizational and management reporting structure.

The Company also reviews construction and development activities for each of its projects under development, in addition to its reportable segments. The Company separately identifies capital expenditures and assets for its Encore Boston Harbor development project. Other Macau primarily represents the Company's Macau holding company.



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

The following tables present the Company's segment information (in thousands):

	Years Ended December 31,		
	2018	2017	2016
<b>Operating revenues</b>			
Macau Operations:			
Wynn Palace	\$ 2,757,566	\$ 2,030,287	\$ 555,574
Wynn Macau	2,294,525	2,336,910	2,150,721
<b>Total Macau Operations</b>	<b>5,052,091</b>	<b>4,367,197</b>	<b>2,706,295</b>
Las Vegas Operations	1,665,569	1,702,963	1,639,502
<b>Total</b>	<b>\$ 6,717,660</b>	<b>\$ 6,070,160</b>	<b>\$ 4,345,797</b>
<b>Adjusted Property EBITDA (1)</b>			
Macau Operations:			
Wynn Palace	\$ 843,902	\$ 527,583	\$ 103,036
Wynn Macau	733,238	760,752	681,509
<b>Total Macau Operations</b>	<b>1,577,140</b>	<b>1,288,335</b>	<b>784,545</b>
Las Vegas Operations	467,273	522,397	474,782
<b>Total</b>	<b>2,044,413</b>	<b>1,810,732</b>	<b>1,259,327</b>
<b>Other operating expenses</b>			
Litigation settlement	463,557	—	—
Pre-opening	53,490	26,692	154,717
Depreciation and amortization	550,596	552,368	404,730
Property charges and other	60,256	29,576	54,822
Corporate expenses and other	144,479	102,560	80,178
Stock-based compensation (2)	36,491	43,971	43,218
<b>Total other operating expenses</b>	<b>1,308,869</b>	<b>755,167</b>	<b>737,665</b>
<b>Operating income</b>	<b>735,544</b>	<b>1,055,565</b>	<b>521,662</b>
<b>Other non-operating income and expenses</b>			
Interest income	29,866	31,193	13,536
Interest expense, net of amounts capitalized	(381,849)	(388,664)	(289,365)
Change in derivatives fair value	(4,520)	(1,056)	433
Change in Redemption Note fair value	(69,331)	(59,700)	65,043
Gain (loss) on extinguishment of debt	104	(55,360)	—
Other	(4,074)	(21,709)	(712)
<b>Total other non-operating income and expenses</b>	<b>(429,804)</b>	<b>(495,296)</b>	<b>(211,065)</b>
<b>Income before income taxes</b>	<b>305,740</b>	<b>560,269</b>	<b>310,597</b>
Benefit (provision) for income taxes	497,344	328,985	(8,128)
<b>Net income</b>	<b>803,084</b>	<b>889,254</b>	<b>302,469</b>
Net income attributable to noncontrolling interests	(230,654)	(142,073)	(60,494)
<b>Net income attributable to Wynn Resorts, Limited</b>	<b>\$ 572,430</b>	<b>\$ 747,181</b>	<b>\$ 241,975</b>

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

- (1) "Adjusted Property EBITDA" is net income before interest, income taxes, depreciation and amortization, litigation settlement expense, pre-opening expenses, property charges and other, management and license fees, corporate expenses and other (including intercompany golf course and water rights leases), stock-based compensation, gain (loss) on extinguishment of debt, change in derivatives fair value, change in Redemption Note fair value and other non-operating income and expenses. Adjusted Property EBITDA is presented exclusively as a supplemental disclosure because management believes that it is widely used to measure the performance, and as a basis for valuation, of gaming companies. Management uses Adjusted Property EBITDA as a measure of the operating performance of its segments and to compare the operating performance of its properties with those of its competitors, as well as a basis for determining certain incentive compensation. The Company also presents Adjusted Property EBITDA because it is used by some investors as a way to measure a company's ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplement to GAAP. In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including us, have historically excluded from their EBITDA calculations pre-opening expenses, property charges, corporate expenses and stock-based compensation, that do not relate to the management of specific casino properties. However, Adjusted Property EBITDA should not be considered as an alternative to operating income as an indicator of the Company's performance, as an alternative to cash flows from operating activities as a measure of liquidity, or as an alternative to any other measure determined in accordance with GAAP. Unlike net income, Adjusted Property EBITDA does not include depreciation or interest expense and therefore does not reflect current or future capital expenditures or the cost of capital. The Company has significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments, income taxes and other non-recurring charges, which are not reflected in Adjusted Property EBITDA. Also, Wynn Resorts' calculation of Adjusted Property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.
- (2) Excludes \$0.7 million and \$0.5 million included in pre-opening expenses, respectively, for the year ended December 31, 2018 and 2016. Pre-opening expenses did not include any stock-based compensation during 2017. Excludes a credit of \$2.2 million included in property charges and other expenses in 2018.

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

	Years ended December 31,		
	2018	2017	2016
<b>Capital expenditures</b>			
Macau Operations:			
Wynn Palace	\$ 89,617	\$ 107,405	\$ 838,271
Wynn Macau	62,542	43,510	43,548
<b>Total Macau Operations</b>	<b>152,159</b>	<b>150,915</b>	<b>881,819</b>
Las Vegas Operations	73,029	139,893	106,373
Encore Boston Harbor	791,250	572,825	212,197
Corporate and other	459,534	71,841	25,554
	<b>\$ 1,475,972</b>	<b>\$ 935,474</b>	<b>\$ 1,225,943</b>

	December 31,		
	2018	2017	2016
<b>Assets</b>			
Macau Operations:			
Wynn Palace	\$ 3,858,904	\$ 4,017,494	\$ 4,317,458
Wynn Macau	1,903,921	1,271,544	1,161,670
Other Macau	68,487	174,769	28,927
<b>Total Macau Operations</b>	<b>5,831,312</b>	<b>5,463,807</b>	<b>5,508,055</b>
Las Vegas Operations	2,792,508	3,266,390	3,275,780
Encore Boston Harbor	1,865,286	1,060,530	419,001
Corporate and other	2,727,163	2,891,012	2,750,721
	<b>\$ 13,216,269</b>	<b>\$ 12,681,739</b>	<b>\$ 11,953,557</b>

	December 31,		
	2018	2017	2016
<b>Long-lived assets</b>			
Macau	\$ 4,387,051	\$ 4,613,950	\$ 4,973,854
United States	5,166,537	4,083,555	3,442,842
	<b>\$ 9,553,588</b>	<b>\$ 8,697,505</b>	<b>\$ 8,416,696</b>

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

**Quarterly Consolidated Financial Information (Unaudited)**

The following tables (in thousands, except per share data) present selected quarterly financial information for 2018 and 2017, as previously reported. Because income (loss) per share amounts are calculated using the weighted average number of common and dilutive common equivalent shares outstanding during each quarter, the sum of the per share amounts for the four quarters may not equal the total income per share amounts for the year.

	Year Ended December 31, 2018				
	First (1)	Second	Third	Fourth (2)	Year
Operating revenues	\$ 1,715,578	\$ 1,605,424	\$ 1,709,072	\$ 1,687,586	\$ 6,717,660
Operating income (loss)	\$ (81,294)	\$ 279,572	\$ 290,983	\$ 246,283	\$ 735,544
Net income (loss)	\$ (137,478)	\$ 205,280	\$ 219,772	\$ 515,510	\$ 803,084
Net income (loss) attributable to Wynn Resorts, Limited	\$ (204,307)	\$ 155,756	\$ 156,115	\$ 464,866	\$ 572,430
Basic income (loss) per share	\$ (1.99)	\$ 1.44	\$ 1.44	\$ 4.32	\$ 5.37
Diluted income (loss) per share	\$ (1.99)	\$ 1.44	\$ 1.44	\$ 4.31	\$ 5.35

	Year Ended December 31, 2017				
	First (as adjusted)	Second (as adjusted)	Third (as adjusted)	Fourth (3) (as adjusted)	Year (as adjusted)
Operating revenues	\$ 1,423,757	\$ 1,472,892	\$ 1,551,347	\$ 1,622,164	\$ 6,070,160
Operating income	\$ 249,930	\$ 246,889	\$ 257,327	\$ 301,419	\$ 1,055,565
Net income	\$ 132,525	\$ 106,796	\$ 105,969	\$ 543,964	\$ 889,254
Net income attributable to Wynn Resorts, Limited	\$ 100,816	\$ 74,916	\$ 79,767	\$ 491,682	\$ 747,181
Basic income per share	\$ 0.99	\$ 0.73	\$ 0.78	\$ 4.80	\$ 7.32
Diluted income per share	\$ 0.99	\$ 0.73	\$ 0.78	\$ 4.77	\$ 7.28

(1) During the first quarter of 2018, the Company incurred a litigation settlement expense totaling \$463.6 million. See Item 8—"Financial Statements and Supplementary Data," Note 15, "Commitments and Contingencies."

(2) During the fourth quarter of 2018, the Company finalized its analysis of U.S. tax reform and recorded an income tax benefit of \$390.9 million, incremental to the provisional income tax benefit recorded during the fourth quarter of 2017. See Item 8—"Financial Statements and Supplementary Data," Note 12, "Income Taxes."

(3) During the fourth quarter of 2017, the Company recorded a provisional income tax benefit of \$339.9 million related to the enactment of U.S. tax reform. See Item 8—"Financial Statements and Supplementary Data," Note 12, "Income Taxes."

## **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

## **Item 9A. Controls and Procedures**

### **Disclosure Controls and Procedures**

The Company's management, with the participation of the Company's Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), 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 annual report. Based on such evaluation, the CEO and CFO have concluded that, as of December 31, 2018, the Company's disclosure controls and procedures are effective as of the end of the period covered by this annual report.

### **Management's Report on Internal Control Over Financial Reporting**

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2018. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in *Internal Control-Integrated Framework* (2013). Based on our assessment, management believes that, as of December 31, 2018, our internal control over financial reporting was effective based on those criteria.

The effectiveness of our internal control over financial reporting as of December 31, 2018 has been audited by Ernst & Young, LLP, an independent registered public accounting firm. Their report appears under "Report of Independent Registered Public Accounting Firm on Internal Control Over Financial Reporting."

### **Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting during the quarter ended December 31, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **Item 9B. Other Information**

None.

**PART III**

**Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this item will be contained in the Registrant's definitive Proxy Statement for its 2019 Annual Stockholder Meeting to be filed with the Securities and Exchange Commission within 120 days after December 31, 2018 (the "2019 Proxy Statement") under the captions "Election of Directors," "Executive Officers," "Board Governance" and "Section 16(a) Beneficial Ownership Reporting Compliance," and is incorporated herein by reference.

As part of the Company's commitment to integrity, the Board of Directors has adopted a Code of Business Conduct and Ethics applicable to all directors, officers and employees of the Company and its subsidiaries. This Code is periodically reviewed by the Board of Directors. In the event we determine to amend or waive certain provisions of this code of ethics, we intend to disclose such amendments or waivers on our website at <https://wynnresortslimited.gcs-web.com/corporate-governance/code-business-conduct-and-ethics> within four business days following such amendment or waiver or as otherwise required by the Nasdaq listing standards.

**Item 11. Executive Compensation**

The information called for by this item is incorporated herein by reference to our definitive 2019 Proxy Statement under the captions "Board Compensation," "Compensation Discussion and Analysis" and "Executive Compensation Tables", which will be filed with the SEC.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

**Securities Authorized for Issuance Under Equity Compensation Plans**

The following table summarizes compensation plans under which our equity securities are authorized for issuance, aggregated as to: (i) all compensation plans previously approved by stockholders, and (ii) all compensation plans not previously approved by stockholders. These plans are described in Item 8—"Financial Statements and Supplementary Data" of Part II (see Notes to Consolidated Financial Statements).

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	345,790	\$ 60.99	3,041,051
Equity compensation plans not approved by security holders	—	—	—
<b>Total</b>	<b>345,790</b>	<b>\$ 60.99</b>	<b>3,041,051</b>

Certain information required by this item will be contained in the 2019 Proxy Statement under the caption "Certain Beneficial Ownership and Management," and is incorporated herein by reference.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information called for by this item is incorporated herein by reference to our definitive 2019 Proxy Statement under the caption "Certain Relationships and Related Transactions," and "Board Governance," which will be filed with the SEC.

**Item 14. Principal Accountant Fees and Services**

The information called for by this item is incorporated herein by reference to our definitive 2019 Proxy Statement under the caption "Ratification of Appointment of Independent Auditors," which will be filed with the SEC.

**PART IV**

**Item 15. Exhibits, Financial Statement Schedules**

(a)1. The following consolidated financial statements of the Company are filed as part of this report under Item 8—"Financial Statements and Supplementary Data."

- Reports of Independent Registered Public Accounting Firm
- Consolidated Balance Sheets as of December 31, 2018 and 2017
- Consolidated Statements of Income for the years ended December 31, 2018, 2017 and 2016
- Consolidated Statements of Comprehensive Income for the years ended December 31, 2018, 2017 and 2016
- Consolidated Statements of Stockholders' Equity for the years ended December 31, 2018, 2017 and 2016
- Consolidated Statements of Cash Flows for the years ended December 31, 2018, 2017 and 2016
- Notes to Consolidated Financial Statements
- Quarterly Consolidated Financial Information (Unaudited)

(a)2. Financial Statement Schedule filed in Part IV of this report:

- Schedule II—Valuation and Qualifying Accounts

We have omitted all other financial statement schedules because they are not required or are not applicable, or the required information is shown in the consolidated financial statements or notes to the consolidated financial statements.

**SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS**  
(in thousands)

Description	Balance at Beginning of Year	Provision (Benefit) for Doubtful Accounts	Write-offs, Net of Recoveries	Balance at End of Year
<b>Allowance for doubtful accounts:</b>				
2018	\$ 30,600	6,527	(4,433)	\$ 32,694
2017	\$ 54,742	(6,711)	(17,431)	\$ 30,600
2016	\$ 67,057	8,203	(20,518)	\$ 54,742
Description	Balance at Beginning of Year	Additions	Deductions	Balance at End of Year
<b>Deferred income tax asset valuation allowance:</b>				
2018	\$ 3,390,467	201,282	(947,850)	\$ 2,643,899
2017	\$ 3,286,723	112,543	(8,799)	\$ 3,390,467
2016	\$ 3,330,878	32,130	(76,285)	\$ 3,286,723

**(a)3. Exhibits**

Exhibits that are not filed herewith have been previously filed with the SEC and are incorporated herein by reference.

Exhibit No.	Description	Incorporated by Reference	
		Form	Filing Date
3.1	<a href="#">Third Amended and Restated Articles of Incorporation of the Registrant.</a>	10-Q	5/8/2015
3.2	<a href="#">Eighth Amended and Restated Bylaws of the Registrant.</a>	10-Q	11/6/2015
4.1	<a href="#">Specimen certificate for shares of Common Stock, \$0.01 par value per share of the Registrant.</a>	S-1	10/7/2002
4.2	<a href="#">Indenture, dated as of May 22, 2013, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors named therein and U.S. Bank National Association, as trustee.</a>	8-K	5/22/2013
4.3	<a href="#">Supplemental Indenture, dated as of February 18, 2015, to Indenture, dated as of May 22, 2013, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors named therein and U.S. Bank National Association, as trustee.</a>	10-K	3/2/2015
4.4	<a href="#">Second Supplemental Indenture, dated as of March 20, 2018, to Indenture, dated as of May 22, 2013, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the guarantors party thereto and U.S. Bank National Association.</a>	8-K	3/21/2018
4.5	<a href="#">Indenture, dated as of February 18, 2015, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors named therein and U.S. Bank National Association, as trustee.</a>	8-K	2/18/2015
4.6	<a href="#">Indenture, dated as of May 11, 2017, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors named therein and U.S. Bank National Association, as trustee.</a>	8-K	5/11/2017
4.7	<a href="#">Indenture, dated as of September 20, 2017, by and between Wynn Macau, Limited and Deutsche Bank Trust Company Americas, as trustee, relating to senior notes due 2024.</a>	10-Q	11/8/2017
4.8	<a href="#">Indenture, dated as of September 20, 2017, by and between Wynn Macau, Limited and Deutsche Bank Trust Company Americas, as trustee, relating to senior notes due 2027.</a>	10-Q	11/8/2017
4.9	<a href="#">Registration Rights Agreement, dated March 20, 2018, by and between Wynn Resorts, Limited and the Wynn Family Limited Partnership.</a>	8-K	3/23/2018
4.10	<a href="#">Consent and Waiver to the Registration Rights Agreement, dated March 22, 2018, by and between Wynn Resorts, Limited and the Wynn Family Limited Partnership.</a>	8-K	3/23/2018
10.1.0	<a href="#">Credit Agreement, dated as of October 30, 2018, by and among Wynn Resorts, Limited, as borrower, Wynn Group Asia, Inc. and Wynn Resorts Holdings, LLC, as guarantors, Deutsche Bank AG New York Branch, as administrative agent and as collateral agent, and the lenders party thereto.</a>	10-Q	11/7/2018
10.2.1	<a href="#">Common Terms Agreement Sixth Amendment Agreement, dated December 21, 2018, between, among others, Wynn Resorts (Macau) S.A. as the company and Bank of China Limited, Macau Branch as security agent.</a>	10-K	*
10.2.2	<a href="#">Term Facility Agreement Fifth Amendment Agreement, dated December 21, 2018, by and among Wynn Resorts (Macau) S.A. and Bank of China Limited, Macau Branch as Hotel Facility Agent and Hotel Facility Lender.</a>	10-K	*
10.2.3	<a href="#">Revolving Credit Facility Agreement Second Amendment Agreement, dated as of December 21, 2018, by and among Wynn Resorts (Macau) S.A. and Bank of China Limited, Macau Branch as Revolving Credit Facility Agent and Revolving Credit Facility Lender.</a>	10-K	*
10.2.4	<a href="#">Common Terms Agreement Fifth Amendment Agreement, dated September 30, 2015, between, among others, Wynn Resorts (Macau) S.A. as the company and Bank of China Limited, Macau Branch as security agent.</a>	10-Q	11/6/2015
10.2.5	<a href="#">Term Facility Agreement Fourth Amendment Agreement, dated September 30, 2015, by and among Wynn Resorts (Macau) S.A. and Bank of China Limited, Macau Branch as Hotel Facility Agent and Hotel Facility Lender.</a>	10-Q	11/6/2015



10.2.6	<a href="#"><u>Revolving Credit Facility Agreement Amendment Agreement, dated as of September 30, 2015, by and among Wynn Resorts (Macau) S.A. and Bank of China Limited, Macau Branch as Revolving Credit Facility Agent and Revolving Credit Facility Lender.</u></a>	10-Q	11/6/2015
10.2.7	<a href="#"><u>Debenture, dated as of September 14, 2004, between Wynn Resorts (Macau), S.A. and Société Générale, Hong Kong Branch as the Security Agent.</u></a>	10-Q	11/4/2004
10.3.1	<a href="#"><u>Credit Agreement, dated as of November 20, 2014, by and among Wynn America, LLC, as borrower, Wynn Las Vegas Holdings, LLC, Everett Property, LLC and Wynn MA, LLC, as guarantors, Deutsche Bank AG New York Branch, as administrative agent and collateral agent, Deutsche Bank Securities Inc., Merrill Lynch, Pierce, Fenner &amp; Smith Incorporated, Credit Agricole Corporate and Investment Bank, Fifth Third Bank, SunTrust Robinson Humphrey, Inc., The Bank of Nova Scotia, BNP Paribas Securities Corp., Sumitomo Mitsui Banking Corporation and UBS Securities LLC, as joint lead arrangers and joint bookrunners, Morgan Stanley Senior Funding, Inc. and Bank of China, Los Angeles Branch, as arrangers, and Merrill Lynch, Pierce, Fenner &amp; Smith Incorporated, as documentation agent, and the other lenders party thereto.</u></a>	10-K	3/2/2015
10.3.2	<a href="#"><u>First Amendment to Credit Agreement, dated as of November 5, 2015, by and among Wynn America, LLC, as borrower, the Guarantors named therein, Deutsche Bank AG New York Branch, as administrative agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn America, LLC's Credit Agreement, dated as of November 20, 2014.</u></a>	10-Q	11/6/2015
10.3.3	<a href="#"><u>Second Amendment to Credit Agreement, dated as of December 21, 2015, by and among Wynn America, LLC, as borrower, the Guarantors named therein, Deutsche Bank AG New York Branch, as administrative agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn America, LLC's Credit Agreement, dated as of November 20, 2014.</u></a>	10-K	2/29/2016
10.3.4	<a href="#"><u>Third Amendment to Credit Agreement, dated as of June 21, 2016, by and among Wynn America, LLC, as borrower, the Guarantors named therein, Deutsche Bank AG New York Branch, as administrative agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn America, LLC's Credit Agreement, dated as of November 20, 2014.</u></a>	10-Q	8/9/2016
10.3.5	<a href="#"><u>Fourth Amendment to Credit Agreement, dated as of July 1, 2016, by and among Wynn America, LLC, as borrower, the Guarantors named therein, Deutsche Bank AG New York Branch, as administrative agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn America, LLC's Credit Agreement, dated as of November 20, 2014.</u></a>	10-Q	8/9/2016
10.3.6	<a href="#"><u>Fifth Amendment to Credit Agreement, dated as of April 24, 2017, by and among Wynn America, LLC as borrower, the Guarantors named therein, Deutsche Bank AG New York Branch, as administrative agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn America, LLC's Credit Agreement, dated as of November 20, 2014.</u></a>	10-Q	5/4/2017
10.3.7	<a href="#"><u>Joinder Agreement, dated as of August 9, 2017, by Wynn Las Vegas, LLC and Wynn Sunrise, LLC as guarantors, to the Credit Agreement, dated as of November 20, 2014, by and among Wynn America, LLC, as borrower, the Guarantors named therein, Deutsche Bank AG New York Branch, as administrative agent on behalf of the several banks and other financial institutions or entities from time to time.</u></a>	10-Q	11/8/2017
10.3.8	<a href="#"><u>Security Agreement, dated as of November 20, 2014, by and among Wynn America, LLC, Wynn Las Vegas Holdings, LLC, Everett Property, LLC and Wynn MA, LLC, as pledgors, and Deutsche Bank AG New York Branch, as collateral agent.</u></a>	10-K	3/2/2015
10.3.9	<a href="#"><u>Joinder Agreement, dated as of August 9, 2017, by Wynn Las Vegas, LLC and Wynn Sunrise, LLC, as pledgors, and Deutsche Bank AG New York Branch, as collateral agent, to the Security Agreement, dated as of November 20, 2014.</u></a>	10-Q	11/8/2017
10.3.10	<a href="#"><u>Completion Guaranty, dated as of November 20, 2014, by and between Wynn Resorts, Limited, and Deutsche Bank AG New York Branch, as administrative agent.</u></a>	10-K	3/2/2015
10.4.0	<a href="#"><u>Term Loan Agreement, dated as of July 25, 2018, by and among Wynn/CA Plaza Property Owner, LLC and Wynn/CA Property Owner, LLC, as borrowers, United Overseas Bank Limited, New York Agency, as administrative agent and lead arranger, Fifth Third Bank, as joint lead arranger, Sumitomo Mitsui Banking Corporation, as joint lead arranger, Credit Agricole Corporate and Investment Bank, as managing agent, and the lenders party thereto.</u></a>	8-K	7/30/2018

10.5.0	<a href="#">Credit Agreement, dated March 28, 2018, by and among Wynn Resorts, Limited, as borrower, Wynn Group Asia, Inc. and Wynn Resorts Holdings, LLC, as guarantors, Deutsche Bank AG Cayman Islands Branch, as administrative agent, Deutsche Bank Securities Inc., as Lead Arranger and Bookrunner, and the lenders party thereto.</a>	8-K	4/3/2018
10.6.0	<a href="#">Promissory Note, dated as of February 18, 2012, made by Wynn Resorts, Limited to Aruze USA, Inc.</a>	8-K	2/21/2012
10.7.1	<a href="#">Concession Contract for the Operation of Games of Chance or Other Games in Casinos in the Macau Special Administrative Region, dated June 24, 2002, between the Macau Special Administrative Region and Wynn Resorts (Macau), S.A. (English translation of Portuguese version of Concession Agreement).</a>	S-1	8/20/2002
10.7.2	<a href="#">Concession Contract for Operating Casino Gaming or Other Forms of Gaming in the Macao Special Administrative Region, dated June 24, 2002, between the Macau Special Administrative Region and Wynn Resorts (Macau), S.A. (English translation of Chinese version of Concession Agreement).</a>	S-1	9/18/2002
10.7.3	<a href="#">Unofficial English translation of Land Concession Contract between the Macau Special Administrative Region and Wynn Resorts (Macau), S.A.</a>	10-Q	8/3/2004
10.7.4	<a href="#">Land Concession Contract, published on May 2, 2012, by and among Palo Real Estate Company Limited, Wynn Resorts (Macau), S.A. and the Macau Special Administrative Region of the People's Republic of China (translated to English from traditional Chinese and Portuguese).</a>	8-K	5/2/2012
10.7.5	<a href="#">Bank Guarantee Reimbursement Agreement, dated as of September 14, 2004, between Wynn Resorts (Macau), S.A. and Banco Nacional Ultramarino.</a>	10-Q	11/4/2004
10.8.1	<a href="#">Corporate Allocation Agreement, dated as of September 19, 2009, by Wynn Macau, Limited and Wynn Resorts, Limited.</a>	10-K	3/2/2015
10.8.2	<a href="#">Amended and Restated Corporate Allocation Agreement, dated as of September 19, 2009, by Wynn Resorts (Macau), S.A., and Wynn Resorts, Limited.</a>	10-K	3/2/2015
10.8.3	<a href="#">Management Fee and Corporate Allocation Agreement, dated as of February 26, 2015, by and between Wynn Las Vegas, LLC and Wynn Resorts, Limited.</a>	10-K	3/2/2015
10.8.4	<a href="#">Management Fee and Corporate Allocation Agreement, dated as of November 20, 2014, by and among Wynn MA, LLC and Wynn Resorts, Limited.</a>	10-K	2/29/2016
10.9.1	<a href="#">Intellectual Property License Agreement, dated as of September 19, 2009, by and among Wynn Resorts Holdings, LLC, Wynn Resorts, Limited and Wynn Macau, Limited.</a>	10-K	3/2/2015
10.9.2	<a href="#">Amended and Restated Intellectual Property License Agreement, dated as of September 19, 2009, by and among Wynn Resorts Holdings, LLC, Wynn Resorts, Limited and Wynn Resorts (Macau), S.A.</a>	10-K	3/2/2015
10.9.3	<a href="#">2015 Intellectual Property License Agreement, dated as of February 26, 2015, by and between Wynn Resorts Holdings, LLC, Wynn Resorts, Limited and Wynn Las Vegas, LLC.</a>	10-Q	5/8/2015
10.9.4	<a href="#">2014 Intellectual Property License Agreement, dated as of November 20, 2014, by and between Wynn Resorts Holdings, LLC, Wynn Resorts, Limited and Wynn MA, LLC.</a>	10-K	2/29/2016
10.9.5	<a href="#">Surname Rights Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.</a>	10-Q	11/4/2004
10.9.6	<a href="#">Rights of Publicity License, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts Holdings, LLC.</a>	10-Q	11/4/2004
+10.10.1.0	<a href="#">Amended and Restated Employment Agreement, dated as of February 28, 2017, by and between Wynn Resorts, Limited and Matt Maddox.</a>	10-Q	5/4/2017
+10.10.1.1	<a href="#">Amended and Restated Employment Agreement, dated as of April 17, 2018, by and between Wynn Resorts, Limited and Matt Maddox.</a>	10-Q	5/9/2018
+10.10.2.0	<a href="#">Employment Agreement, dated as of January 27, 2017 by and between Wynn Resorts, Limited and Craig Billings.</a>	10-Q	5/4/2017
+10.10.2.1	<a href="#">First Amendment to Employment Agreement, dated as of April 17, 2018, by and between Wynn Resorts, Limited and Craig S. Billings.</a>	10-Q	5/9/2018
+10.10.3.0	<a href="#">Employment Agreement, dated as of August 2, 2018, by and between Wynn Resorts, Limited and Ellen Whittemore.</a>	10-Q	8/8/2018

+10.10.4.0	<a href="#">Employment Agreement, dated as of October 4, 2002, by and between Wynn Resorts, Limited and Stephen A. Wynn.</a>	S-1	10/7/2002
+10.10.4.1	<a href="#">First Amendment to Employment Agreement, dated as of August 6, 2004, by and between Stephen A. Wynn and Wynn Resorts, Limited.</a>	10-Q	11/4/2004
+10.10.4.2	<a href="#">Second Amendment to Employment Agreement between Wynn Resorts, Limited and Stephen A. Wynn dated January 31, 2007.</a>	10-K	3/1/2007
+10.10.4.3	<a href="#">Third Amendment to Employment Agreement, dated as of September 11, 2008, between Wynn Resorts, Limited and Stephen A. Wynn.</a>	8-K	9/15/2008
+10.10.4.4	<a href="#">Fourth Amendment to Employment Agreement, dated as of December 31, 2008, between Wynn Resorts, Limited and Stephen A. Wynn.</a>	10-K	3/2/2009
+10.10.4.5	<a href="#">Amendment to Employment Agreement, dated as of February 16, 2009, by and between Wynn Resorts, Limited and Stephen A. Wynn.</a>	10-Q	5/11/2009
+10.10.4.6	<a href="#">Sixth Amendment to Employment Agreement, dated as of February 24, 2011, between Wynn Resorts, Limited and Stephen A. Wynn.</a>	8-K	2/28/2011
+10.10.4.7	<a href="#">Seventh Amendment to Employment Agreement, dated as of January 15, 2015, between Wynn Resorts, Limited and Stephen A. Wynn.</a>	10-K	3/2/2015
+10.10.4.8	<a href="#">Separation Agreement, dated February 15, 2018, by and between Wynn Resorts, Limited, Stephen A. Wynn, and Wynn Resorts Holdings, LLC.</a>	8-K	2/16/2018
+10.10.5.0	<a href="#">Amended and Restated Employment Agreement, dated as of February 28, 2017, by and between Wynn Resorts, Limited and Kim Sinatra.</a>	10-Q	5/4/2017
+10.10.5.1	<a href="#">First Amendment to the Amended and Restated Employment Agreement, dated as of April 17, 2018, by and between Wynn Resorts, Limited and Kim Sinatra.</a>	10-Q	5/9/2018
+10.10.5.2	<a href="#">Agreement, dated as of August 3, 2018, by and between Wynn Resorts, Limited and Kim Sinatra.</a>	10-Q	8/8/2018
+10.11.0	<a href="#">Amended and Restated 2014 Omnibus Incentive Plan, dated January 1, 2017.</a>	10-K	2/24/2017
10.12.1	<a href="#">Amended and Restated Stockholders Agreement, dated January 6, 2010, by and among Stephen A. Wynn, Elaine P. Wynn and Aruze USA, Inc.</a>	8-K	1/6/2010
10.12.2	<a href="#">Waiver and Consent, dated November 24, 2010, by and among Aruze USA, Inc., Stephen A. Wynn and Elaine P. Wynn.</a>	8-K	11/26/2010
10.12.3	<a href="#">Waiver and Consent, dated December 15, 2010, by and among Aruze USA, Inc., Stephen A. Wynn and Elaine P. Wynn.</a>	8-K	12/15/2010
10.12.4	<a href="#">Settlement Agreement and Mutual Release, dated March 8, 2018, by and between Wynn Resorts, Limited, Stephen A. Wynn, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, D. Boone Wayson, Allan Zeman, Kimmarie Sinatra, Universal Entertainment Corp., and Aruze USA, Inc.</a>	8-K	3/9/2018
10.12.5	<a href="#">Settlement Agreement and Mutual Release, dated April 16, 2018, by and between Wynn Resorts, Limited, Stephen A. Wynn, Elaine P. Wynn and Kimmarie Sinatra.</a>	8-K	4/18/2018
10.12.6	<a href="#">Cooperation Agreement, dated as of August 3, 2018, by and between Wynn Resorts, Limited and Elaine P. Wynn.</a>	8-K	8/6/2018
10.13	<a href="#">Second Amended and Restated Shareholders' Agreement, dated as of January 14, 2016, by and among Wynn Resorts (Macau), Ltd., Wynn Resorts International, Ltd., Chen Chi Ling Linda and Wynn Resorts (Macau), S.A.</a>	10-K	2/28/2018
10.14.1	<a href="#">Third Amended and Restated Agreement of Lease, dated as of December 1, 2016, by and between Wynn Las Vegas, LLC and Stephen A. Wynn.</a>	10-K	2/24/2017
10.14.2	<a href="#">Sixth Amended and Restated Art Rental and Licensing Agreement, dated as of July 1, 2012, between Stephen A. Wynn, as lessor, and Wynn Las Vegas, LLC, as lessee.</a>	10-Q	11/9/2012
10.14.3	<a href="#">Aircraft Time Sharing Agreement, dated as of January 15, 2015, by and between Wynn Resorts, Limited and Stephen A. Wynn.</a>	10-K	3/2/2015
10.14.4	<a href="#">Aircraft Purchase Option Agreement, dated as of January 3, 2013, between Wynn Resorts, Limited and Stephen A. Wynn.</a>	10-K	3/1/2013
10.15	<a href="#">Form of Indemnity Agreement.</a>	S-1	9/18/2002
21.1	<a href="#">Subsidiaries of the Registrant.</a>	10-K	*
23.1	<a href="#">Consent of Ernst &amp; Young LLP, Independent Registered Accounting Firm.</a>	10-K	*

31.1	<a href="#">Certification of Chief Executive Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).</a>	10-K	*
31.2	<a href="#">Certification of Chief Financial Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).</a>	10-K	*
32	<a href="#">Certification of CEO and CFO pursuant to 18 U.S.C. Section 1350.</a>	10-K	*
101	The following financial information from the Company's Annual Report on Form 10-K for the year ended December 31, 2018, filed with the SEC on February 28, 2019 formatted in Extensible Business Reporting Language (XBRL): (i) the Consolidated Balance Sheets as of December 31, 2018 and December 31 2017, (ii) the Consolidated Statements of Income for the years ended December 31, 2018, 2017 and 2016, (iii) the Consolidated Statements of Cash Flows for the years ended December 31, 2018, 2017 and 2016, (iv) the Consolidated Statements of Stockholders' Equity as of December 31, 2018, 2017 and 2016, (v) the Consolidated Statements of Comprehensive Income for the years ended December 31, 2018, 2017 and 2016 and (vi) Notes to Consolidated Financial Statements.	10-K	*

\* Filed herein

+ Denotes management contract or compensatory plan or arrangement.

**Item 16. Form 10-K Summary**

Not applicable.

**SIGNATURES**

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

**WYNN RESORTS, LIMITED**

Dated: February 28, 2019

By:           /s/ Matt Maddox          

Matt Maddox

Director, Chief Executive Officer and President (Principal Executive Officer)

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>          /s/ Matt Maddox          </u> Matt Maddox	Director, Chief Executive Officer and President (Principal Executive Officer)	February 28, 2019
<u>          /s/ Philip G. Satre          </u> Philip G. Satre	Non-Executive Chairman of the Board and Director	February 28, 2019
<u>          /s/ Betsy S. Atkins          </u> Betsy S. Atkins	Director	February 28, 2019
<u>          /s/ Richard J. Byrne          </u> Richard J. Byrne	Director	February 28, 2019
<u>          /s/ Jay L. Johnson          </u> Jay L. Johnson	Director	February 28, 2019
<u>          /s/ Patricia Mulroy          </u> Patricia Mulroy	Director	February 28, 2019
<u>          /s/ Margaret J. Myers          </u> Margaret J. Myers	Director	February 28, 2019
<u>          /s/ Clark T. Randt, Jr.          </u> Clark T. Randt, Jr.	Director	February 28, 2019
<u>          /s/ Winifred Webb          </u> Winifred Webb	Director	February 28, 2019
<u>          /s/ Craig S. Billings          </u> Craig S. Billings	Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	February 28, 2019

**DATED 21 December 2018**

**WYNN RESORTS (MACAU) S.A.**  
the Company

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

**THE FINANCIAL INSTITUTIONS NAMED HEREIN**  
as Outgoing Global Coordinating Lead Arrangers

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

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Term Facility Agent

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

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Intercreditor Agent

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

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

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**COMMON TERMS AGREEMENT**  
**SIXTH AMENDMENT AGREEMENT**

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THIS AGREEMENT is dated \_\_\_\_\_ 21 December \_\_\_\_\_ 2018 and made between:

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



**RECITALS:**

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

**IT IS AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions and incorporation of defined terms

(i) In this Agreement:

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

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

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

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

**"Amendment to Executive Director Share Pledge"** means the Amendment to Executive Director Share Pledge dated on or about the date hereof between Ms Linda Chen, the Company and the Security Agent;

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

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

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

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

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

**"Deed of Appointment and Priority Fifth Deed of Amendment"** means the Deed of Appointment and Priority Fifth Deed of Amendment dated on or about the date hereof between, among others, the Original First Ranking Lenders, the Hedging Counterparties, the Second Ranking Finance Party, the Company, the Security Agent, the Intercreditor Agent and the POA Agent;

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

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

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

**"Facility Amendment Agreements"** means the Term Facility Agreement Fifth Amendment Agreement and the Revolving Credit Facility Agreement Second Amendment Agreement (each a **"Facility Amendment Agreement"**).

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

**"Fifth Amendment Effective Date"** has the meaning given to such term in Clause 4 (*Amendments*) of the Common Terms Agreement Fifth Amendment Agreement;

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

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

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

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

**"Macau Security Confirmations"** means the First Macau Security Confirmation and the Second Macau Security Confirmation;

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

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

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

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

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

**"Relevant Executive Director"** means:

- (i) before the occurrence of the Executive Director Substitution which took place prior to the Sixth Amendment Effective Date, Mr. Wong Chi Seng; and
- (ii) on and from the occurrence of the Executive Director Substitution which took place prior to the Sixth Amendment Effective Date, Ms. Linda Chen;

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

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

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

**"Security Amendment Documents"** means:

- (i) the Amendment to Company Floating Charge;
- (ii) the Amendment to Company Mortgage;
- (iii) the Amendment to Company Share Pledge;
- (iv) the Amendment to Executive Director Share Pledge;
- (v) the Amendment to Palo Floating Charge;
- (vi) the Amendment to Palo Mortgage;
- (vii) the Amendment to Palo Share Pledge; and
- (viii) the Amendment to Pledge over Gaming Equipment and Utensils;

**"Security Confirmation Documents"** means:

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

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

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

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

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

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

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

## 1.2 **Clauses**

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

## 1.3 **Designation**

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

- (i) the Term Facility Agreement Fifth Amendment Agreement as a Senior Finance Document;
- (j) the Revolving Credit Facility Agreement Second Amendment Agreement as a Senior Finance Document;
- (k) this Agreement as a Senior Finance Document;
- (l) the Subordination Deed Fifth Deed of Amendment and Acknowledgement of Security as a Security Document;
- (m) the Guarantee Fifth Deed of Amendment and Acknowledgement as a Security Document;
- (n) the Deed of Appointment and Priority Fifth Deed of Amendment as a Security Document;
- (o) [Not Used]
- (p) [Not Used]
- (q) each of the Security Confirmation Documents as a Security Document;
- (r) each of the Security Amendment Documents as a Security Document; and
- (s) the Livrança Covering Letter as a Security Document.

2. **[NOT USED]**

2.1 [Not Used]

2.2 [Not Used]

3. **GLOBAL COORDINATING LEAD ARRANGERS**

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

4. **AMENDMENT**

With effect from the date upon which the Intercreditor Agent confirms to the Lenders and the Company that it has received (or the Intercreditor Agent has waived receipt of, as the case may be) each of the documents or evidence listed in Schedule 1 (*Conditions Precedent*) in a form and substance satisfactory to the Intercreditor Agent, (such date being the "**Sixth Amendment Effective Date**"), the Original Common Terms Agreement shall be amended so that it shall be read and construed for all purposes as set out in Schedule 2 (*Amended Common Terms Agreement*).

5. **FACILITY ADVANCES**

5.1 [Not used]

5.2 [Not used]

5.3 [Not used]

5.4 [Not used]

5.5 [Not used]

5.6 **Breakfunding and accrued interest**

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

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

The parties hereto agree in respect of the actions, events and other steps that are set out in the Pre-Amendment Global Transfer Agreement, Clauses 3 (*Global Coordinating Lead Arrangers*) and 4 (*Amendment*) of this Agreement and in the Post-Amendment Global Transfer Agreement which are stated to occur on the Sixth Amendment Effective Date, that such actions, events and other steps shall (where those actions, events and other steps have been carried out in accordance with the Completion Memorandum) occur on the Sixth Amendment Effective Date in the order set out in the Completion Memorandum.

7. **REPRESENTATIONS**

**7.1 Prior to the Sixth Amendment Effective Date**

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

**7.2 On the Sixth Amendment Effective Date**

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

7.3 [Not used]

8. [NOT USED]

**9. CONTINUITY AND FURTHER ASSURANCE**

**9.1 Continuing obligations**

The provisions of the Common Terms Agreement shall, save as amended by this Agreement, continue in full force and effect. In particular, nothing in this Agreement shall affect the rights of the Senior Secured Creditors in respect of the occurrence of any Default which is continuing or which arises on or after the date of this Agreement.

**9.2 Further assurance**

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

**10. MISCELLANEOUS**

**10.1 Incorporation of terms**

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



## 10.2 Counterparts

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

## 10.3 [Not used]

## 11. PROPERTY MANDATORY PREPAYMENT EVENT

### 11.1 Property Mandatory Prepayment Event

The parties acknowledge that, on and from the Sixth Amendment Effective Date, the events and circumstances previously specified as Events of Default in paragraphs (v), (w) and (z) of Schedule 10 (*Events of Default*) of the Original Common Terms Agreement will each constitute a Property Mandatory Prepayment Event.

### 11.2 No recourse against the Macau SAR government

- (a) Notwithstanding anything in this Clause 11 or in the Amended Common Terms Agreement to the contrary, and without prejudice to the enforceability of clause 32 of the Concession Contract, no Senior Secured Creditor shall be entitled to take legal proceedings (in its own right) against the Macau SAR government for the occurrence of a Property Mandatory Prepayment Event or for the termination of the Concession Contract (including as a result of the termination events set out in article 45 of Law no. 16/2001, of 24 September, and clauses 77, 78, 80 and 81 of the Concession Contract).
- (b) The parties hereto acknowledge that the Company's recourse against the Macau SAR government in connection with the Concession Contract is as contemplated by the Concession Contract and the laws of the Macau SAR (including Law no. 16/2001 of 24 September) in effect from time to time.

## 12. GOVERNING LAW

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

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

**Schedule 1**  
**CONDITIONS PRECEDENT**

**1. Due establishment, authority and certification**

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

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

**2. Senior Finance Documents**

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

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

3. **Legal opinions**

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

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

4. **Fees and expenses**

Receipt by the Intercreditor Agent of evidence that:

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

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

5. [Not used]

6. **Security**

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

7. **Process agents**

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

8. **Other documents and evidence**

- (a) Evidence that all those things specified as being required to be done on or prior to the Sixth Amendment Effective Date in the Completion Memorandum have been done in accordance with the Completion Memorandum.
- (b) [Not used].
- (c) Receipt by the Intercreditor Agent of a copy of:
  - (i) the Pre-Amendment Global Transfer Agreement; and
  - (ii) the Post-Amendment Global Transfer Agreement,in each case, duly executed by the parties thereto.
- (d) Receipt by the Intercreditor Agent of evidence that:
  - (i) the transfers and acquisitions referred to in the Pre-Amendment Global Transfer Agreement have been completed; and
  - (ii) the transfers and acquisitions referred to in the Post-Amendment Global Transfer Agreement will be completed on the Sixth Amendment Effective Date.
- (e) A copy of any other authorisation or other document, opinion or assurance which the Intercreditor Agent considers to be necessary or desirable (if it has notified the Company accordingly prior to the Sixth Amendment Effective Date) in connection with the entry into and performance of the transactions contemplated by any Senior Finance Document or for the validity and enforceability of any Senior Finance Document.
- (f) The valuation report by Jones Lang LaSalle Limited relating to the land and buildings comprised in the Site and the Cotai Site.
- (g) Receipt by the Intercreditor Agent of a copy of the letter dated \_\_18 December\_ 2018 issued by the Macau SAR government in which the Macau SAR government has approved the execution of this Agreement, the Facility Amendment Agreements, the Macau Security Confirmations and the Security Amendment Documents, as well as the amendments to the Facility Agreements (as contemplated by the Facility Amendment Agreements) and the amendments to the Security Documents (as contemplated by the Security Amendment Documents).
- (h)

**SCHEDULE 2**  
**AMENDED COMMON TERMS AGREEMENT**

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**  
the Company

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

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

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Term Facility Agent

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

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Intercreditor Agent

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Security Agent

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**COMMON TERMS AGREEMENT**  
(As amended by the Common Terms Agreement Amendment Agreement  
dated 14 September 2005,  
the Common Terms Agreement Second Amendment Agreement  
dated 27 June 2007  
the Common Terms Agreement Third Amendment Agreement  
dated 8 September 2009  
the Common Terms Agreement Fourth Amendment Agreement  
dated 31 July 2012,  
the Common Terms Agreement Fifth Amendment Agreement  
dated 30 September 2015  
and the Common Terms Agreement Sixth Amendment Agreement  
dated \_\_\_21 December\_\_\_ 2018)

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

**BETWEEN:**

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

**WHEREAS:**

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

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

**NOW IT IS HEREBY AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 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:

**"Acceptable Bank"** means:

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

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

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

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

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

**"Additional Facility Agent"** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Affiliate"** as applied to any Person, means any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with") as applied to any Person means the power, directly or indirectly, to (a) vote 10% or more of the shares or other securities having ordinary voting power for the election of the Board of Directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise (*provided* that the Executive Director shall not, by virtue of fulfilling either of these requirements alone as a result of the Executive Director Shares held by such individual in the Company or as a result of such individual's role as executive director of the Company, be an Affiliate of the Company).

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

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

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

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

**"Ancillary Finance Documents"** means the Fee Letters.

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

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

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

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

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

- (a) the granting of any Lien permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*);
- (b) any Disposition permitted by paragraph 5 of Part B of Schedule 5 (*Covenants*) (*provided* that, in the case of paragraph 5(a) of Part B of Schedule 5 (*Covenants*), Dispositions of Property thereunder shall be considered "Asset Sales" to the extent of any proceeds thereof not applied to the replacement of Property pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*)).

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

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

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

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

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

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

"**Board of Directors**" means:

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

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

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

exceeds:

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

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

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

"**Capital Expenditure**" means, in relation to any Person, for any period, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a capital lease or a finance lease) of fixed or capital assets (including, without limitation, real property) or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under applicable GAAP.

"**Capital Lease Obligations**" means, as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or finance leases under applicable GAAP, and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with applicable GAAP.



**"Capital Stock"** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all classes of membership interests in a limited liability company, any and all classes of partnership interests in a partnership, any and all equivalent ownership interests in a Person and any and all warrants, rights or options to purchase any of the foregoing.

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

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

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

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

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

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

- (a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of any Wynn Obligor to any Person (except as may be permitted by this Agreement or any Security Document and excluding any disposition forming part of a Permitted Cotai Reorganisation);
- (b) the adoption of a plan relating to the liquidation or dissolution of any Wynn Obligor or any successor thereto, but excluding any voluntary liquidation, winding-up, dissolution of, or similar action with respect to, Palo after a Permitted Cotai Reorganisation; or
- (c) a Wynn Event.

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

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

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

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

in each case in relation to that Recovery Claim.

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

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

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

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

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

**"Common Terms Agreement Sixth Amendment Agreement"** means the agreement so entitled dated \_\_\_\_\_ 2018 between the parties thereto.

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

**"Commonly Controlled Entity"** means an entity, whether or not incorporated, which is under common control with any Obligor within the meaning of section 4001 of ERISA or is part of a group that includes such Person and that is treated as a single employer under section 414 of the Code.

"**Company Share Pledge**" means the pledge over shares in the Company dated on or about the date of this Agreement between Wynn HK, Wynn International, the Company and the Security Agent.

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

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

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

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

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

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

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

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

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

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

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

"**Cotai Land Concession Contract**" means the land concession contract agreed to by and between Palo, the Company and the Macau SAR dated 2 May 2012 pursuant to Dispatch number 16/2012, and includes any novation, assignment, transfer or other Disposition to the Company or replacement thereof in the name of the Company in connection with a Permitted Cotai Reorganisation.

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

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

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

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

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

"**Cotai Site Facilities**" means

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

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

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

"**Current Liabilities**" means, at any date, all amounts that would, in conformity with applicable GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a balance sheet of the Restricted Group at such date prepared on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have

the effect of reducing Current Liabilities and (ii) is in any way derived from or attributable or otherwise connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof), but excluding:

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

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

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

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

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

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

"**Defaulting Lender**" means any Lender:

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

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

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

"**Designated Person**" means a Person:

- (a) listed in the annex to, or otherwise subject to the provisions of, the Executive Order;
- (b) named as a "Specially Designated National and Blocked Person" on the most current list published by Office of Foreign Assets Control of the U.S. Department

of the Treasury at its official website or any replacement website or other replacement official publication of such list; or

- (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or who or which is the subject of any Sanctions *provided* that such Person is named as a "prohibited person", "prohibited entity" or equivalent or, as the case may be, who or which is named as a Person that is the subject of any Sanctions (in each case) on any list published by any Governmental Authority (including, without limitation, the authorities referred to in the definition of "Sanctions" in this Clause 1.1 (*Definitions*)) pursuant to or otherwise in connection with any Anti-Terrorism Laws or any Sanctions.

**"DICJ Authorisation"** means, if the Company requests an Advance under an Additional Lender Facility:

- (a) the approval by the Macau SAR government of the financial indebtedness in respect of the Additional Lender Facility, as set forth in the submission made by the Company to the Macau SAR government in connection therewith; and
- (b) any other approval, authorisation, confirmation, document or instrument from the Macau SAR government that the Intercreditor Agent (acting in its sole discretion and in consultation with the Macanese legal adviser to the Senior Secured Creditors) considers necessary or desirable in connection with the Additional Lender Facility.

**"Direct Agreements"** means each of the following documents:

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

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

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

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

**"Disqualified Stock"** means any Capital Stock or other ownership or profit interest of any Obligor that any Obligor is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect thereof for consideration other than Capital Stock (other than Disqualified Stock).

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

- (a) income Tax expense (whether or not paid during such period) other than Tax on gross gaming revenue;
- (b) amortization or write-off of debt discount and debt issuance costs and interest, commissions, discounts and other fees and charges associated with Financial Indebtedness (including the Advances);
- (c) depreciation and amortization expense;
- (d) amortization of intangibles (including goodwill);
- (e) an amount equal to the aggregate net non-cash loss on the Disposition of Property during such period (other than sales of inventory in the ordinary course of business);
- (f) any extraordinary expenses or losses;
- (g) any foreign currency translation losses;
- (h) any corporate expenses;
- (i) any expense that is non-recurring in nature;
- (j) stock-based compensation;
- (k) pre-opening and development expenses;
- (l) Approved IP Fees paid in accordance with paragraph 6.1 of Part B of Schedule 5 (*Covenants*); and
- (m) Specified Equity Contributions,

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

- (n) interest income;
- (o) an amount equal to the aggregate net non-cash gain on the Disposition of Property during such period (other than sales of inventory in the ordinary course of business);

- (p) any extraordinary income or gains;
- (q) any foreign currency translation gains; and
- (r) any upfront premium or similar income or gains derived from, or in connection with the grant of, any Subconcession,

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

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

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

**"Effective Date"** means the Sixth Amendment Effective Date.

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

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

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

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

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

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

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



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

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

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

"**Equity Issuance**" means:

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

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

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

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

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

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

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

- (a) any compulsory transfer or taking by condemnation, seizure, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking or confiscation of such Property or the requisition of the use of such Property, by any agency, department, authority, commission, board, instrumentality or political subdivision of any Governmental Authority having jurisdiction; or
- (b) any settlement in lieu of paragraph (a) above.

**"Event of Loss"** means, with respect to any property or asset (tangible or intangible, real or personal), any of the following:

- (a) any loss, destruction or damage of such property or asset;
- (b) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset; or
- (c) any settlement in lieu of paragraph (b) above.

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

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

*minus*, without duplication, the US dollar equivalents of:

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

permanent reduction in commitments thereunder such that after giving effect to such commitment reduction the relevant member of the Restricted Group would not be able to reborrow all or any of the amount so prepaid),

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

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

- (a) is used exclusively for the remittance of remuneration to employees;
- (b) is a zero-balance disbursement account used exclusively for the remittance of vendor payments;
- (c) is established for the exclusive purpose of receiving funds for customers and patrons to establish credit;
- (d) is established for the exclusive benefit of officers, directors and employees in connection with share option schemes, welfare benefit schemes, pension schemes or other similar arrangements; and
- (e) the granting of a Lien in favour of a Senior Secured Creditor in respect thereof would violate applicable law or regulations provided that the Intercreditor Agent has received legal advice (in form and substance reasonably satisfactory to the Intercreditor Agent) to confirm the relevant violation of applicable law or regulation and that such relevant violation cannot be overcome by the relevant member of the Restricted Group (using all commercially reasonable efforts).

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

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

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

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

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

- (i) the entire Cotai Site shall remain part of the Project Security and subject to the Palo Mortgage and there shall be no adverse effect on the validity or enforceability of, or the effectiveness or ranking of any Security of the Finance Parties as a result of the Excluded Project being located on the Cotai Site;
- (ii) the development, operation and maintenance of such Excluded Project:
  - (A) complies in all material respects with all applicable Legal Requirements (including, without limitation, Environmental Laws), the Cotai Land Concession Contract and the Concession Contract; and
  - (B) does not materially interfere with or materially obstruct (or otherwise have any material adverse effect on) the development, operation and maintenance of the Cotai Project; and
- (iii) any claim, interest or liability, or right of recourse of any kind of any counterparty to any Resort Management Agreement, in respect of such Excluded Project against or in the Company, Palo or any other member of the Restricted Group or any of their respective assets (including, without limitation, Wynn Macau and the Cotai Project) is limited to an aggregate amount equal to all revenues derived by the Company (or, as the case may be, Palo) in respect of that Excluded Project and any other assets of the Company (or, as the case may be, Palo) comprised in that Excluded Project (and which do not form part of and are not necessary to ensure to the Restricted Group the full benefit of Wynn Macau or the Cotai Project).

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

**"Executive Director"** means an individual:

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

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

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

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

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

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

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

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

- (a) the Macau SAR government has approved a new executive director of the Company in accordance with the Concession Contract (the "**New Executive Director**") and, if applicable, the issuance of the New Executive Director Shares to the New Executive Director (including the Security over such New Executive Director Shares as contemplated by paragraph (d) below) and the cancellation of the Existing Executive Director Shares;
- (b) the Executive Director has transferred all of the Existing Executive Director Shares to the New Executive Director or New Executive Director Shares have been issued to the New Executive Director and the Existing Executive Director Shares have been cancelled on or prior to such issuance;
- (c) any other contracts and accessions to existing contracts by the New Executive Director, the Company and any other relevant Obligor as are necessary or desirable in order for the New Executive Director to step into the Executive Director's position and role as executive director of the Company and owner of the Executive Director Shares have been entered into; and
- (d) the New Executive Director has duly executed and, (where applicable) the Company has provided the Intercreditor Agent with, any acknowledgement, confirmation and/or such other documents as the Intercreditor Agent, acting on the advice of its legal counsel, shall deem appropriate to ensure (1) the Existing Executive Director Shares are pledged in the same manner after the occurrence of the steps set out in paragraphs (a) to (c) (inclusive) above as such shares are pledged prior to the occurrence of the steps set out in paragraphs (a) to (c) (inclusive) above, such that the New Executive Director will be the "Pledgor" under the Executive Director Share Pledge and the outgoing Executive Director will no longer be the Pledgor thereunder and will be released from any obligations thereunder or (2) the New Executive Director Shares when issued are pledged in the same manner as the Existing Executive Director Shares are pledged prior to the occurrence of the steps set out in paragraphs (a) to (c) (inclusive) above,

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

Senior Secured Creditors party to this Agreement so authorise the Intercreditor Agent to provide such confirmation on being so satisfied)).

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

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

**"Facility"** means any of:

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

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

**"Facility Agreements"** means:

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

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

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

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

**"Final Repayment Date"** means:

- (a) in relation to the Term Facility, 26 June 2022 or, if that day is not a Business Day, the immediately preceding Business Day; and
- (b) in relation to an Additional Lender Facility providing for a term loan, the date set forth in the applicable Additional Lender Facility Agreement.

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

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

**"Financial Indebtedness"** means, in relation to any Person at any date, without duplication:

- (a) all indebtedness of such Person for borrowed money;
- (b) all obligations of such Person for the purchase price of Property or services to the extent the payment of such obligations is deferred for a period in excess of 90 days (other than trade payables incurred in the ordinary course of such Person's business);
- (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments;
- (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (unless the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property);
- (e) all Capital Lease Obligations (to the extent treated as finance or capital lease obligations in accordance with applicable GAAP) or Synthetic Lease Obligations of such Person, in each case, other than any liability in respect of a lease or hire purchase contract which would, in accordance with GAAP in force as at the Sixth Amendment Effective Date, have been treated as an operating lease;
- (f) any indebtedness of such Person for or in respect of receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis or on a basis where recourse is limited solely to warranty claims relating to title or objective characteristics of the relevant receivables);
- (g) any indebtedness of such Person in respect of any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) all indebtedness of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities;
- (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person;
- (j) all obligations of such Person in respect of Swap Agreements or any other derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;
- (k) all Guarantee Obligations of such Person in respect of obligations (whether of such Person or another Person) of the kind referred to in paragraphs (a) through (j) above;



- (l) all obligations of the kind referred to in paragraphs (a) through (k) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation; and
- (m) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries.

**"Financing Costs"** means:

- (a) interest, fees, commissions, costs and expenses payable by the Company under the Senior Finance Documents;
- (b) interest, fees, commissions, costs and expenses payable by the Company under the Performance Bond Facility;
- (c) amounts payable by the Company under Clause 10 (*Changes to the Calculation of Interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) and Clause 13 (*Currency and Other Indemnities*);
- (d) any other amounts of interest, fees, commissions, discounts, prepayment penalties or premiums and other finance payments payable in respect of Financial Indebtedness permitted to be incurred by a member of the Restricted Group pursuant to paragraphs 2.1(e) and 2.1(f) of Part B of Schedule 5 (*Covenants*);
- (e) any amounts of dividends, disbursements or other payments payable for the purpose of paying any amount with respect to Guaranteed WML Debt (pursuant to paragraph 6.1(v) of Part B of Schedule 5 (*Covenants*));
- (f) net amounts payable by the Company under any Hedging Agreement and Permitted Swap Transaction; and
- (g) any value added or other taxes payable by the Company or any other member of the Restricted Group in respect of paragraphs (a) through (f) above and, save to the extent already included in paragraph (c) above, any withholding tax on a party under a Senior Finance Document, the Performance Bond Facility or any other agreement relating to the provision of Financial Indebtedness referred to above in respect of which the Company or any other member of the Restricted Group has an obligation to gross up.

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

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

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

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

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

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

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

- (a) the definitions of Required Lenders and Fundamental Term in Clause 1.1 (*Definitions*) and Clause 34 (*Amendments and Waivers*);
- (b) the provisions setting out the date for, or the amount of, or the currency of, any payment of principal (other than Clause 8.2 (*Voluntary Prepayment of the Term Loan Facilities*)) or interest under a Senior Finance Document or any interest rate hedging payment to a Hedging Counterparty (but excluding, in each case, any amendment bringing forward the date of any such interest rate hedging payment or increasing the amount of any such interest rate hedging payment);
- (c) [Not used];
- (d) the provisions setting out the amount of a Lender's Available Commitment under a Facility (otherwise than by a transfer in accordance with the terms of this Agreement) or the duration of its availability or any additional obligation on a Lender to lend money or provide any other form of credit;
- (e) a term which expressly requires the consent of each Lender or Senior Secured Creditor;
- (f) the priority or ranking of any Security or the Secured Obligations (and any other provisions which, if amended, would have the effect of changing the priority or ranking thereof);
- (g) the provisions dealing with the order of distribution on partial payment by the Company or the proceeds of Security;
- (h) paragraph 2.1(e) of Part B of Schedule 5 (*Covenants*) or paragraph 2.1(f) of Part B of Schedule 5 (*Covenants*);
- (i) Clause 25 (*Sharing Among the Senior Secured Creditors*); and
- (j) Clause 33 (*Intercreditor Arrangements*).

Notwithstanding the above:

- (i) unanimity among the Lenders and Hedging Counterparties shall not be required with respect to any changes, additions, deletions, modifications

or supplements (herein "changes") comprised in any amendment to the Deed of Appointment and Priority made in accordance with paragraph (c) of clause 24.1 (*Required Consents*) of the Deed of Appointment and Priority with respect to subparagraphs (a), (e), (f), (g), (h) and (j) above and any Decision related to such changes shall be effected pursuant to subparagraph (a) of the definition of "Required Lenders" in this Clause 1.1 (*Definitions*) (and as if a Hedging Voting Right Event had occurred and was continuing in relation to each Hedging Counterparty) *provided* that, in each case, the Senior Secured Creditors' rights, benefits and interests in respect of the First Ranking Liabilities (as defined in the Deed of Appointment and Priority) and the Security, the enforcement thereof and the priority and ranking of their claims in respect thereof and the subordination thereto of all other claims, remain unaffected by any such changes;

- (ii) any amendment or waiver that is an Affected Lender Decision may be made in accordance with Clause 34.5 (*Amendment and Waiver of an Affected Lender Decision*); and
- (iii) any amendment or waiver that is a Screen Rate Decision may be made in accordance with Clause 34.6 (*Replacement of Screen Rate*).

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

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

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

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

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

**"Governing Documents"** means, collectively, as to any Person, the certificate of incorporation, the memorandum and articles of association or bylaws, any shareholders

agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation or constituent documents applicable to such Person.

**"Governmental Authority"** means, as to any Person, the government of the Macau SAR, any other national, state, provincial or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, in each case having jurisdiction over such Person, or any arbitrator with authority to bind such Person at law.

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

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

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

**"Guaranteed WML Debt"** means WML Debt in respect of which the Company or any Obligor has incurred, assumed or allowed to remain outstanding any Guarantee Obligations in compliance with paragraph 2.1(i) of Part B of Schedule 5 (*Covenants*) of this Agreement.

**"Guarantee Obligation"** means any guarantee, indemnity, letter of credit or other legally binding assurance against loss granted by one Person in respect of any Financial Indebtedness or other liability or obligation of another Person, or any agreement to assume any Financial Indebtedness of any other Person or to supply funds or to invest in any manner whatsoever in such other Person by reason of Financial Indebtedness of such Person; *provided, however*, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing Person shall be deemed to be the lower of (1) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (2) the maximum amount for which such guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation (unless such primary obligation and the maximum amount for which such guaranteeing Person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing Person's maximum reasonably anticipated liability in respect thereof as determined by the Company in good faith).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) (is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or

(j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**"Insurance"** means a Direct Insurance or a Reinsurance.

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

**"Insurer"** means a Direct Insurer or a Reinsurer.

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

**"Intellectual Property"** means the collective reference to all rights, priorities and privileges relating to intellectual property, including copyrights, patents, trademarks, service-marks, technology, know-how and processes, formulas, trade secrets or licenses (under which the applicable Person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

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

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

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

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

**"Investment Income"** means any interest, dividends or other income arising from or in respect of a Permitted Investment.

**"Investment Proceeds"** means any net proceeds received upon any disposal, realisation or redemption of a Permitted Investment, but excluding any Investment Income.

**"Investments"** has the meaning given to it in paragraph 8 of Part B of Schedule 5 (*Covenants*).

"**IP Agreement**" means the Amended and Restated Fourth Amendment to Intellectual Property Licence Agreement dated 19 September 2009.

"**IP Fees**" means the "Licensing Fee" as defined in the IP Agreement.

"**ISDA Master Agreement**" has the meaning given in Schedule 8 (*Hedging Arrangements*).

"**ISDA Schedule**" means the schedule to the ISDA Master Agreement in form and substance reasonably satisfactory to the Intercreditor Agent.

"**Land Concession Contract**" means the land concession contract agreed to by the Company with the Macau SAR on 4 June 2004 which forms an integral part of Dispatch number 81/2004.

"**Land Concession Consent Agreement**" means the Agreement relating to Security under the Land Concession Contract between the Government of the Macau SAR, the Company and the Security Agent and the Supplement in respect thereof dated 14 September 2005.

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

"**Legal Requirements**" means all laws, statutes, orders, decrees, injunctions, licenses, permits, approvals, agreements and regulations of any Governmental Authority having jurisdiction over the matter in question.

"**Lender**" means a Term Facility Lender, a Revolving Credit Facility Lender or an Additional Lender.

"**Lending Group**" means the Term Lending Group, each Revolving Lending Group and each Additional Lending Group.

"**Leverage Ratio**" means, in relation to any period, the ratio of Total Debt on the last day of such period to EBITDA for such period.

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

"**Licensor**" has the meaning given in the IP Agreement.

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

"**Listing Rules**" means the rules as in effect from time to time governing the listing of securities on The Stock Exchange of Hong Kong Limited.



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

**"Livranças"** means the promissory notes dated on or about the date of this Agreement issued by the Company and endorsed and payable to the Security Agent.

**"London Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

**"Macau Gaming Laws"** means Law No. 16/2001 and Administrative Regulation No. 26/2001, as amended from time to time, and other laws promulgated by any Governmental Authority of the Macau SAR and applying to gaming operations in the Macau SAR.

**"Macau SAR"** means the Macau Special Administrative Region.

**"Major Project Document"** means any of:

- (a) the Concession Contract;
- (b) the Land Concession Contract;
- (c) the IP Agreement;
- (d) the Performance Bond Facility Agreement;
- (e) the Concession Contract Performance Bond;
- (f) any Resort Management Agreement; and
- (g) the Cotai Land Concession Contract.

**"Major Project Participants"** means:

- (a) each Obligor;
- (b) the Macau SAR; and
- (c) each other Person who is party to a Major Project Document (other than any Resort Management Agreement).

**"Market Disruption Event"** has the meaning given in Clause 10.2 (*Market disruption*).

**"Material Adverse Effect"** means a material adverse condition or material adverse change in or affecting:

- (a) the business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management of the Company or Palo or the Company, the Restricted Group and the Wynn Obligors, taken as a whole;

- (b) the ability of the Company or any other Obligor to perform its obligations under the Senior Finance Documents;
- (c) [not used];
- (d) the validity or enforceability of any Senior Finance Document (other than any Palo Security Document *provided that* such material adverse condition or material adverse change in or affecting the validity or enforceability of that Palo Security Document arises as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation);
- (e) the validity, enforceability or priority of any of the Liens purported to be created under any of the Security Documents (other than any of the Palo Security Documents, *provided that* such material adverse condition or material adverse change in or affecting the validity, enforceability or priority of any of the Liens purported to be created under that Palo Security Document arises as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation); or
- (f) the rights and remedies of any Senior Secured Creditor under any Senior Finance Document (other than any Palo Security Document *provided that* such material adverse condition or material adverse change in or affecting the rights or remedies of any Senior Secured Creditor under that Palo Security Document arises as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation).

"**Money Laundering Laws**" has the meaning given to that term in paragraph 33 of Part A of Schedule 5 (*Covenants*).

"**Moody's**" means Moody's Investors Service, Inc or its successor.

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

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

"**Multiemployer Plan**" means a Plan that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA.

"**Net Cash Proceeds**" means:

- (a) in connection with any Asset Sale, the proceeds thereof in the form of cash (including any such proceeds received by way of deferred payment of principal pursuant to a note or instalment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale, net of attorneys' fees, accountants' fees, investment banking fees, amounts required to be applied to the repayment of Financial Indebtedness secured by a Lien

expressly permitted hereunder on any asset which is the subject of such Asset Sale (other than any Lien pursuant to a Security Document) and other fees and expenses, in each case, to the extent actually incurred in connection with such Asset Sale and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable); and

- (b) in connection with any issuance or sale of debt securities or instruments or the incurrence of loans, the cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other fees and expenses, in each case, to the extent actually incurred by the Company or any other member of the Restricted Group in connection therewith.

**"Net Income"** means, in relation to any period, the net income (or loss) of the Restricted Group for such period, determined on a consolidated basis which includes members of the Restricted Group only (and which, for the avoidance of doubt, does not take account of any amount to the extent it (i) would otherwise have the effect of increasing Net Income and (ii) is in any way derived from or attributable or otherwise related to or connected with an Excluded Project, an Excluded Subsidiary, a Resort Management Agreement, the grant of any Subconcession or any interest, right or claim in respect thereof) and otherwise in accordance with GAAP without taking account of any amount of cash or cash proceeds paid or received in respect of the grant or entry into any Subconcession and before any reduction in respect of preferred equity dividends.

**"New Executive Director Shares"** means the shares in the Company which constitute a ten percent (10%) non-blocking voting interest in the Company (and having *de minimis* economic interest) issued to a New Executive Director in connection with an Executive Director Substitution on or prior to the cancellation of the Existing Executive Director Shares.

**"Notional Amount"**, in relation to a Hedging Agreement or a Permitted Swap Transaction, has the meaning referred to in paragraph 10 of Schedule 8 (*Hedging Arrangements*).

**"Novation Certificate"** means a novation certificate in substantially the form set out in Part B of Schedule 11 (*Transfers and Accession*).

**"Obligations"** means:

- (a) all loans, advances, debts, liabilities and obligations howsoever arising, owed by the Company or any other Obligor under the Senior Finance Documents to any Senior Secured Creditors of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Senior Finance Documents or any of the other Transaction Documents, including all interest (including interest accruing after the maturity of any Advance and interest accruing after the filing of any

petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Obligor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, premiums, if any, and any charges, expenses, attorneys' fees and accountants' fees, in each case chargeable to any Obligor in connection with its dealings with such Obligor and payable by such Obligor thereunder;

- (b) any and all sums advanced by any Agent or any Lender in order to preserve the Project Security or preserve any Senior Secured Creditor's security interest in the Project Security as permitted by the Senior Finance Documents; and
- (c) in the event of any proceeding for the collection or enforcement of the Obligations after issuance of an Enforcement Notice, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realising on the Project Security, or of any exercise by any Senior Secured Creditor of its rights under the Security Documents, together with attorneys' fees and court costs, in each case as permitted by the Senior Finance Documents.

**"Obligors"** means the Company, the Wynn Obligors, Palo, the other members of the Restricted Group (in each case, on and from the date on which the requirements of paragraph 27.1 of Part A of Schedule 5 (*Covenants*) have been satisfied in respect of such other member of the Restricted Group) and any party to a Senior Finance Document referred to in paragraph (f) of the definition of "Senior Finance Document" in this Clause 1.1 (*Definitions*) (other than, in each case, the Wynn Non-Obligor Subordination Deed Parties, any Person that accedes to the Subordination Deed on or after the Sixth Amendment Effective Date as a "Wynn Non-Obligor" (or in any additional capacity at the same time as such Person's accession as a "Wynn Non-Obligor"), a Secured Party or a Person who is solely party to an acknowledgement of Security).

**"OFAC"** has the meaning given to that term in paragraph 31 of Part A of Schedule 5 (*Covenants*).

**"Open Market Purchases"** means the purchase of outstanding Advances from a Lender or Lenders by the Company pursuant to secondary market purchases entered into with such a Lender or Lenders as the Company shall see fit.

**"Operatives"** means a shareholder, officer, employee, servant, controlling Person, executive, director, agent, authorised representative or Affiliate of any of the Obligors.

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

**"Palo Assignment of Insurances"** means the Palo Assignment of Onshore Insurance Policies entered into between Palo and the Security Agent on 15 October 2012.

**"Palo Floating Charge"** means the charge so entitled entered into between Palo and the Security Agent on 15 October 2012.

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

**"Palo Pledge over Onshore Accounts"** means the pledge so entitled dated on or about the Fourth Amendment Effective Date and made between Palo and the Security Agent.

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

**"Palo Share Pledge"** means the Share Pledge entered into between the Company, Wynn International, Wynn HK, Palo and the Security Agent on 15 October 2012.

**"Palo Security Documents"** means (in each case, from the date thereof):

- (a) the Palo Mortgage;
- (b) the Palo Power of Attorney;
- (c) the Palo Assignment of Insurances;
- (d) the Palo Floating Charge;
- (e) the Palo Pledge over Onshore Accounts; and
- (f) the Palo Share Pledge.

**"Patacas"** or **"MOP"** denotes the lawful currency of the Macau SAR.

**"Performance Bond Facility"** means a facility extended to the Company by the Performance Bond Provider in accordance with the terms of the Performance Bond Facility Agreement for the issuance of the Concession Contract Performance Bond and subordinated to amounts owed to the Senior Secured Creditors under the Senior Finance Documents in accordance with the Deed of Appointment and Priority.

**"Performance Bond Facility Agreement"** means the agreement dated as of 14 September 2004 between the Performance Bond Provider and the Company.

**"Performance Bond Provider"** means Banco Nacional Ultramarino, S.A. or such other Person as may be acceptable to the Intercreditor Agent.

**"Permits"** means all approvals, licences, consents, permits, authorisations, registrations and filings, necessary in connection with the execution, delivery or performance, admission into evidence or enforcement of the Transaction Documents and all material approvals, licences, consents, permits, authorisations, registrations and filings required for the development, construction, ownership or operation of Wynn Macau and the Cotai Project, in each case, as contemplated under the Transaction Documents.

**"Permitted Businesses"** means:

- (a) the development, construction, ownership, operation, management, maintenance, refurbishment, enhancement and financing of hotel resorts and casinos in the Macau SAR as permitted under the Concession Contract;
- (b) the operation of casino games of chance or other forms of gaming in one or more locations in the Macau SAR in connection with Wynn Macau, the Cotai Project or any Excluded Project, in each case as permitted under the Concession Contract and, in the case of any Excluded Project, as contemplated by the Resort Management Agreement entered into by the Company in respect thereof; and
- (c) the ownership, operation or oversight of food and beverage, spa, entertainment production, convention, retail, residential, foreign exchange, transportation and outsourcing of in-house facilities, businesses or other activities which are necessary for, incident to, arising out of, supportive of or connected to the development, construction, financing, ownership, operation, maintenance, refurbishment or enhancement of such hotel resorts and casinos,

and, in the case of the Company and other members of the Restricted Group, the holding of shares and other interests permitted hereunder in Subsidiary Obligor and Excluded Subsidiaries.

**"Permitted Cotai Reorganisation"** means any transaction or series of transactions in which Palo Disposes to the Company Palo's interest in the Cotai Site (whether by assignment, novation, transfer or replacement of the Cotai Land Concession Contract or otherwise) and Palo's ownership of, and interest in, all of Palo's other assets (including, without limitation, assets relating to the Cotai Site and/or the Cotai Project) *provided* that, in any such case:

- (i) such Disposal, does not conflict with the Cotai Land Concession Contract, the Concession Contract and applicable Legal Requirements (taking into account any relevant Macau SAR Permits obtained or to be obtained as a condition to any such Permitted Cotai Reorganisation);
- (ii) the Company gives prompt written notice to the Intercreditor Agent of the occurrence of such Disposal (and such written notice includes a confirmation that both the Company and Palo are then (and will, following the completion of such Disposal, be) Solvent);
- (iii) the entire Cotai Site shall remain at all times part of the Project Security and there shall be no adverse effect on the validity or enforceability of, or the effectiveness or ranking of any Security as a result of such Disposal; and
- (iv) (without prejudice to paragraph (iii) above) the Company complies with paragraph 15 of Part A of Schedule 5 (*Covenants*) with respect to its acquisition of any Disposed Property.

**"Permitted Financial Indebtedness"** has the meaning given in paragraph 2.1 of Part B of Schedule 5 (*Covenants*).

**"Permitted Investments"** means the following:

- (a) securities issued, or directly and fully guaranteed or insured, by the United States government or any agency or instrumentality of the United States government (as long as the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than nine months from the date of acquisition;
- (b) securities issued, or directly and fully guaranteed or insured, by the government of the Hong Kong SAR or any agency or instrumentality of the government of the Hong Kong SAR (as long as the full faith and credit of the Hong Kong SAR is pledged in support of those securities) having maturities of not more than nine months from the date of acquisition;
- (c) interest-bearing demand or time deposits (which may be represented by certificates of deposit) issued by banks having general obligations rated (on the date of acquisition thereof) at least "A" or the equivalent by S&P or Moody's or, if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security in paragraph (a) or (b) above, of a market value of no less than the amount of monies so invested;
- (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in paragraphs (a), (b) and (c) above entered into with any financial institution meeting the qualifications specified in paragraph (c) above;
- (e) commercial paper having a rating of A-1, P-1 or F1 from one or more of S&P, Moody's or Fitch respectively and in each case maturing within nine months after the date of acquisition;
- (f) corporate bonds having a rating of at least BBB-, Baa3 or BBB from two or more of S&P, Moody's or Fitch respectively, with an aggregate principal amount not exceeding (when aggregated with the principal amount of any Dim Sum Bonds then held by any Obligor pursuant to paragraph (h) below) USD250,000,000 or its equivalent at any time;
- (g) money market or mutual funds which are rated at least AAA by S&P or Aaa by Moody's or have an equivalent rating from another internationally recognised rating agency; and
- (h) corporate bonds denominated in Renminbi (commonly known as "offshore RMB" or "Dim Sum" bonds) which do not satisfy the ratings requirements set out in paragraph (f) above ("**Dim Sum Bonds**") with an aggregate principal amount not exceeding USD100,000,000 or its equivalent at any time.

"**Permitted Liens**" means the collective reference to:

- (a) in the case of any Property other than any Pledged Stock, Liens permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto (but only of the priority and to the extent of coverage expressly set forth in paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto); and

- (b) in the case of any Property consisting of Pledged Stock, non-consensual Liens permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto to the extent arising by operation of law.

**"Permitted Loan Repurchase"** means any purchase of Advances by the Company made in accordance with Clause 21.10 (*Permitted Loan Repurchases*); provided that:

- (a) the aggregate amount paid by the Company for such purchases (excluding payments of accrued interest) during the period commencing on the Sixth Amendment Effective Date and ending on (and including) the Release Date shall not exceed the Permitted Loan Repurchase Amount; and
- (b) each such purchase is either an Open Market Purchase or is consummated pursuant to a written offer made to all Term Facility Lenders (if the Company proposes to purchase Advances under the Term Facility), all Revolving Credit Facility Lenders (other than Additional Lenders) (if the Company proposes to purchase Advances under a Revolving Credit Facility that is not an Additional Lender Facility), all Additional Lenders party to the applicable Additional Lender Facility (if the Company proposes to purchase Advances under such Additional Lender Facility), and delivered to the Intercreditor Agent concurrently with the delivery of such offer to the applicable Lenders.

**"Permitted Loan Repurchase Amount"** means USD200,000,000.

**"Permitted Swap Transaction"** means any derivative transaction entered into to protect against or benefit from any Obligor's exposure to fluctuations in any rate, price, index or credit rating (whether in relation to interest rates, commodity prices, currency exchange or otherwise) but excluding any transaction entered into for purely speculative purposes.

**"Person"** means any natural person, corporation, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

**"Plan"** means, at a particular time, any employee benefit plan that is subject to the requirements of section 412 of the Code or that is a Single Employer Plan and which any Obligor or any Commonly Controlled Entity maintains, administers, contributes to or is required to contribute to or under which any Obligor or any Commonly Controlled Entity could reasonably be expected to incur any liability.

**"Pledge over Gaming Equipment and Utensils"** means the pledge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

**"Pledge over Onshore Accounts"** means the pledge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

**"Pledged Stock"** means any Property expressed to be subject to any Lien created or purported to be created under all and any of the Company Share Pledge, the Palo Share Pledge, the Wynn International Share Charge and the Wynn HK Share Charge.



**"Post-Amendment Global Transfer Agreement"** has the meaning given in the Common Terms Agreement Sixth Amendment Agreement.

**"Power of Attorney"** means the irrevocable power of attorney dated on or about the Fifth Amendment Effective Date granted by the Company in favour of the Security Agent in connection with the Mortgage.

**"Pre-Amendment Global Transfer Agreement"** has the meaning given in the Common Terms Agreement Sixth Amendment Agreement.

**"Proceedings"** has the meaning given to it in paragraph 12(i) of Part A of Schedule 5 (*Covenants*) hereto.

**"Project Security"** means any Property expressed to be subject to any Lien created or purported to be created under any of the Security Documents.

**"Project Works"** means the design, development and construction of the Cotai Project.

**"Projections"** has the meaning given in paragraph 2(c) of Part A of Schedule 5 (*Covenants*).

**"Property"** means any property or assets including without limitation any right or interest (whether legal or equitable) in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

**"Property Mandatory Prepayment Event"** means the occurrence of any of the following events or circumstances:

- (a) any temporary administrative intervention is made by the Macau SAR under article 44 of Law no. 16/2001, of 24 September and pursuant to clause 79 of the Concession Contract;
- (b) the Macau SAR takes any formal measure seeking the unilateral dissolution of the Concession Contract under article 45 of Law no. 16/2001, of 24 September and pursuant to clause 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;
- (c) the Land Concession Contract or the Cotai Land Concession Contract is terminated or rescinded or the Macau SAR takes any formal measure seeking any termination of (i) the Land Concession Contract pursuant to Clause 15 thereof or any rescission pursuant to Clause 16 thereof or (ii) the Cotai Land Concession Contract pursuant to Clause 14 thereof or any rescission pursuant to Clause 15 thereof, provided that, the occurrence of the foregoing events with respect to the Cotai Land Concession Contract shall constitute a Property Mandatory Prepayment Event under this paragraph (c), only if the same could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents; and/or

- (d) any Macau SAR Governmental Authority requires any amendment to the Concession Contract, the Performance Bond Facility Agreement and/or the Concession Contract Performance Bond which could reasonably be expected to have a Material Adverse Effect.

**"Quarterly Date"** means:

- (a) with respect to the first Quarterly Date, the last day of the first full Fiscal Quarter falling after the Sixth Amendment Effective Date; and
- (b) with respect to each subsequent Quarterly Date, the last day of the next succeeding Fiscal Quarter.

**"Quotation Day"** means, in relation to any period for which an interest rate is to be determined, two London Business Days before the first day of that period or, in the case of any interest rate determined using HIBOR, the first day of that period.

**"Realised Hedge Loss"** has the meaning given in paragraph 7 of Schedule 8 (*Hedging Arrangements*).

**"Recovering Senior Secured Creditor"** has the meaning given in Clause 25.1 (*Payments to Senior Secured Creditors*).

**"Reference Banks"**, in relation to any Facility Agreement, has the meaning given in such Facility Agreement.

**"Reinsurance"** means any contract or policy of reinsurance from time to time taken out or effected in respect of any Direct Insurance.

**"Reinsurer"** means an international reinsurer of good standing and responsibility with whom a Reinsurance is placed from time to time in accordance with paragraph 10 of Part A of Schedule 5 (*Covenants*).

**"Release Date"** means the date on which the Intercreditor Agent notifies the Company that the following conditions have been satisfied:

- (a) receipt by the Intercreditor Agent of confirmation from each Agent and Hedging Counterparty that all liabilities to its Lending Group or, as the case may be, to it have been discharged in full under the Senior Finance Documents; and
- (b) unless the discharge in paragraph (a) above is effected using the proceeds of Financial Indebtedness incurred pursuant to paragraph 2.1(d) of Part B of Schedule 5 (*Covenants*), receipt by the Intercreditor Agent of a legal opinion from the Lenders' Macanese counsel in a form satisfactory to the Intercreditor Agent on the basis of which the Intercreditor Agent is able to determine that the risk of the discharge of the Financial Indebtedness owed by the Company to the Senior Secured Creditors in accordance with the Senior Finance Documents not being recognised or deemed to be discharged under the insolvency laws of the Macau SAR is acceptable to the Intercreditor Agent.

"Renminbi " or "RMB" denotes the lawful currency of the People's Republic of China.

"Repair Plan" has the meaning given in paragraph 5 of Schedule 9 (*Mandatory Prepayment*).

"Repayment Date" means:

- (a) in relation to the Term Facility, each of the dates on which repayments of principal are scheduled to be made, as set forth in the Term Facility Agreement; and
- (b) in relation to an Additional Lender Facility providing for a term loan, each of the dates on which repayments of principal are scheduled to be made, as set forth in the applicable Additional Lender Facility Agreement.

"Reportable Event" means any of the events set forth in section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under regulations under ERISA.

"Required Filings" has the meaning given to that term in the Common Terms Agreement Sixth Amendment Agreement.

"Required Lenders" means:

- (a) in relation to any Decision other than on a Fundamental Term, Lenders (and, after the occurrence and continuation of a Hedging Voting Right Event in relation to any Hedging Counterparty, that Hedging Counterparty) who:
  - (i) have notified the Intercreditor Agent of their vote in respect of such Decision within the time required by the Intercreditor Agent pursuant to this Agreement; and
  - (ii) hold, in aggregate, more than 50% of the Voting Entitlements of all such Senior Secured Creditors who have so notified their votes; and
- (b) in relation to a Decision on a Fundamental Term, all Lenders (and, after the occurrence of a Hedging Voting Rights Event in relation to a Hedging Counterparty that is continuing, that Hedging Counterparty).

"Resort Management Agreement" means (a) any agreement entered into by the Company (that does not conflict with the Concession Contract and all other applicable Legal Requirements) with an Excluded Subsidiary or other third party for the management or operation by the Company in compliance with the Concession Contract and all other applicable Legal Requirements of an Excluded Project or any part thereof (other than an Excluded Project or any part thereof located on the Cotai Site) and/or (b) any Cotai Resort Management Agreement.

"Responsible Officer" means, as to any Person in respect of any matter, the chief executive officer, president, managing director, chief financial officer, chief operating officer or treasurer of such Person duly authorised in respect of such matter, but in any event, with respect to financial matters, the chief financial officer or treasurer of such

Person or the chief financial officer of WML or Wynn Resorts. Unless otherwise qualified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Company.

**"Restricted Group"** means the Group other than any Excluded Subsidiary.

**"Restricted Payments"** has the meaning given to it in paragraph 6 of Part B of Schedule 5 (*Covenants*) hereto.

**"Revolving Credit Facilities"** means each of the revolving loan facilities to be provided under the Revolving Credit Facility Agreements.

**"Revolving Credit Facility Agent"** means Bank of China Limited, Macau Branch as facility agent for the Revolving Credit Facility Lenders.

**"Revolving Credit Facility Agreements"** means:

- (a) the agreement so entitled between the Company, the Revolving Credit Facility Agent and the Revolving Credit Facility Lenders; and
- (b) each Additional Lender Facility Agreement providing for a revolving credit facility.

**"Revolving Credit Facility Availability Period"** means the period specified in Clause 4.2 (*Revolving Credit Facility Availability Period*).

**"Revolving Credit Facility Lender"** means:

- (a) a lender identified as such in Part B of Schedule 1 (*The Lenders and the Hedging Counterparties*) or in an Additional Lender Facility Agreement providing for a revolving credit facility; or
- (b) a Transferee in respect of a Revolving Credit Facility made available pursuant to a Revolving Credit Facility Agreement.

**"Revolving Credit Facility Termination Date"** means the Termination Date (as defined in the Revolving Credit Facility Agreement).

**"Revolving Lending Group"** means the Revolving Credit Facility Lenders under a Revolving Credit Facility Agreement, acting as a lending group in accordance with, and subject to the decision making rules under, that Revolving Credit Facility Agreement.

**"Sanctions"** means any sanctions administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury, the Federal Government of Canada or other relevant sanctions authority.

**"Screen Rate"** means HIBOR or LIBOR.

**"Screen Rate Decision"** means, if any Screen Rate is not available for a currency which can be selected for an Advance, any amendment or waiver which relates to providing

for another benchmark rate to apply in relation to that currency in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that other benchmark rate).

"**Secured Obligations**" has the meaning given in the Deed of Appointment and Priority.

"**Secured Parties**" has the meaning given in the Deed of Appointment and Priority.

"**Security**" means the Liens created or purported to be created under the Security Documents.

"**Security Agent**" means Bank of China Limited, Macau Branch in its capacity as agent and security trustee for the Secured Parties or its successor appointed in accordance with the Deed of Appointment and Priority.

"**Security Confirmation Documents**" has the meaning given to that term in the Common Terms Agreement Sixth Amendment Agreement.

"**Security Documents**" means:

- (a) the Mortgage;
- (b) the Palo Mortgage;
- (c) the Power of Attorney;
- (d) the Palo Power of Attorney;
- (e) the Land Security Assignment;
- (f) the Assignment of Rights;
- (g) the Pledge over Gaming Equipment and Utensils;
- (h) the Pledge over Onshore Accounts;
- (i) the Assignment of Insurances;
- (j) the Palo Assignment of Insurances;
- (k) the Assignment(s) of Reinsurances;
- (l) the Floating Charge;
- (m) the Palo Floating Charge;
- (n) the Livranças and the Livrança Covering Letter;
- (o) the Debenture;
- (p) the Palo Pledge over Onshore Accounts;

- (q) the Guarantee;
- (r) the Executive Director Share Pledge;
- (s) the Company Share Pledge;
- (t) the Palo Share Pledge;
- (u) the Wynn International Share Charge;
- (v) the Wynn HK Share Charge;
- (w) the Charge over HK Accounts;
- (x) the Subordination Deed;
- (y) the Deed of Appointment and Priority;
- (z) each Direct Agreement;
- (aa) (with effect from the date thereof) each Supplemental Security Document;
- (bb) any other document from time to time creating, evidencing or entered into as security for or guaranteeing the Obligations of the Company or any other Obligor or member of the Restricted Group and any documents entered into pursuant to any of the documents referred to in this definition, including any such document notifying or acknowledging the granting or creation of such security or creating or evidencing security over an Account; and
- (cc) any document entered into pursuant to any further assurance provisions set out in any of the documents referred to in this definition which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document and any other document which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document.

**"Senior Finance Documents"** means:

- (a) each Facility Agreement;
- (b) this Agreement;
- (c) each Security Document;
- (d) the Ancillary Finance Documents;
- (e) each Hedging Agreement; and
- (f) any other document entered into which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Senior Finance Document.

**"Senior Secured Creditors"** means the GCLAs, the Agents, the Security Agent, the Lenders and the Hedging Counterparties.

**"Senior Secured Indebtedness"** means all Financial Indebtedness (actual or contingent) of the Company to the Senior Secured Creditors under the Senior Finance Documents together with all other amounts payable by the Company to the Senior Secured Creditors (or any of them) under or arising out of the Senior Finance Documents.

**"Shareholder Guarantees"** means the Guarantee and the Executive Director Share Pledge.

**"Shareholder Loans"** means Financial Indebtedness advanced by one or more of the Shareholders, the Wynn Obligors or Affiliates of the Wynn Obligors (including, without limitation, Wynn Resorts, WML or any Affiliate of any of Wynn Resorts or WML) to the Company or any other member of the Group that is subordinated in accordance with the terms provided by the Subordination Deed.

**"Shareholders"** means Wynn HK, Wynn International and the Executive Director.

**"Shareholders' Agreement"** means the amended and restated shareholders' agreement entered into between the Shareholders and the Company dated 16 September 2004.

**"Sharing Payment"** has the meaning given in Clause 25.1 (*Payments to Senior Secured Creditors*).

**"Signing Date"** means the date of signing of this Agreement, being 14 September 2004 (and any reference in this Agreement to the date of this Agreement shall be construed accordingly).

**"Single Employer Plan"** means any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

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

**"Site Easements"** the easements appurtenant, easements in gross, licence agreements and other rights running for the benefit of the Company and/or appurtenant to the Site.

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

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

**"Solvent"** means, when used with respect to any Person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature, and (e) such Person is not insolvent

within the meaning of any applicable Legal Requirements. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, secured or unsecured.

**"Special Gaming Tax Account"** means the account so designated in Schedule 6 (*Accounts*).

**"Specified Conditions Precedent"** means the conditions precedent as set out in Part H of Schedule 2 (*Conditions Precedent*).

**"Specified Equity Contributions"** means:

- (a) on and prior to 30 June 2016, any cash contribution (whether by way of equity, debt or otherwise) the proceeds of which are paid to the Company or Palo (each such cash contribution being a "**Contribution**"); and
- (b) after 30 June 2016, any Contribution at any time,

designated by the Company as a "Specified Equity Contribution" in writing to the Intercreditor Agent and made, in each case, in accordance with and as permitted by (and which shall be treated, for all purposes under the Senior Finance Documents, as specified in) the Specified Equity Contributions Conditions.

**"Specified Equity Contributions Conditions"** means each of the following conditions, stipulations and other requirements:

- (a) no more than two Contributions may be made in any period of four consecutive Fiscal Quarters (commencing with the Fiscal Quarter ending on 30 September 2016);
- (b) when two Contributions are made in any period of four consecutive Fiscal Quarters (commencing with the Fiscal Quarter ending on 30 September 2016), no Contribution is permitted to be made at any time during the immediately succeeding period of four consecutive Fiscal Quarters (commencing with the Fiscal Quarter immediately succeeding the Fiscal Quarter in which the second of the two Contributions referenced in this paragraph was made);
- (c) each Contribution shall be deemed to be made on the first day of the relevant Fiscal Quarter in which it is made;
- (d) each Contribution shall only be included in EBITDA where EBITDA is calculated for the purposes of testing compliance with the financial covenants set out in paragraphs 1(a) and 1(b) of Part B of Schedule 5 (*Covenants*) and in EBITDA where EBITDA is calculated for the purposes of determining the Leverage Ratio used in ascertaining the ECF Percentage;



- (e) no Contribution shall be included or taken into account for any purpose (other than as set out in paragraph (d) above) and (without limitation) the effect of each Contribution shall be ignored or excluded (to the extent it would otherwise be taken into account or included under the terms of any Senior Finance Document) in any calculation (other than those specified in paragraph (d) above) for the purposes of (or definitions set out in) the Senior Finance Documents;
- (f) without prejudice to paragraph (e) above, the aggregate amount of all Contributions standing to the credit of any Account or Accounts (as well as the aggregate amount of all Permitted Investments made using such Contributions) shall be excluded for the purposes of paragraph (f) of the definition of "Total Debt" in this Clause 1.1 (*Definitions*); and
- (g) any Contribution:
  - (i) (where made by way of loan or the incurrence of other Financial Indebtedness), constitutes Subordinated Debt; and
  - (ii) (where made by way of equity, being the provision of cash consideration for the issuance of Capital Stock by the relevant Obligor), such issuance of Capital Stock is made, in each case, to the existing direct shareholder of such Obligor and is either subject to the existing first ranking fixed Lien in favour of the Security Agent over the Capital Stock of the Obligor or, if needed (in the opinion of the Intercreditor Agent, acting reasonably), is otherwise in such form and on such terms as the Intercreditor Agent may require.

"**Standard & Poor's**" or "**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or its successor

"**Subconcession**" means any subconcession for the operation of games of chance and other games in casinos in the Macau SAR granted by the Company under the Concession Contract with the approval of Macau SAR and in accordance with paragraph 17 of Part B of Schedule 5 (*Covenants*).

"**Subordinated Debt**" means Financial Indebtedness that is subordinated in accordance with the terms provided by the Subordination Deed.

"**Subordination Deed**" means the deed formerly entitled the "Sponsor's Subordination Deed" and dated on or about the Signing Date between the Wynn Obligors, the Company, Wynn Resorts, Wynn Holdings and the Security Agent as further amended, restated, supplemented and novated by, *inter alia*, the Subordination Deed Fourth Deed of Amendment and Acknowledgment of Security (as such term is defined in the Common Terms Agreement Fifth Amendment Agreement), the Subordination Deed Third Deed of Amendment and Acknowledgment of Security (as such term is defined in the Common Terms Agreement Fourth Amendment Agreement), the Sponsors' Subordination Deed Second Deed of Amendment and Acknowledgment of Security (as such term is defined in the Common Terms Agreement Third Amendment Agreement) and the Sponsors' Subordination Deed of Release, Amendment and Acknowledgment

of Security (as such term is defined in the Common Terms Agreement Second Amendment Agreement) .

"**Subsidiary**" means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

"**Subsidiary Obligor**" has the meaning given to it in paragraph 2.1(g) of Part B of Schedule 5 (*Covenants*).

"**Substitution**" has the meaning given to that term in the Common Terms Agreement Third Amendment Agreement.

"**Supplemental Security Documents**" has the meaning given to it in Part H of Schedule 2 (*Conditions Precedent*) to the Common Terms Agreement (as amended from time to time prior to the Sixth Amendment Effective Date).

"**Swap Agreements**" means interest rate swaps, caps or collar agreements or similar arrangements providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

"**Synthetic Lease Obligations**" means all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Financial Indebtedness of such Person (without regard to accounting treatment).

"**Tax**" means any tax (including, without limitation, value-added and income), levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**Tax Deduction**" means any deduction or withholding for or on account of Tax.

"**Tax Payment**" means an increased payment made by the Company to a Senior Secured Creditor under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

"**Term Facility**" means the term loan facilities provided pursuant to the Term Facility Agreement.

**"Term Facility Agent"** means Bank of China Limited, Macau Branch as facility agent for the Term Facility Lenders or its successor appointed in accordance with this Agreement.

**"Term Facility Agreement"** means the agreement formerly entitled the "Hotel Facility Agreement" between the Company, the Term Facility Agent and the Term Facility Lenders as further amended, restated, supplemented and novated from time to time by, *inter alia*, the Term Facility Agreement Fifth Amendment Agreement.

**"Term Facility Agreement Fifth Amendment Agreement"** has the meaning given to such term in the Common Terms Agreement Sixth Amendment Agreement.

**"Term Facility Availability Period"** means the period specified in Clause 4.1 (*Term Facility Availability Period*).

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

**"Term Facility Lender"** means a lender identified as such in Part A of Schedule 1 (*The Lenders and Hedging Counterparties*) or a Transferee in respect of the Term Facility.

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

**"Term Lending Group"** means the Term Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Term Facility Agreement.

**"Term Loan Facilities"** means each of the term loan facilities provided pursuant to the Term Loan Facilities Agreements.

**"Term Loan Facilities Agreements"** means:

- (a) the Term Facility Agreement; and
- (b) each Additional Lender Facility Agreement providing for a term loan facility.

**"Term Loan Facility Lender"** means a Term Facility Lender or an Additional Lender party to an Additional Lender Facility Agreement providing for a term loan facility.

**"Termination Event"** has the meaning given in paragraph 2 (*Certificates; Other Information*) of Part A of Schedule 5 (*Covenants*).

**"Termination Proceeds"** means compensation or other proceeds paid by the Macau SAR in relation to the termination or rescission of the Concession Contract.

**"Total Debt"** means, in relation to the Restricted Group at any time, the aggregate principal amount of all Financial Indebtedness of each member of the Restricted Group at such time (without double counting) but:

- (a) excluding Financial Indebtedness referred to in paragraph (j) of the definition thereof (save in relation to any Realised Hedge Loss);
- (b) excluding Financial Indebtedness arising in respect of the Performance Bond Facility (save in relation to any drawing under the Concession Contract Performance Bond);
- (c) excluding Financial Indebtedness arising in respect of any Shareholder Loans;
- (d) excluding such Financial Indebtedness to the extent it is owed to another member of the Restricted Group;
- (e) including the amount of any liability or obligation, whether or not contingent, assumed by the Company under any Resort Management Agreement and quantified in the same manner as though it were a Guarantee Obligation, in accordance with the deeming provision set out in the definition thereof in this Clause 1.1; and
- (f) subject to paragraph (f) of the definition of "Specified Equity Contributions Conditions" in this Clause 1.1 (*Definitions*), deducting the aggregate amount of any balances standing to the credit of, amounts on deposit in and any Permitted Investments held, in each case, in any Account.

"**Transaction Document**" means a Senior Finance Document or a Major Project Document (other than any Resort Management Agreement).

"**Transfer Date**" means, in relation to a Transferee, the later of:

- (a) the proposed Transfer Date specified in the Novation Certificate; and
- (b) the date on which the Intercreditor Agent executes the Novation Certificate.

"**Transferee**" means a Person to whom the rights and obligations of a Lender under the Senior Finance Documents to which that Lender is a party are transferred in accordance with Clause 21.6 (*Transfers by Lenders*).

"**UCC**" means the Uniform Commercial Code of any State in the United States of America, as in effect from time to time.

"**Unpaid Sum**" means any sum due and payable by an Obligor but unpaid under the Senior Finance Documents.

"**Upfront Premium Account**" means the account so designated in Schedule 6 (*Accounts*).

"**Upsize Advance**" has the meaning given to it in Clause 3.1.3.

"**Upsized Amount**" has the meaning given to it in paragraph 1 of Part H of Schedule 2 (*Conditions Precedent*).

"USD" or "US dollars" or "US\$" denotes the lawful currency of the United States of America.

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

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

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

"Voting Entitlement" means, in respect of a Decision:

- (a) in relation to a Lender, the sum of the US dollar equivalent amounts, as at the Decision Date for such Decision, of its participations in the outstanding Advances and the aggregate undrawn Available Commitments of such Lender under the Facilities;
- (b) in relation to each Hedging Counterparty (after a Hedging Voting Right Event has occurred in relation to such Hedging Counterparty and is continuing), the US dollar equivalent value, as at the Decision Date for such Decision, of the Realised Hedge Loss due and payable but unpaid by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is party.

"Voting Stock" means, with respect to any Person as of any date, the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"WML" means Wynn Macau, Limited.

"WML Debt" means Financial Indebtedness of WML (or a Subsidiary of WML, other than an Obligor, any Excluded Subsidiary or any member of the Group).

"Wholly Owned Subsidiary" means, as to any Person, any other Person in which all (or, in the case of a *Sociedade Anonima* incorporated in Macau, not less than 99.8%) of the Capital Stock (other than directors' qualifying shares required by any Legal Requirement) of such other Person is beneficially owned by such first-mentioned Person directly and/or through other Wholly Owned Subsidiaries.

"Working Capital" means, at any date, an amount equal to Current Assets on such date minus Current Liabilities on such date.

"Wynn Asia 2" means WM Cayman Holdings Limited II.

"Wynn Event" means:

- (a) the first day on which Wynn Resorts ceases to beneficially own, directly or indirectly, 51% of the outstanding Capital Stock of the Company (measured by both voting power and size of equity interests); or

(b) the first day on which Wynn Resorts otherwise ceases to have, directly or indirectly, the ability or the right to direct or procure the direction of the management and policies of the Company.

"**Wynn HK**" means Wynn Resorts (Macau), Limited.

"**Wynn HK Share Charge**" means the share charge so entitled dated on or about the date of this Agreement between Wynn Holdings and the Security Agent.

"**Wynn Holdings**" means Wynn Resorts (Macau) Holdings, Ltd.

"**Wynn International**" means Wynn Resorts International, Ltd.

"**Wynn International Share Charge**" means the share charge so entitled dated on or about the date of this Agreement between Wynn Asia 2 and the Security Agent.

"**Wynn Macau**" means the luxury hotel resort, casino, retail and entertainment complex located in peninsular Macau, owned and operated by the Company, and including "Encore at Wynn Macau".

"**Wynn Non-Obligor Subordination Deed Party**" means each of Worldwide Wynn, LLC, Wynn Design & Development, LLC Wynn International Marketing, Ltd., WML Finance I Limited, the Corporate Services Provider and the Licensor.

"**Wynn Obligor**" means Wynn Holdings, Wynn Asia 2, Wynn International and Wynn HK.

"**Wynn Resorts**" means Wynn Resorts, Limited.

"**Wynn Resorts Group**" means Wynn Resorts and each of its Subsidiaries for the time being.

## 1.2 Principles of Construction

Any reference in this Agreement to:

1.2.1 "**continuing**", in relation to a Default or an Event of Default, shall be construed as a reference to a Default or an Event of Default which has not been remedied or waived;

1.2.2 the "**equivalent**" of one currency (the "**original currency**") in another currency (the "**conversion currency**") shall (unless otherwise specified) be determined by the Intercreditor Agent or such Person nominated by the Intercreditor Agent for that purpose by reference to its spot rate of exchange in Hong Kong for the purchase of the conversion currency with the original currency at or about 11:00 a.m. on the date of the determination or if no such spot rate of exchange exists on that date, by such other method as the Intercreditor Agent (in consultation with the Company) shall reasonably determine;

1.2.3 "**include**", "**includes**" and "**including**" is without limitation;

- 1.2.4 a "**month**" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that:
- (a) if any such numerically corresponding day is not a Business Day, such period shall end on the immediately succeeding Business Day to occur in that next succeeding calendar month or, if none, it shall end on the immediately preceding Business Day; and
  - (b) if there is no numerically corresponding day in that next succeeding calendar month, that period shall end on the last Business Day in that next succeeding calendar month,
- (and references to "**months**" shall be construed accordingly);
- 1.2.5 "**repay**" (or any derivative form thereof) shall, subject to any contrary indication, be construed to include "**prepay**" (or, as the case may be, the corresponding derivative form thereof); and
- 1.2.6 a document being in "**substantially the Agreed Form**" or in substantially a specified form shall be construed as meaning such document being in the same form as the Agreed Form or the specified form save for the insertion of information left in blank or the correction of typographical errors.

### 1.3 **Rules of Interpretation**

In this Agreement, unless the context otherwise requires:

- 1.3.1 words importing the singular include the plural and vice versa;
- 1.3.2 words importing a gender include every gender;
- 1.3.3 references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, confirmed, novated or replaced from time to time;
- 1.3.4 references to this Agreement are references to this Agreement and the Schedules;
- 1.3.5 references to clauses and Schedules are references to clauses of, and Schedules to, this Agreement;
- 1.3.6 headings are for convenience only and shall be ignored in construing this Agreement;
- 1.3.7 references to any party to this Agreement include references to its respective successors, permitted transferees and permitted assigns;
- 1.3.8 references to law shall be construed as references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgement;

- 1.3.9 references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;
- 1.3.10 references to any judgement include references to any order, injunction, decree, determination or award of any court or tribunal;
- 1.3.11 a time of day is a reference to Hong Kong time unless otherwise stated.

Following the Fourth Amendment Effective Date, any reference to the Hotel Facility Agent or a Hotel Facility Lender in any Senior Finance Document, shall be deemed to be a reference to the Term Facility Agent or a Term Facility Lender, as the case may be.

Following the Fifth Amendment Effective Date, unless the context otherwise requires, the terms "**Wong Option Agreement**" and "**Shareholders Agreement**" shall have the meaning given to each such term in clause 1.5 (*Other Definitions*) of the Deed of Appointment and Priority.

In this Agreement, on and following the date on which (a) a Permitted Cotai Reorganisation and (b) the first to occur of (i) a voluntary liquidation, winding up or dissolution (or similar action) of, or in respect of, Palo and (ii) the date on which all rights, title and interests in, or to, the assets of Palo have been transferred, novated or assigned (as the case may be) to the Company and the Company has assumed all of the rights and obligations of Palo under all contracts to which Palo is party, have each occurred, Palo's obligations under this Agreement shall be deemed to be (and shall be construed as) obligations of the Company.

#### 1.4 **Conflict with a Senior Finance Document**

- 1.4.1 The parties agree and acknowledge that Clause 1.4.2 below will not affect or supersede (in any manner) the relevant parties' choice of the laws of the Macau SAR to govern the Senior Finance Documents that are stated to be governed by the laws of the Macau SAR (or the application of the laws of the Macau SAR to such Senior Finance Documents).
- 1.4.2 In the case of any conflict between:
- (a) 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;
  - (b) 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);
  - (c) 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



- (d) 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) [Not used];
- (d) paragraph 1 of Part A of Schedule 5 (*Covenants*) but only for the benefit of the relevant Responsible Officers of the Company;
- (e) Clause 18.3 (*Permitted Cotai Reorganisation; Release of Palo Security*), paragraph 15.3 (*Additional Collateral, Discharge of Liens, etc.*) of Part A of Schedule 5 (*Covenants*), paragraph 6 (*Limitation on Restricted Payments*) of Part B of Schedule 5 (*Covenants*), paragraph 15.2(a) (*Other Contracts*) of Part B of Schedule 5 (*Covenants*) and paragraphs 1 and 3.7 of Schedule 6 (*Accounts*) but, in each case, only for the benefit of the Obligors and the Wynn Non-Obligor Subordination Deed Parties;
- (f) Clause 23.9 (*Exclusion of Liabilities*) but only for the benefit of any officer, employee or agent of an Agent or GCLA; and
- (g) 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 [Not used]

## 1.7 **Application of Agreement**

The parties acknowledge that this Agreement contains references to certain obligations and contracts which have been performed and references to certain matters and circumstances that have occurred, in each case, prior to the Sixth Amendment Effective

Date. The existence of such references shall not be construed so as to imply (in respect of such obligations, contracts, matters and circumstances) additional or continuing obligations beyond the express terms of this Agreement.

## 2. **CONDITIONS PRECEDENT**

2.1 [Not used]

### 2.2 **Conditions Precedent to each Advance**

The obligation of each Lender to participate in each Advance under a Term Loan Facility and a Revolving Credit Facility is subject to the Company having satisfied the conditions set out in Part B2 of Schedule 2 (*Conditions Precedent*) in respect of each Facility in form and substance acceptable to the Intercreditor Agent.

### 2.3 **Independent rights and obligations of Lenders**

2.3.1 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. Each participation by a Lender in an Advance shall constitute a separate and independent debt arising under the Senior Finance Documents to such Lender from the Company of an amount equal to such participation, and references to repayment of an Advance by the Company or to the payment by the Company of interest or any fee or other amount in respect of or in connection with an Advance or determined by reference to the amount of an Advance or a Facility shall be construed accordingly.

2.3.3 A Senior Secured Creditor may, except as otherwise stated in the Senior Finance Documents, separately enforce its rights under the Senior Finance Documents. In relation to any amount due and payable by any Obligor to any Senior Secured Creditor under any Senior Finance Document (whether on account of such Senior Secured Creditor's participation in any Advance that has become due and payable or otherwise), nothing in any Senior Finance Document shall (or shall be construed so as to) prevent or restrict such Senior Secured Creditor (whether alone or with any other Senior Secured Creditor) from (without limitation) seeking any judicial remedy or commencing or taking any legal proceeding or other procedure or step under the laws of any jurisdiction (including any application for a winding-up, bankruptcy or moratorium of or for any Obligor).

## 3. **DRAWDOWN OF ADVANCES**

### 3.1 **Drawdown conditions**

Subject to the terms of this Agreement and the Facility Agreements, the Company may request, and the relevant Lending Group shall make, Advances under a Facility if:

3.1.1 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 not later than 3:00 p.m. on the sixth Business Day before the proposed Advance Date) or the fourth day before the proposed Advance Date (in the case of an Advance under a Revolving Credit Facility), the Intercreditor Agent and the relevant Facility Agent have received a completed Advance Request;

3.1.2 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; and

3.1.3 in the case of the Revolving Credit Facility and the Term Loan Facilities, if any Advance to be requested under the Advance Request, when drawn on the proposed Advance Date, would result in the aggregate US dollar equivalent amount of all Advances outstanding under the Facilities to exceed USD2,500,000,000 (such Advance being an "**Upsize Advance**"), the Intercreditor Agent has received (prior to the duly completed Advance Request in respect of such Advance being received) all documents and other evidence listed in either paragraph 1 of Part H of Schedule 2 (*Conditions Precedent*) or paragraphs 2 to 8 (inclusive) of Part H of Schedule 2 (*Conditions Precedent*), in each case, in form and substance satisfactory to the Intercreditor Agent.

### 3.2 **Completion of an Advance Request**

Each Advance Request is irrevocable and shall not be regarded as having been completed unless:

- 3.2.1 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, 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 currency of the Advances to be made;
  - (b) the Facility under which each such Advance shall be made;
  - (c) the first Interest Period for such Advances (which shall be the same for each such Advance requested under a Term Loan Facility);
  - (d) (in the case of Advances under the Term Facility) the purpose for which such Advances shall be applied; and
  - (e) (in the case of Advances under the Revolving Credit Facility) the purpose for which such Advances shall be applied.
- 3.2.4 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 Revolving Credit Facilities, the aggregate amount requested is either a minimum amount of USD5,000,000 or (as the case may be) its HK dollar equivalent which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount; and
- 3.2.5 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) no Default (or, in the case of any Rollover Advance (as defined in each Revolving Credit Facility Agreement), Event of Default) is continuing or would result from the proposed Advances; and
  - (b) the representations and warranties contained in Schedule 4 (*Representations and Warranties*) which are repeated by the Company at the Advance Date are true and correct in all material respects with reference to the facts and circumstances existing on the date of the Advance Request.

3.3 [Not Used]

## 4. AVAILABILITY PERIODS

### 4.1 Term Facility Availability Period

Subject to other terms of the Senior Finance Documents, the Term Facility shall be made available from the Sixth Amendment Effective Date until the date falling 5 Business Days from the Sixth Amendment Effective Date.

### 4.2 Revolving Credit Facility Availability Period

Subject to other terms of the Senior Finance Documents, the Revolving Credit Facility shall be made available pursuant to the Revolving Credit Facility Agreement from the Sixth Amendment Effective Date until the earliest of:

- 4.2.1 the Revolving Credit Facility Termination Date; and
- 4.2.2 the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*).

### 4.3 Additional Lender Facility Availability Period

Subject to other terms of the Senior Finance Documents, each Additional Lender Facility shall be made available from the date of such Additional Lender Facility Agreement until the earliest of:

- (a) the termination date (as set out in the applicable Additional Lender Facility Agreement); and
- (b) the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*).

## 5. **PURPOSE**

### 5.1 **Purpose - General**

The Company shall apply the proceeds of each Advance under a Facility in accordance with the relevant Facility Agreement and this Agreement.

### 5.2 **No Obligation to be Concerned with Application**

None of the Senior Secured Creditors shall be obliged to concern themselves with the application of proceeds of the Facilities.

### 5.3 **Limitation on Advances**

5.3.1 The proceeds of the Advances shall not be applied towards the acquisition (or maintenance or repair) of any equipment or utensils used in the operation of casino games of chance or other forms of gaming.

5.3.2 [Not Used]

## 6. **PRO RATA DRAWINGS**

The Company shall ensure that:

- (a) where an Advance is requested under a Term Loan Facility, an Advance, as a proportion of the Available Commitments under such Facility, in a US dollar equivalent amount pro rata with that requested has also been requested to be made on the same Advance Date under each of the other Term Loan Facilities; and
- (b) where an Advance is requested under a Revolving Credit Facility, an Advance, as a proportion of the Available Commitments under such Facility, in a US dollar equivalent amount pro rata with that requested has also been requested to be made on the same Advance Date under each of the other Revolving Credit Facilities.

## 7. **[NOT USED]**

## 8. **REPAYMENTS, PREPAYMENTS AND CANCELLATION**

### 8.1 **Repayments**

The Company may repay principal amounts falling due under any Facility Agreement only in accordance with that Facility Agreement and this Agreement.

### 8.2 **Voluntary Prepayment of the Term Loan Facilities**

8.2.1 Subject to the other provisions of this Clause 8 and any applicable terms in the Facility Agreements, the Company may, on at least 30 days' prior written notice to the Intercreditor Agent (which notice shall, if not withdrawn prior thereto, become irrevocable on the tenth Business Day prior to the proposed prepayment date), make voluntary prepayments under the Term Loan Facilities on the last day of any Interest Period, *provided* that for each voluntary prepayment, the amount prepaid under the Term Loan Facilities must exceed an aggregate of USD10,000,000 or its equivalent or, if less, the balance of the principal amount owing to all Term Loan Facility Lenders.

8.2.2 Amounts prepaid under sub-clause 8.2.1 above shall be applied on the Interest Payment Date on which they are made *pro rata* between the Advances outstanding under the Term Loan Facilities and applied *pro rata* against the repayment instalments of those Advances.

8.2.3 For purposes of clarification, Permitted Loan Repurchases shall not constitute payments or prepayments of any amount under the Term Loan Facilities and shall not be subject to the provisions of this Clause 8.

### 8.3 **Mandatory Prepayment**

8.3.1 The Company shall prepay Advances and/or cancel Available Commitments under the Facilities on the dates and in the amounts specified in Schedule 9 (*Mandatory Prepayment*) and this Clause 8.3.

8.3.2 Any amount prepaid under this Clause 8.3 and Schedule 9 (*Mandatory Prepayment*) shall be applied in the following order:

- (a) **first**, pro rata between the Advances outstanding under the Term Loan Facilities and then in inverse order of maturity against the remaining repayment instalments of those Advances;
- (b) **second**, in cancellation of the Available Commitments under the Revolving Credit Facilities (and the Available Commitments of the Lenders under the Revolving Credit Facilities will be cancelled rateably); and
- (c) **thirdly**, in prepayment pro rata of Advances outstanding under the Revolving Credit Facilities (and any Available Commitments of the Lenders under the Revolving Credit Facilities associated therewith shall be automatically cancelled).

8.3.3 Each of the Facilities (and any Available Commitments thereunder) shall be automatically cancelled upon the Company being required to make prepayment pursuant to paragraph 7 and/or paragraph 9 of Schedule 9 (*Mandatory Prepayment*).

#### 8.4 Cancellation

- (a) Save as provided in Clause 8.5 (*Prepayment and Cancellation of Individual Lenders*) and Clause 14 (*Illegality*), the Company may only cancel the whole or any part (being a minimum amount of USD25,000,000) of the Available Commitments under the Revolving Credit Facilities made available pursuant to the Revolving Credit Facility Agreements on not less than seven Business Days' prior irrevocable written notice to the Intercreditor Agent and the relevant Facility Agent, in all cases without penalty or payment of fees or charges save as provided for in Clause 8.6.2 (*Restrictions*) or the relevant Facility Agreement. Such cancellation shall apply *pro rata* across all Revolving Credit Facilities made available under the Revolving Credit Facility Agreements.
- (b) The Available Commitments of each Lender under each of the Term Loan Facilities will be automatically cancelled at the close of business in Hong Kong on the last day of the relevant Availability Period for that Term Loan Facility to the extent undrawn at that date.

#### 8.5 Prepayment and Cancellation of Individual Lenders

If:

- (a) any sum payable to any Lender by the Company is required to be increased under Clause 11.2 (*Tax gross-up*); and/or
- (b) any Lender claims indemnification from the Company under Clause 11.3 (*Tax Indemnity*) or Clause 12 (*Increased costs*); and/or
- (c) a Market Disruption Event occurs in relation to any Advance for any Interest Period pursuant to Clause 10.2 (*Market disruption*); and/or
- (d) any Lender withholds its consent to the incurrence of any Financial Indebtedness by the Company such that the Intercreditor Agent is unable to approve the incurrence of additional Financial Indebtedness in accordance with paragraph 2.1(j) of Part B of Schedule 5 (*Covenants*) or the amendment or waiver of paragraph 2.1 of Part B of Schedule 5 (*Covenants*); and/or
- (e) any Lender becomes a Non-Consenting Lender (as defined in Clause 8.8.3 below) and that Non-Consenting Lender has not, within 10 Business Days of being supplied with the same, executed (and returned to the Intercreditor Agent) all agreements and other instruments (to which it is required to be a party) needed to effect the transfer contemplated by (and in accordance with) Clause 8.8 (*Replacement of Non-Consenting Lender*); and/or
- (f) any Lender withholds its consent to any Screen Rate Decision such that the amendment or waiver contemplated by that Screen Rate Decision is not approved by the Required Lenders within the time specified by the Intercreditor Agent for making such Decision; and/or
- (g) any Lender becomes an Outgoing Lender (as defined in Clause 8.9 (*Anti-Terrorism and Restricted Party Events*) below) and that Outgoing Lender has not, within 10 Business Days of being supplied with the same, executed (and returned to the Intercreditor Agent) all agreements and other instruments (to which it is required to be a party) needed to effect the transfer contemplated by (and in accordance with) Clause 8.9 (*Anti-Terrorism and Restricted Party Events*),

then, the Company may, subject to the other provisions hereof and, in the case of paragraph (d) above, whilst the circumstances described therein continue, and on giving at least fifteen days' prior irrevocable written notice to the Intercreditor Agent:

- (i) prepay that Lender's participation in the Advances outstanding under the relevant Facility Agreement on the Interest Payment Date which immediately ends after the Company's notice; and/or

- (ii) cancel that Lender's undrawn and uncanceled Available Commitments under the relevant Facility Agreement.

## 8.6 Restrictions

- 8.6.1 Any notice of cancellation or prepayment given under this Clause 8 shall be irrevocable if not withdrawn in accordance with Clause 8.2.1 (*Voluntary Prepayment of the Term Loan Facilities*) and shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of the cancellation or prepayment.
- 8.6.2 Any prepayment or cancellation pursuant to this Clause 8 shall be made together with accrued interest and fees on the amount prepaid or cancelled and without premium or penalty, save that the Company shall pay any Break Costs and any other fees specified in the relevant Facility Agreement.
- 8.6.3 The Company shall not repay or prepay all or any part of the Advances or cancel all or any part of the Available Commitments under any Facility Agreement except in accordance with that Facility Agreement and this Clause 8.
- 8.6.4 The Company may not reborrow any part of the Term Loan Facilities which is prepaid.
- 8.6.5 No amount of the Available Commitments cancelled under this Clause 8 may be subsequently reinstated.
- 8.6.6 If the Intercreditor Agent receives a notice under this Clause 8, it shall promptly forward a copy of that notice to either the Company or the affected Lender (or the Facility Agent acting for such Lender), as appropriate.
- 8.6.7 [Not used]

## 8.7 Replacement of Lender

If any Lender:

- (a) claims any amounts from the Company under Clauses 11.2 (*Tax gross-up*), 11.3 (*Tax indemnity*) or 12 (*Increased costs*) hereof;
- (b) fails to make its portion of any Advance to be made by it on the relevant Advance Date;
- (c) withholds its consent in any of the circumstances contemplated in Clause 8.5(d) (*Prepayment and Cancellation of Individual Lenders*); or
- (d) is a Defaulting Lender,

(an "**Affected Lender**"), the Company may (after paying all amounts then due under Clauses 11.2 (*Tax gross-up*), 11.3 (*Tax indemnity*) or 12 (*Increased costs*) hereof to the Affected Lender and, in the case of paragraph (c) above, whilst the circumstances referred to therein continue) designate a non-Affected Lender, any commercial bank or any other financial institution or bank reasonably satisfactory to the Intercreditor Agent (the "**Replacement Lender**") to accept a transfer in accordance with Clause 21.6 (*Transfers by Lenders*) of the Affected Lender's rights, benefits and obligations hereunder, and, promptly following such designation, the Affected Lender shall be obliged to execute the Novation Certificate required for such transfer in accordance with Clause 21.6 (*Transfers by Lenders*) and the non-Affected Lender may, but shall not be obliged to, execute such Novation Certificate and, if it does so, shall be obliged to accept such transfer in accordance with Clause 21.6 (*Transfers by Lenders*). Any such acceptance of transfer shall be for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Affected Lender's participation in the outstanding Advances and all accrued interest, Break Costs and other amounts payable in relation thereto under the Senior Finance Documents.

## 8.8 Replacement of Non-Consenting Lender

- 8.8.1 If at any time any Lender becomes a Non-Consenting Lender (as defined in Clause 8.8.3 below), then the Company may, on 5 Business Days' prior written notice to the Intercreditor Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 21 (*Changes to the Parties*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company, and which is acceptable to the Intercreditor Agent (acting reasonably) which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Advances and all accrued interest, Break Costs and other amounts payable in relation thereto under the Senior Finance Documents. Such Non-Consenting Lender shall provide all reasonable assistance to effect the foregoing transfer.

- 8.8.2 The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:

- (a) neither the Intercreditor Agent nor the Lender shall have any obligation to the Company to find a Replacement Lender;
- (b) such replacement of a Non-Consenting Lender must take place no later than 60 days after the date the Lender was deemed a Non-Consenting Lender under Clause 8.8.3; and
- (c) in no event shall the Lender replaced under this Clause 8.8.2 be required to pay or surrender to such Replacement Lender any of the fees previously received by such Lender pursuant to the Senior Finance Documents.

8.8.3 In the event that:

- (a) the Intercreditor Agent (at the request of the Company) has pursuant to sub-clause 33.1.2 of Clause 33.1 (*Notices of Required Decisions*) notified the relevant Senior Secured Creditors of a Decision required in respect of a waiver or amendment of any provisions of the Senior Finance Documents;
- (b) the waiver or amendment in question requires the consent of all Lenders and, after the occurrence of a Hedging Voting Rights Event in relation to a Hedging Counterparty that is continuing, that Hedging Counterparty; and
- (c) Lenders and, after the occurrence and continuation of a Hedging Voting Right Event in relation to any Hedging Counterparty, that Hedging Counterparty, who hold, in aggregate, more than 66 2/3% of the Voting Entitlements of all such Senior Secured Creditors have voted in favour of that Decision,

then any Lender who does not and continues not to vote in favour of such Decision shall be deemed a "**Non-Consenting Lender**".

## 8.9 **Anti-Terrorism and Restricted Party Events**

- (a) If any litigation, governmental, regulatory or other proceedings by OFAC, FinCEN, the Monetary Authority of Macao, the Hong Kong Monetary Authority or any other United States, European Communities, Macau or Hong Kong Governmental Authority (or any divisions of any of them or authority deriving power from any of them) is pending or adversely determined against a Lender (an "**Outgoing Lender**") as a direct result of that Outgoing Lender's (i) receipt of funds or other property from a Designated Person, (ii) breach of any Anti-Terrorism Law, (iii) breach of any anti-money laundering law or (iv) breach of any anti-corruption law, the Company may on 5 Business Days' prior written notice to the Intercreditor Agent and such Outgoing Lender, replace such Outgoing Lender by requiring such Outgoing Lender to (and such Outgoing Lender shall) transfer pursuant to Clause 21.4 (*Assignment and Transfer by Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (an "**Incoming Lender**") selected by the Company and which is acceptable to the Intercreditor Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations of the transferring Outgoing Lender (including the assumption of the transferring Outgoing Lender's participations on the same basis as the transferring Outgoing Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Outgoing Lender's participation in the outstanding Advances and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Senior Finance Documents.
- (b) The replacement of an Outgoing Lender pursuant to this Clause shall be subject to the following conditions:
  - (i) neither the Intercreditor Agent nor the Outgoing Lender shall have any obligation to the Company to find an Incoming Lender;
  - (ii) in the event of a replacement of an Outgoing Lender such replacement must take place no later than 60 days after the date the Outgoing Lender notifies the Company and the Intercreditor Agent, or the Company notifies the Intercreditor Agent, as the case may be, of the occurrence of any event set out in paragraph (a) above; and
  - (iii) in no event shall the Outgoing Lender replaced under this paragraph (b) be required to pay or surrender to such Incoming Lender any of the fees previously received by such Outgoing Lender pursuant to the Senior Finance Documents.

## 9. **INTEREST, INTEREST PERIODS AND DEFAULT INTEREST**

### 9.1 **Calculation of interest**

The Company shall pay interest under each Facility Agreement at the rate specified in that Facility Agreement.

### 9.2 **Payment of interest**

- 9.2.1 Subject to Clause 9.2.2 below, interest on each Advance shall be due on each Interest Payment Date relating to that Advance.
- 9.2.2 If an Interest Period for a Revolving Credit Facility Advance is 6 months or longer, interest on that Advance shall be due on the dates falling on three month intervals after the first day of that Interest Period *provided that* the last such due date shall be brought forward or postponed (as the case may be) so as to coincide with the Interest Payment Date relating to that Advance.

### 9.3 Interest Periods

The duration of each Interest Period shall be determined as follows:

- 9.3.1 Each Interest Period for a Term Loan Facility Advance shall start on the Advance Date for such Advance or (if already made) on the last day of its preceding Interest Period. A Revolving Credit Facility Advance has one Interest Period only which shall start on the Advance Date for such Advance.

- 9.3.2 Subject to this Clause 9, the duration of each Interest Period for each Advance under:

- (a) a Term Loan Facility shall be one, two, three or six months; and
- (b) a Revolving Credit Facility shall be one, two, three or six months,

in each case as the Company may, by not less than five (or, in the case of any Term Loan Facility Advance made on or prior to the Sixth Amendment Effective Date, two) Business Days' prior notice to the Facility Agent for such Facility, select, *provided that* Term Loan Facility Advances with the same Advance Date shall have the same Interest Period and, save in the case of each Initial Advance made thereunder, the first Interest Period for each Advance made under a Term Loan Facility shall end on the same day as the end of the current Interest Period of any other outstanding Advance made under the same Facility.

- 9.3.3 If the Company fails to give such notice of its selection in relation to an Interest Period, the duration of such Interest Period shall, subject to this Clause 9, be 3 months.

- 9.3.4 Any Interest Period which would otherwise extend beyond:

- (a) a Repayment Date (in the case of any Interest Period relating to an Advance under the Term Facility); or
- (b) the Revolving Credit Facility Termination Date (in the case of any Interest Period relating to an Advance under a Revolving Credit Facility),

shall be of such duration that it shall end on such date.

- 9.3.5 If two or more Interest Periods relating to Advances in the same currency under the same Term Loan Facility end at the same time, then, on the last day of such Interest Periods, such Advances shall be consolidated into and treated as a single Advance.

- 9.3.6 The Company shall use reasonable efforts to at all times select the duration of Interest Periods so as to ensure that, in respect of such of the Advances outstanding under the Facilities as is from time to time equal to the Notional Amounts specified in the Hedging Agreements or, as the case may be, any Permitted Swap Transaction (to the extent that such Permitted Swap Transaction relates to hedging an Obligor's exposure to interest rate fluctuations under the Term Loan Facilities), the Interest Payment Dates for such Advances coincide with (and are no more frequent than) the selected dates for payment of amounts to the Company under the Hedging Agreements or, if applicable, a Permitted Swap Transaction.

- 9.3.7 Any Interest Period which would end on a day which is not a Business Day shall be extended to the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

- 9.3.8 Interest on an Advance shall accrue from and including the first day of an Interest Period relating to such Advance up to but excluding the last day of such Interest Period.

### 9.4 Default interest

- 9.4.1 If the Company fails to pay any amount payable by it under a Senior Finance Document on its due date, interest shall accrue on such Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to sub-clause 9.4.2 below, is 2% higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted an Advance under the relevant



Facility Agreement in the currency of the overdue amount (or, where there is no such relevant Facility Agreement, an Advance in the relevant currency under the Term Facility Agreement) for successive Interest Periods, each of a duration selected by the relevant Facility Agent (each acting reasonably). Any interest accruing under this sub-clause 9.4.1 shall be immediately payable by the Company on demand in writing by the Intercreditor Agent or the relevant Facility Agent.

- 9.4.2 If any Unpaid Sum consists of all or part of an Advance which became due on a day which was not the last day of an Interest Period relating to that Advance:
- (a) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Advance; and
  - (b) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be 2% per annum higher than the rate which would have applied if the overdue amount had not become due.
- 9.4.3 Default interest (if unpaid) arising on an Unpaid Sum shall be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but shall remain immediately due and payable.

## 10. CHANGES TO THE CALCULATION OF INTEREST

### 10.1 Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if LIBOR or HIBOR is to be determined by reference to the Reference Banks under any Facility Agreement but a Reference Bank does not supply a quotation on the Quotation Day under such Facility Agreement, the applicable LIBOR or HIBOR for the purpose of such Facility Agreement shall be determined on the basis of the quotations of the remaining Reference Banks under such Facility Agreement. Where LIBOR or HIBOR is to be determined by reference to the Reference Banks under any Facility Agreement and none or only one Reference Bank supplies a quotation, then LIBOR or, as the case may be, HIBOR shall be treated as incapable of being determined under such Facility Agreement.

### 10.2 Market disruption

- 10.2.1 If a Market Disruption Event occurs in relation to an Advance under a Facility for any Interest Period, the relevant Facility Agent shall promptly notify the Intercreditor Agent of the fact and that this Clause 10.2 is in operation and the Intercreditor Agent shall promptly notify the Company and the other Lenders.
- 10.2.2 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 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 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall deliver to the Intercreditor Agent the payment evidence reasonably satisfactory to the relevant Senior Secured Creditor that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority (*provided* that the Company shall not be obliged to provide any such evidence from a Governmental Authority to the extent that it is not provided by such Governmental Authority).

### 11.3 Tax indemnity

11.3.1 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 Sixth Amendment Signing Date;
- (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;
- (c) the implementation or application of, or compliance with, Basel III or any law or regulation that implements or applies Basel III; or
- (d) the implementation or application of, or compliance with, the Dodd-Frank Wall Street Reform and Consumer Protection Act of the United States of America (whether enacted, adopted or issued before, on or after the date of this Agreement) and/or all requests, rules, guidelines or directives in connection therewith (in each case whether enacted, adopted or issued before, on or after the date of this Agreement) and all amendments thereto from time to time.

12.1.2 In this Agreement:

- (a) "**Increased Costs**" means:

- (i) 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);

- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Senior Finance Document,

which is incurred or suffered by a Lender or any of its Affiliates to the extent that it is attributable to that Lender's having entered into or maintaining its commitment or funding or performing its obligations under any Senior Finance Document; and

(b) "**Basel III**" means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and
- (ii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

## 12.2 Increased cost claims

12.2.1 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 Wynn Macau or the Cotai Project (including, in each case, its participation therein) to the extent that loss or liability is suffered or incurred by that Senior Secured Creditor (other than by reason of default or negligence by a Senior Secured Creditor),

*provided* that, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

### 13.3 **Indemnity to the Agents**

The Company shall, within fifteen days of demand, indemnify each of the Agents against any cost, loss or liability incurred by such Agent (acting reasonably) as a result of:

- 13.3.1 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 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:

16.2.1 this Agreement, the other Senior Finance Documents and any other documents referred to herein or therein; and

16.2.2 any other Senior Finance Documents executed after the Sixth Amendment Signing Date,

in accordance with, in the case of any fees, costs and expenses of the legal advisers appointed on or prior to the Sixth Amendment Signing Date, the appointment or engagement letters (if any) executed by the Company on or prior to the Sixth Amendment Signing Date.

### 16.3 Amendment costs

If the Company or any other Obligor requests an amendment, waiver or consent under any Senior Finance Document, the Company shall, within thirty days of demand, reimburse the Agents for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agents in responding to, evaluating, negotiating or complying with that request.

### 16.4 Enforcement costs

The Company shall, within fifteen days of written demand, pay to each Senior Secured Creditor the amount of all costs and expenses (including legal fees) incurred by that Senior Secured Creditor in connection with the enforcement of, or the preservation of, any rights under and in accordance with any Senior Finance Document *provided* that, prior to the delivery of an Enforcement Notice, such costs and expenses shall be reasonable.

## 17. REPRESENTATIONS AND WARRANTIES

### 17.1 Matters represented

The Company makes the representations and warranties set out in Schedule 4 (*Representations and Warranties*) to each Senior Secured Creditor as at each of the dates specified in Clause 17.2 (*Timing*).

### 17.2 Timing

17.2.1 Each of the representations and warranties set out in Schedule 4 (*Representations and Warranties*) are deemed to be made by the Company (by reference to the facts and circumstances then existing) on the Sixth Amendment Signing

Date.

17.2.2 Unless otherwise stated to have been made as of a specific date, each of the representations and warranties set out in Schedule 4 (*Representations and Warranties*) is made by the Company (with reference to the facts and circumstances then existing) on the Sixth Amendment Effective Date and (other than the representations and warranties set out in paragraphs 10.5 (*Taxes*), 21.1 to 21.6 (inclusive) (*Subsidiaries and Beneficial Interest*) and 36 (*Wynn Asia 2*) of Schedule 4 (*Representations and Warranties*)) is deemed to be repeated by the Company on each subsequent Advance Date (with reference to the facts and circumstances then existing), as if any reference therein to any Senior Finance Document in respect of which any amendment, acknowledgement, confirmation, consolidation, novation, restatement, replacement or supplement is expressed to be made by any of the documents referred to in Clause 1.3 (*Designation*) of the Common Terms Agreement Sixth Amendment Agreement or by the Common Terms Agreement Sixth Amendment Agreement included, to the extent relevant, such document and the Senior Finance Document as so amended, acknowledged, confirmed, consolidated, novated, restated, replaced or supplemented.

## 18. COVENANTS

### 18.1 Content

The Company undertakes to each of the Senior Secured Creditors that it shall comply with the covenants set out in Schedule 5 (*Covenants*).

### 18.2 Duration

The covenants in Schedule 5 (*Covenants*) shall remain in force from the Sixth Amendment Signing Date until the Senior Secured Indebtedness has been fully discharged.

### 18.3 Permitted Cotai Reorganisation; Release of Palo Security

18.3.1 Notwithstanding any other provision of this Agreement or the other Senior Finance Documents to the contrary, the Company shall be permitted to undertake a Permitted Cotai Reorganisation. If, for the purposes of carrying out such Permitted Cotai Reorganisation, where Palo has created a Lien over any of its assets or business under the Palo Security Documents (save for the Palo Share Pledge) in favour of the Security Agent and such Lien is required (in order to effect such Permitted Cotai Reorganisation) to be released, the Security Agent shall, at the cost and request of the Company, promptly release such Liens.

18.3.2 The Company may, in writing to the Intercreditor Agent, request that Palo be the subject of a voluntary liquidation, winding up or dissolution (or similar action) after a Permitted Cotai Reorganisation. Such written request from the Company shall also confirm that Palo has no (and shall not have any) assets, no Default is continuing or would result from such voluntary liquidation, winding up or dissolution (or similar action) and any payments or assets to be distributed as a result of such voluntary liquidation, winding up or dissolution (or similar action) shall be distributed to the Company.

18.3.3 Palo may, following such written request, be the subject of such voluntary liquidation, winding up or dissolution (or similar action) if the Intercreditor Agent confirms in writing that it is satisfied that the matters contemplated by paragraphs (i) to (iv) (inclusive) of the definition of "Permitted Cotai Reorganisation" in Clause 1.1 (*Definitions*) have occurred in a form and substance satisfactory to it (acting reasonably) and that no payment is due from Palo pursuant to the Guarantee or any Palo Security Document.

18.3.4 If Palo is or is proposed to be, pursuant to Clause 18.3.3 above, the subject of such voluntary liquidation, winding up or dissolution (or similar action) then:

- (a) where Palo has created a Lien over any of its assets or business under the Security Documents in favour of the Security Agent, or any Lien in favour of the Security Agent was created over the shares (or equivalent) of Palo, the Security Agent shall, at the cost and request of the Company, promptly release such Liens and the Security Agent (and/or, as required, the Intercreditor Agent) shall promptly release Palo from its obligations under the Senior Finance Documents (including, without limitation, any obligations Palo has as an Obligor) and Palo shall, upon such release occurring, no longer be an Obligor for the purposes of the Senior Finance Documents;
- (b) the releases referred to in paragraph (a) above shall not become effective until the date of such voluntary liquidation, winding up or dissolution (or similar action); and
- (c) if such voluntary liquidation, winding up or dissolution (or similar action) does not occur in respect of Palo, the releases referred to in paragraph (a) above shall have no effect and the obligations of Palo under the Senior Finance Documents (including, without limitation, its obligations as an Obligor) and the Liens created

or intended to be created by or over Palo shall continue in such force and effect (and Palo shall continue to be an Obligor for the purposes of the Senior Finance Documents) as if those releases had not been effected.

#### **18.4 Release of Security over the Existing Executive Director Shares**

If the Existing Executive Director Shares are (or are proposed) to be cancelled in connection with an Executive Director Substitution then:

- 18.4.1 where there is a Lien over such Existing Executive Director Shares under the Security Documents in favour of the Security Agent, the Security Agent shall, at the cost and request of the Company, promptly release such Liens;
- 18.4.2 the releases referred to in Clause 18.4.1 above shall not become effective until immediately prior to the cancellation of such Existing Executive Director Shares; and
- 18.4.3 if such cancellation of the Existing Executive Director Shares does not occur, the releases referred to in Clause 18.4.1 above shall have no effect and the Liens created or intended to be created over such Existing Executive Director Shares shall continue in such force and effect as if those releases had not been effected.

### **19. EVENTS OF DEFAULT**

#### **19.1 Events of Default**

- 19.1.1 Each of the events set out in Schedule 10 (*Events of Default*) (save for paragraph (cc)) is an Event of Default.
- 19.1.2 For the avoidance of doubt and notwithstanding anything in this Agreement or in the Senior Finance Documents to the contrary, the termination of the Concession Contract (including as a result of the termination events set out in article 45 of Law no. 16/2001, of 24 September, and clauses 77, 78, 80 and 81 of the Concession Contract) shall not (in itself) constitute an Event of Default and no Senior Secured Creditor shall be entitled to take legal proceedings (in its own right) against the Macau SAR government for such termination or for the occurrence of a Property Mandatory Prepayment Event.

#### **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 take action to enforce all or any part of the Security or all or any of the Shareholder Guarantees (subject to the expiration of any cure periods contained therein), whereupon any such action shall be taken;
- 19.2.6 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;
- 19.2.7 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;



19.2.8 following the issue of an Enforcement Notice, give (or require the Security Agent to give) notice to any Account Bank in relation to the operation of the Accounts in accordance with paragraph 3.3 (*Default*) of Schedule 6 (*Accounts*); and/or

19.2.9 exercise any or all other remedies available at law not inconsistent with the foregoing,

*provided* that the foregoing shall not in any way affect the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents.

### 19.3 Remedies following an Executive Director Event

Without prejudice to Clause 19.2 (*Remedies following an Event of Default*) or in any way affecting the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents, upon the occurrence of an Executive Director Event and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, require the Security Agent to take action to enforce all or any part of the Security granted pursuant to the Executive Director Share Pledge.

## 20. APPLICATION OF ENFORCEMENT PROCEEDS

After delivery of an Enforcement Notice and notwithstanding the provisions of Schedule 6 (*Accounts*), all Enforcement Proceeds shall be applied in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

## 21. CHANGES TO THE PARTIES

### 21.1 Binding Agreement

This Agreement shall be binding upon and enure to the benefit of each party hereto and its or any subsequent successors and transferees.

### 21.2 Assignment and Transfer by the Company or the GCLAs

21.2.1 The Company may not assign, transfer, novate or dispose of any of its rights or obligations under this Agreement or the other Senior Finance Documents.

21.2.2 The GCLAs may not assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the Company.

### 21.3 Assignment and Transfer by Agents

Each Agent may assign or transfer any of its rights and obligations under any Senior Finance Document to which it is party only in accordance with its voluntary or requested resignation under and subject to the relevant Senior Finance Document and this Agreement and then only if it first procures that its assignee or transferee executes a duly completed Agent's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by such Agent, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent) and enters into such other acknowledgements as may be necessary or desirable to protect the Security.

### 21.4 Assignment and Transfer by Lenders

21.4.1 Subject to the provisions of the Facility Agreement to which it is a party and execution and delivery by the assignee or Transferee of a Finance Party Accession Undertaking, any Lender may, at any time, assign in accordance with Clause 21.5 (*Assignments by Lenders*) all or any of its rights and benefits under the Senior Finance Documents or transfer in accordance with Clause 21.6 (*Transfers by Lenders*) all or any of its rights, benefits and obligations under the Senior Finance Documents to:

- (a) another Lender or an Affiliate of a Lender;
- (b) any commercial bank;
- (c) any other bank or financial institution or trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets;
- (d) in the case of a Permitted Loan Repurchase, the Company; or

- (e) any other entity with the consent of the Company (such consent not to be unreasonably withheld or delayed and which consent shall not be

required in respect of any assignment or transfer after the occurrence of an Event of Default which is continuing),

*provided* that all transactional costs (including any stamp duties, transfer taxes and any costs attributable to any transfer of Security) of such assignment or transfer shall be borne by the relevant Lender or assignee or Transferee except for:

- (i) any transfer in connection with the syndication of the Facilities, all such costs of which (including those set forth in Clause 21.7 (*Assignment and Transfer Fees*)) shall be borne by the Company; and
- (ii) any transfer contemplated by the Pre-Amendment Global Transfer Agreement or the Post-Amendment Global Transfer Agreement, all such costs of which shall be borne by the Company.

21.4.2 Any assignment or transfer of a Lender's participations in Advances outstanding or, as the case may be, Available Commitments under:

- (a) the Term Facility shall be in a minimum amount of USD1,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility; or
- (b) a Revolving Credit Facility shall be in a minimum amount of USD1,000,000 or its equivalent or, if less, equal to the aggregate of such Lender's participations or Available Commitments under such Facility.

21.4.3 Each assignee or Transferee, by executing a Finance Party Accession Undertaking (including, without limitation, the Pre-Amendment Global Transfer Agreement and the Post-Amendment Global Transfer Agreement), confirms, for the avoidance of doubt, that the Intercreditor Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the assigning or transferring Lender would have been had it remained a Lender.

## 21.5 Assignments by Lenders

If any Lender assigns all or any of its rights and benefits under the Senior Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), then, unless and until the assignee has delivered:

- (a) a notice to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) confirming in favour of the Senior Secured Creditors that it shall be under the same obligations towards each of them as it would have been under if it had been an original party hereto as a Lender and to the relevant Facility Agreement as a Term Facility Lender, Additional Lender or Revolving Credit Facility Lender (as the case may be); and

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

(whereupon such assignee shall become a party hereto as a "Lender" or thereto as a "Term Facility Lender", "Additional Lender" or "Revolving Credit Facility Lender"), the Company and the Senior Secured Creditors shall not be obliged to recognise such assignee as having the rights against each of them which it would have had if it had been such a party hereto or thereto. This Clause 21.5 shall not apply to the Company's acquisition of an Advance pursuant to a Permitted Loan Repurchase.

## 21.6 Transfers by Lenders

Except in the case of a Permitted Loan Repurchase, if any Lender wishes to transfer all or any of its rights, benefits and/or obligations under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents as contemplated in Clause 21.4 (*Assignment and Transfer by Lenders*), then such transfer shall only be effective if the procedure set out in this Clause 21.6 is complied with. Such transfer shall be effected by the delivery to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) of:

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

in which event, on the later of the Transfer Date specified in such Novation Certificate and the fifth Business Day after (or such earlier Business Day endorsed by the Intercreditor Agent on such Novation Certificate falling on or after) the date of delivery of such Novation Certificate and Finance Party Accession Undertaking to the Intercreditor Agent:

21.6.1 to the extent that in such Novation Certificate the Lender party thereto seeks to transfer by novation its rights, benefits and obligations under this Agreement and the corresponding rights, benefits and obligations under the other Senior Finance Documents, the Company and such Lender shall be released from further obligations towards one another under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents and their respective rights against one another shall be cancelled (such rights and

obligations being referred to in this Clause 21.6 as "**discharged rights and obligations**");

21.6.2 each of the Company and the Transferee shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar the Company and such Transferee have assumed and/or acquired the same in place of such other party and such Lender;

21.6.3 the Agents, the GCLAs, such Transferee and the other Lenders shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such Transferee been an original party to this Agreement and the other relevant Senior Finance Documents as a Lender with the rights, benefits and/or obligations acquired or assumed by it as a result of such transfer and to that extent the Agents, the GCLAs and the relevant Lender shall each be released from further obligations to each other under this Agreement and the other relevant Senior Finance Documents; and

21.6.4 such Transferee shall become a party hereto as a "Lender" and to the relevant Facility Agreement as a "Term Facility Lender", "Additional Lender" or "Revolving Credit Facility Lender" (as the case may be).

#### 21.7 **Assignment and Transfer Fees**

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*), the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee of USD2,000.

#### 21.8 **Disclosure of Information**

Any Senior Secured Creditor may disclose to any of its Affiliates and any other Person:

21.8.1 to (or through) whom such Senior Secured Creditor assigns or transfers (or may potentially assign or transfer) all or any of its rights, benefits and obligations in accordance with the Senior Finance Documents;

21.8.2 in the case of a Lender, with (or through) whom such Lender enters into (or may potentially enter into) any sub-participation in relation to the Senior Finance Documents or any Obligor; or

21.8.3 to whom information may be required to be disclosed by any applicable law or pursuant to any regulatory or stock exchange requirement;

such information about any Obligor, Wynn Macau, the Cotai Project and the Senior Finance Documents as such Senior Secured Creditor may consider appropriate, *provided* that the Person to whom such information is provided under sub-clause 21.8.1 or 21.8.2 first enters into a Confidentiality Undertaking (or, in the case of the Security Agent, the confidentiality undertaking referred to in clause 18.9 (*Disclosure of Information by*

*Security Agent*) of the Deed of Appointment and Priority) and that the Company has received a copy of such signed undertaking.

## 21.9 **Change of Facility Office**

Any Lender may change its Facility Office *provided* that the Company shall have no liability (or no increase in liability) under Clause 11 (*Tax gross-up and Indemnities*) or Clause 12 (*Increased costs*) which would not exist as at the date of such change but for such change, unless such change was requested by the Company pursuant to Clause 15 (*Mitigation by the Senior Secured Creditors*).

## 21.10 **Permitted Loan Repurchases**

21.10.1 Notwithstanding anything to the contrary contained in this Agreement or the other Senior Finance Documents, the Company shall be permitted to acquire Advances pursuant to a Permitted Loan Repurchase (including through Open Market Purchases), so long as any Advances so acquired are cancelled and retired immediately upon such Permitted Loan Repurchase becoming effective, the consideration for such Permitted Loan Repurchase is not funded from any Advance (or the proceeds thereof) and where such Permitted Loan Repurchase is made by way of Open Market Purchase, no Event of Default has occurred and is continuing or might reasonably be expected to occur as a result of such Permitted Loan Repurchase. For all purposes under this Agreement and the other Senior Finance Documents, upon a Permitted Loan Repurchase becoming effective:

- (a) any Advances acquired by the Company pursuant to such Permitted Loan Repurchase:
  - (i) shall be deemed not to be outstanding and to have no principal amount (or any other amount owing in respect thereof);
  - (ii) shall be deemed to be automatically cancelled and retired without any further action by the Company, the Intercreditor Agent, the Lenders or any other Person; and
  - (iii) shall be deemed not to constitute payments (or prepayments) of Advances for any purpose hereunder;
- (b) for the purposes of testing compliance with the financial covenants in paragraph 1 of Part B of Schedule 5 (*Covenants*), any impact of such Permitted Loan Repurchase on EBITDA shall be ignored;
- (c) for the avoidance of doubt and without otherwise limiting the definition or interpretation of "Permitted Business", the Company shall be deemed not to be in breach of paragraph 14 of Part B of Schedule 5 (*Covenants*) solely by virtue of carrying out a Permitted Loan Repurchase;

- (d) Clause 25 (*Sharing Among The Senior Secured Creditors*) shall not be applicable to the consideration paid under such Permitted Loan Repurchase;
- (e) no Obligor shall be permitted to receive any payment or prepayment under this Agreement which is payable to any Lender by virtue of the Company having made a Permitted Loan Repurchase; and
- (f) the Company shall not be permitted to sell, transfer or otherwise dispose of the subject matter of such Permitted Loan Repurchase.

21.10.2 The Company shall take such actions and execute such documents and agreements as may be reasonably requested by the Intercreditor Agent to further evidence the cancellation and retirement referred to in Clause 21.10.1 above.

21.10.3 The Company shall promptly notify the Intercreditor Agent of any Permitted Loan Repurchase made by way of an Open Market Purchase and the identity of the Facilities to which they relate. The Intercreditor Agent shall disclose such information to any Lender that requests the same.

21.10.4 For so long as the Company beneficially owns or has any Voting Entitlements following a Permitted Loan Repurchase, those Voting Entitlements shall be deemed to be zero and the Company shall be deemed not to be a Lender. The Company agrees that, following a Permitted Loan Repurchase by it, it shall not, in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, attend or participate in the same or be entitled to receive the agenda or any minutes of the same and it shall not be entitled to receive any report or other document prepared at the request of, or on the instructions of, the Intercreditor Agent or one or more of the Lenders or any other Secured Party or Secured Parties.

## 22. HEDGING COUNTERPARTIES

### 22.1 Accession

Each Hedging Counterparty shall execute and deliver to the Intercreditor Agent a Hedging Counterparty's Deed of Accession and shall execute and deliver to the Security Agent in accordance with the Deed of Appointment and Priority a Finance Party Accession Undertaking. A Hedging Counterparty may, at any time, assign all or any of its rights and benefits or transfer all or any of its rights, benefits and obligations under and in accordance with the Senior Finance Documents subject to delivery to the Intercreditor Agent of a duly completed:

- (a) Hedging Counterparty's Deed of Accession executed by the assignee or transferee; and
- (b) Finance Party Accession Undertaking executed by the assignee or transferee, the Hedging Counterparty, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent).

### 22.2 Interest in the Security

The obligations of the Company owed to each Hedging Counterparty shall be secured by the Security and each Hedging Counterparty shall be entitled to share in the Enforcement Proceeds in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

### 22.3 Voting rights

Nothing in this Clause 22 nor any other provisions of any Senior Finance Document shall be deemed to entitle any Hedging Counterparty in its capacity as such under any Hedging Agreement to exercise any voting, consent, approval or similar right under the Senior Finance Documents (other than the Hedging Agreements) including any right to participate in any Decision *provided that*:

- 22.3.1 each Hedging Counterparty shall have the right to participate in all Decisions after the occurrence of a Hedging Voting Right Event in relation to such Hedging Counterparty that is continuing; and
- 22.3.2 the consent of all Hedging Counterparties shall be required for any change to the matters referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) in the definition of "Fundamental Term" in Clause 1.1 (*Definitions*) and for any amendment to Clause 33.6 (*Application of Enforcement Proceeds*) and this Clause 22.

### 22.4 Restrictions on Amendment

Each Hedging Counterparty agrees that, except with the prior written consent of the Intercreditor Agent, no amendment may be made to a Hedging Agreement to an extent which would result in:

- 22.4.1 any payment under that Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in that Hedging Agreement; or
- 22.4.2 the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of that Hedging Agreement; or
- 22.4.3 the Company becoming liable to make any payment under that Hedging Agreement in any currency other than in the currency provided for under the original provisions of that Hedging Agreement.

## 22.5 **Restrictions on Termination**

No Hedging Counterparty may terminate a hedging facility or close out any hedging transaction under a Hedging Agreement prior to its stated maturity except in accordance with the terms of the ISDA Master Agreement and the ISDA Schedule (each as may be amended pursuant to paragraph 4 of Schedule 8 (*Hedging Arrangements*)).

## 22.6 **Termination at request of Intercreditor Agent**

After a notice has been given by the Intercreditor Agent pursuant to sub-clause 19.2.2 of Clause 19.2 (*Remedies following an Event of Default*), a Hedging Counterparty shall, at the written request of the Intercreditor Agent, terminate the hedging facility or close out any hedging transaction under the Hedging Agreement to which it is party in accordance with the terms of such Hedging Agreement.

## 23. **AGENTS AND GLOBAL COORDINATING LEAD ARRANGERS**

### 23.1 **Appointment and duties of the Agents**

23.1.1 Each of:

- (a) the Senior Secured Creditors appoints the Intercreditor Agent;
- (b) the Term Facility Lenders appoints the Term Facility Agent;
- (c) the Revolving Credit Facility Lenders appoints the Revolving Credit Facility Agent; and
- (d) the Additional Lenders under each Additional Lender Facility Agreement appoint the applicable Additional Facility Agent as facility agent for those Additional Lenders (or its successor approved in accordance with this Agreement),

to act as its agent under and in connection with the Senior Finance Documents and irrevocably authorises it on its behalf to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the Senior Finance Documents, together with any other incidental rights, powers and discretions.

23.1.2 None of the Agents may begin any legal action or proceeding in the name of a Senior Secured Creditor (other than itself) without that Senior Secured Creditor's consent.

23.1.3 Each Agent has only those duties which are expressly specified in the Senior Finance Documents, and those duties are solely of a mechanical and administrative nature.

### 23.2 **Relationship**

23.2.1 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 Senior Secured Creditor for any breach by the Company of the Senior Finance Documents.

### 23.3 **Role of the GCLAs**

Except as specifically provided in the Senior Finance Documents, none of the GCLAs has any obligations of any kind to any other party to a Senior Finance Document under or in connection with any Senior Finance Document.



## 23.4 Delegation

Each Agent may act through its personnel and agents.

## 23.5 Instructions

23.5.1 Unless otherwise expressly provided in the Senior Finance Documents, the Intercreditor Agent shall act (and shall be fully protected if it so acts) in accordance with the instructions of the Required Lenders in connection with the exercise of any right, power or discretion under or in connection with the Senior Finance Documents.

23.5.2 Each Facility Agent shall be fully protected if it acts in accordance with the instructions of its Lending Group in connection with the exercise of any right, power or discretion under or in connection with any matter not expressly provided for in the Senior Finance Documents.

23.5.3 In the absence of such instructions each Agent may act, subject to the terms of the Senior Finance Documents, as that Agent, in its sole discretion, considers to be in the best interests of all the Senior Secured Creditors or, in the case of each Facility Agent, its Lending Group.

## 23.6 Discretions

Notwithstanding any provision of the Senior Finance Documents, each Agent may:

23.6.1 assume, unless it has, in its capacity as Agent, received written notice to the contrary from any other party to this Agreement, 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 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 Major Project Document or any of their respective related entities if (a) such Person, on providing such information, expressly stated to such Agent or, as the case may be, such GCLA, that such information was confidential or (b) such disclosure would or might in its opinion constitute a breach of any law or be otherwise actionable at the suit of any Person; or

23.8.4 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.

No party hereto (other than the applicable Agent or GCLA) may take any proceedings against any officer, employee or agent of an Agent or a GCLA in respect of any claim it might have against such Agent or such GCLA, as the case may be, or in respect of any act or omission of any kind by that officer, employee or agent (other than by reason of the fraud, gross negligence or wilful misconduct of such officer, employee or agent) in relation to any Senior Finance Document and any officer, employee or agent of such Agent or GCLA may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

## 23.10 No Actions

Each of the Lenders and the Hedging Counterparties agrees that it shall not assert or seek to assert against any director, officer or employee of any of the Agents or any of the GCLAs any claim it might have against any of them.

## 23.11 Business with the Obligors

Each Agent and GCLA may accept deposits from, lend money to and generally engage in any kind of banking or other business with any of the Obligors or their Affiliates.

## 23.12 Resignation

23.12.1 An Agent may resign its appointment hereunder at any time without assigning any reason therefor by giving not less than 25 Business Days' prior notice to that effect to the Senior Secured Creditors and the Company, in which case:

- (a) the Required Lenders (in the case of the Intercreditor Agent) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Required Lenders and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Required Lenders may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent; and
- (b) the relevant Lending Group under a Facility (in the case of a Facility Agent for that Facility) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of such Lending Group and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Lending Group may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent.

23.12.2 If the Required Lenders have not, within 15 Business Days after notice of resignation, appointed a successor Intercreditor Agent which accepts the appointment, the outgoing Agent may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Intercreditor Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the Intercreditor Agent may appoint a successor Agent on the same terms and conditions as previously applied to it.

23.12.3 If a Lending Group has not, within 15 Business Days after notice of resignation appointed a successor Facility Agent which accepts the appointment, the outgoing Facility Agent may appoint a successor Facility Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the outgoing Facility Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the outgoing Facility Agent may appoint a successor Facility Agent on the same terms and conditions as previously applied to it.

23.12.4 If, at the time of expiry of the period specified in sub-clause 23.12.2 or, as the case may be, sub-clause 23.12.3 above, the outgoing Agent cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of Wynn Macau and the Cotai Project.

23.12.5 If the Agent has not been paid an amount due to it under the Senior Finance Documents and gives notice thereof as its reason for resigning together with its notice pursuant to Clause 23.12.1, it shall not be obliged to appoint a successor. If, at the time of expiry of the period specified in clause 23.12.1, the Required Lenders or, as the case may be, the relevant Lending Group, cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Company.

23.12.6 The resignation of an Agent and the appointment of any successor Agent shall both become effective only upon the successor Agent executing an Agent's Deed of Accession *provided* that, where the Agent has notified the reason for its resignation pursuant to Clause 23.12.5, its resignation shall become effective upon the expiry of the period notified by it pursuant to Clause 23.12.1. Upon the execution of an Agent's Deed of Accession, the successor Agent shall succeed to the position of the retiring Agent (as the case may be) under the Senior Finance Documents and the term "Agent" shall mean the successor Agent.

23.12.7 The Intercreditor Agent agrees that it shall, if so requested in writing by the Required Lenders, tender its resignation in accordance with this Clause 23.12.

23.12.8 Each Facility Agent agrees that it shall, if so requested in writing by its Lending Group, tender its resignation in accordance with this Clause 23.12.

23.12.9 Upon the appointment of a successor (or, as the case may be, its resignation becoming effective), the retiring Agent shall be discharged from any future (but not accrued) obligations in respect of the Senior Finance Documents but shall remain entitled to the benefit of Clause 13.2 (*Other Indemnities*) and sub-clauses 23.1, 23.2, 23.5.2, 23.5.3, 23.6.10, 23.8, 23.9, 23.10 and 23.15 of this Clause 23.

## 23.13 Own Responsibility

It is understood and agreed by each Senior Secured Creditor that at all times it has itself been, and shall continue to be, solely responsible for making its own independent appraisal of, and investigation into, all risks arising under or in

connection with the Senior Finance Documents including, but not limited to:

23.13.1 the financial condition, creditworthiness, condition, affairs, status and nature of Wynn Macau, the Cotai Project and each Obligor;

23.13.2 the legality, validity, effectiveness, adequacy and enforceability of the Senior Finance Documents and any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;

23.13.3 whether such Senior Secured Creditor has recourse, and the nature and extent of that recourse, against an Obligor or any other Person or any of their respective assets under or in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; and

23.13.4 the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Agents or the GCLAs, an Obligor, or by any other Person in connection with the Senior Finance Documents, the transactions contemplated therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, each Senior Secured Creditor acknowledges to the Agents and the GCLAs that it has not relied on and shall not hereafter rely on the Agents and the GCLAs or any of them in respect of any of these matters.

#### **23.14 Agency Division Separate**

In acting as Agent under the Senior Finance Documents, each of the Agents shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments and, notwithstanding the foregoing provisions of this Clause 23, any information received by some other division or department of such Agent may be treated as confidential and shall not be regarded as having been given to such Agent's agency division.

#### **23.15 Indemnity to Intercreditor Agent**

23.15.1 Each Senior Secured Creditor shall rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Senior Secured Creditors (or, if all such amounts have been reduced to zero, such proportion determined immediately prior to such reduction) for the time being, indemnify the Intercreditor Agent, within fifteen days of demand (accompanied by reasonable written certification), against cost, loss or liability incurred by the Intercreditor Agent (other than by reason of fraud, negligence or wilful misconduct of the Intercreditor Agent) in acting as Intercreditor Agent in accordance with the terms of the Senior Finance Documents (unless the Intercreditor Agent has been reimbursed by, or indemnified to its satisfaction by, an Obligor pursuant to a Senior Finance Document or otherwise in writing). For the purposes of this Clause 23.15.1, each Hedging Counterparty shall, in respect of each Hedging Agreement entered into by it, be deemed to have made an Advance to the Company in an amount equal to the Realised Hedge Loss (if any) under the Hedging Agreement to which such Hedging Counterparty is party.

23.15.2 Clause 23.15.1 shall not apply to the extent that the Intercreditor Agent is otherwise actually indemnified or reimbursed by any party to a Senior Finance Document under any other provision of the Senior Finance Documents.

23.15.3 Provided that the Company is required to reimburse or indemnify the Intercreditor Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Senior Secured Creditor, indemnify such Senior Secured Creditor in relation to any payment actually made by such Senior Secured Creditor pursuant to Clause 23.15.1 above.

#### **24. CONDUCT OF BUSINESS BY THE SENIOR SECURED CREDITORS**

No provision of the Senior Finance Documents shall:

24.1.1 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.

For purposes of clarification, Permitted Loan Repurchases shall not constitute payments (or prepayments) of Advances or the recovery of any amount from an Obligor for any purpose hereunder.

## 25.2 **Redistribution of payments**

The Intercreditor Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Senior Secured Creditors (other than the Recovering Senior Secured Creditor) in accordance with this Agreement.

## 25.3 **Recovering Senior Secured Creditor's Rights**

25.3.1 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 25, have a valid and enforceable claim against the relevant Obligor.

## 25.6 **Benefit**

The provisions of this Clause 25 are for the sole benefit of the Senior Secured Creditors and may be waived or amended by the Required Lenders without the consent of the Company provided there is no increase in the liability of the Company as a result.

## 26. **PAYMENT MECHANICS**

## 26.1 Payments under the Senior Finance Documents

### 26.1.1 *Prior to an Event of Default*

Unless and until an Event of Default has occurred and is continuing and except with respect to any payments pursuant to a Permitted Loan Repurchase:

- (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 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.

### 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*) and except with respect to any payments pursuant to a Permitted Loan Repurchase:

- (a) all payments to be made by the Company to or for the account of any Senior Secured Creditor or under any Senior Finance Document shall be made to the Intercreditor Agent (other than any such payments to be made to or for the account of the Security Agent which shall continue to be made to the Security Agent);
- (b) all payments to be made by any Lender under any Senior Finance Document (whether pursuant to Clause 25 (*Sharing Among the Senior Secured Creditors*) or otherwise) shall be paid to the Intercreditor Agent; and
- (c) all payments received by the Intercreditor Agent under this sub-clause 26.1.2 shall be distributed in accordance with Clause 33.6 (*Application of Enforcement Proceeds*) to the Person(s) specified therein or, where any such Person is a Lender, to the relevant Facility Agent for the account of that Lender.

## 26.2 Payments by an Agent

26.2.1 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 Obligors

All payments to be made by an Obligor under the Senior Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

## 26.6 **Business Days**

26.6.1 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 an individual holding the Executive Director Shares, his or her liability shall be limited to his or her shares in the Company.

## 29. **NOTICES**

### 29.1 **Communications in Writing**

Any notice, demand or other communication (each, for the purposes of this Clause 29, a "**communication**") to be made under or in connection with the Senior Finance Documents shall be made in writing but, unless otherwise stated, may be made by fax or letter.

### 29.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Senior Finance Documents is:

29.2.1 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 Sixth 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 **Electronic supply of materials**

29.6.1 The Company shall (and shall ensure that each other Obligor shall), unless otherwise requested by the Intercreditor Agent, provide to the Intercreditor Agent all information, documents and other materials that such Obligor is obligated to furnish to the Intercreditor Agent pursuant to the Senior Finance Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a new, or a conversion of an existing, Advance or other extension of credit (including any election of an interest rate or Interest Period relating thereto), (ii) relates to the payment of any principal or other amount due under any Senior Finance Document prior to the scheduled date therefor, (iii) provides notice of any Default under any Senior Finance Document, (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of any Senior Finance Document and/or any Advance or other extension of credit hereunder or (v) initiates or responds to legal process (all such non-excluded information being referred to herein collectively as the "**Communications**") by transmitting the Communications in an electronic/soft medium (provided such Communications contain any required signatures) in a



format acceptable to the Intercreditor Agent to each of Loan\_Agency@bocmacau.com, ieong\_lengchan@bocmacau.com and wong\_iaokun@bocmacau.com (or such other e-mail address or addresses designated by the Intercreditor Agent from time to time).

29.6.2 Each party hereto agrees that the Intercreditor Agent may make the Communications available to the any Senior Secured Creditor by posting the Communications on IntraLinks or another relevant website, if any, to which such Senior Secured Creditor has access (whether a commercial, third-party website or whether sponsored by the Intercreditor Agent) (the "**Platform**"). Nothing in this Clause 29.6 shall prejudice the right of the Intercreditor Agent to make the Communications available to any Senior Secured Creditor in any other manner specified in this Agreement or any other Senior Finance Documents.

29.6.3 Each Senior Secured Creditor agrees that e-mail notice to it (at the address provided pursuant to the next sentence and deemed delivered as provided in the next paragraph) specifying that Communications have been posted to the Platform shall constitute effective delivery of such Communications to such Senior Secured Creditor for purposes of this Agreement and the other Senior Finance Documents. Each Senior Secured Creditor agrees (i) to notify the Intercreditor Agent in writing (including by electronic communication) from time to time to ensure that the Intercreditor Agent has on record an effective e-mail address for such Senior Secured Creditor to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.

29.6.4 Notwithstanding sub-clause 29.6.5 below, each party hereto agrees that any electronic communication referred to in this Clause 29.6 shall be deemed delivered upon the posting of a record of such communication (properly addressed to such party at the e-mail address provided to the Intercreditor Agent) as "sent" in the e-mail system of the sending party or, in the case of any such communication to the Intercreditor Agent, upon the posting of a record of such communication as "received" in the e-mail system of the Intercreditor Agent; *provided* that if such communication is not so received by the Intercreditor Agent during the normal business hours of the Intercreditor Agent, such communication shall be deemed delivered at the opening of business on the next Business Day for the Intercreditor Agent.

29.6.5 Each party hereto acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Communications and the Platform are provided "as is" and "as available", (iii) none of the Intercreditor Agent, its affiliates nor any of their respective officers, directors, employees, agents, advisors or representatives (collectively, the "**Intercreditor Parties**") warrants the adequacy, accuracy or completeness of the Communications or the Platform, and each Intercreditor Party expressly disclaims liability for errors or omissions in any Communications or the Platform and (iv) no representation or warranty of any kind, express, implied or statutory, including any representation or warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Intercreditor Party in connection with any Communications or the Platform.

## 29.7 **English language**

29.7.1 Any notice given under or in connection with any Senior Finance Document must be in English.

29.7.2 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 (and, after the occurrence of a Hedging Voting Right Event in relation to any Hedging Counterparty that is continuing, that Hedging Counterparty) of that matter specifying:

- (i) whether the matter concerns a Fundamental Term and, if not, which Senior Secured Creditors may vote in respect of the Decision and the aggregate Voting Entitlement required for the Decision to be made;
- (ii) the date and time by which the Intercreditor Agent requires receipt of all votes in respect of the Decision (the "**Decision Date**"); and
- (iii) following a Hedging Voting Right Event, the identity of the relevant Hedging Counterparty.

#### 33.2 **Notice of Votes**

Each Senior Secured Creditor shall copy notice of its vote to the Intercreditor Agent, to each Facility Agent and each Hedging Counterparty notified by the Intercreditor Agent pursuant to Clause 33.1.2(iii) (*Notices of Required Decisions*).

#### 33.3 **Decisions under the Senior Finance Documents**

Subject to the other provisions of this Agreement, the exercise of any right, power, discretion or determination which has been delegated to the Intercreditor Agent under the Senior Finance Documents (save for any such right, power, discretion or determination to be exercised by any such party for its own account) shall require the consent or agreement of the Required Lenders *provided* that the Intercreditor Agent may exercise any such right, power, discretion or determination (including giving instructions to the Security Agent) without requiring any Decision which the Intercreditor Agent, acting reasonably, considers is a minor, administrative or technical matter which does not adversely affect the rights of the Senior Secured Creditors under the Senior Finance Documents.

#### 33.4 **Restrictions On Remedies**

Subject to this Clause 33 (*Intercreditor Arrangements*), no Senior Secured Creditor may, at any time:

33.4.1 set off, or purport to set off, at any time, any amount owing to it under the Senior Finance Documents against any amount payable by it to an Obligor (except that any Hedging Counterparty may net off between transactions under a single Hedging Agreement);

33.4.2 take any action or commence any legal proceedings of whatsoever nature against an Obligor under or in respect of a Senior Finance Document to which that Obligor is a party including taking any steps or legal proceedings for the winding-up, dissolution or administration of any of the Obligors or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of any of the Obligors or of any or all of its assets or revenues; or

33.4.3 foreclose on, or enforce or seek an order of the court to enforce all or any of the Security.

#### 33.5 **Notice of Default**

33.5.1 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 and each Hedging Counterparty in writing and, in the case of an Event of Default, it shall issue a notice under Clause 33.1 (*Notices of Required Decisions*) in respect of that Event of Default.

### 33.6 Application of Enforcement Proceeds

Following the delivery of an Enforcement Notice, all Enforcement Proceeds paid to the Intercreditor Agent in accordance with the Deed of Appointment and Priority shall be applied by it (together with any other payments received by it pursuant to sub-clause 26.1.2 of Clause 26.1 (*Payments under the Senior Finance Documents*)) in the following order:

- (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 Term Facility Lenders under clause 15.3 (*Indemnity to Term Facility Agent*) of the Term Facility Agreement or the Revolving Credit Facility Lenders under clause 15.3 (*Indemnity to Revolving Credit Facility Agent*) of the Revolving Credit Facility Agreement or the Additional Lenders under the equivalent provisions of each Additional Lender Facility Agreement in respect of indemnities to each Additional Facility Agent but which, in each case, have not been reimbursed by the Company;
- (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

On the Sixth Amendment Signing Date and on the Sixth Amendment Effective Date, each Senior Secured Creditor party hereto represents and warrants to each other Senior Secured Creditor party hereto that:

33.7.1 it is duly organised and validly existing under the laws of the jurisdiction in which it is incorporated;

33.7.2 it has power to enter into and has duly authorised the execution, delivery and performance of this Agreement;

33.7.3 the obligations expressed to be assumed by it hereunder are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof; and

33.7.4 it is not the beneficiary of any Liens in respect of any Financial Indebtedness owed to it by the Company other than under the Senior Finance Documents.

33.8 The provisions of this Clause 33 (*Intercreditor Arrangements*) are for the sole benefit of the Senior Secured Creditors and may be waived or amended without the consent or agreement of the Company provided there is no increase in the liability of the Company as a result.

#### **34. AMENDMENTS AND WAIVERS**

##### **34.1 Amendment and waiver of common terms**

Subject to Clause 25.6 (*Benefit*) and to Clause 34.2 (*Amendment and waiver of Facility Agreements*) to Clause 34.6 (*Replacement of Screen Rate*) (inclusive) below, any term of, or matter dealt with under, this Agreement and any other Senior Finance Document may be amended, waived or supplemented with the agreement of the Company and/or the other Obligors which are a party to that Senior Finance Document and/or, as the case may be, the Required Lenders.

##### **34.2 Amendment and waiver of Facility Agreements**

Subject to Clause 34.3 (*Amendment and waiver of Fundamental Terms*), Clause 34.4 (*Amendment and waiver affecting Agents*) and Clause 34.6 (*Replacement of Screen Rate*) below, any term of, or matter dealt with under, a Facility Agreement may be amended, waived or supplemented with the agreement of the Company and/or, as the case may be, the required Senior Secured Creditors as specified in that Facility Agreement.

##### **34.3 Amendment and waiver of Fundamental Terms**

34.3.1 Save as set out in Clause 34.3.4 and 34.3.5, a Fundamental Term may only be amended or waived by agreement between the Obligors which are a party to the Senior Finance Document which contains that Fundamental Term and each Lender (and, in the case of the provisions referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) of the definition of "Fundamental Term" in Clause 1.1 (*Definitions*), each Hedging Counterparty).

34.3.2 An amendment or waiver that has the effect of changing or which relates to (other than as expressly permitted by the provisions of any Senior Finance Document) the nature or scope of the Project Security or the Security (except insofar as it relates to a Disposition of any Property which is the subject of the Security where such Disposition is expressly permitted under this Agreement or any other Senior Finance Document) shall not be made without agreement between the Company, each Lender and each Hedging Counterparty.

34.3.3 An amendment or waiver that has the effect of changing the currency of any fee (or portion thereof) payable under any Senior Finance Document to a Secured Party shall not be made without agreement between the Company and that Secured Party.

34.3.4 For the avoidance of doubt, any amendment, waiver or consent of, or in relation to, any of the provisions referred to paragraph (b) of the definition of "Fundamental Term" in Clause 1.1 (*Definitions*) that does not have the effect of changing or which does not relate to:

- (a) an extension to the date of payment of any amount under the Senior Finance Documents;
- (b) a reduction in the interest margin applicable to a Lender's participation in an Advance or a reduction in the amount of any payment of principal, interest or fees owing or payable under any Senior Finance Document;  
or
- (c) a change in currency of payment of any amount under the Senior Finance Document,

does not require unanimity among the Lenders and Hedging Counterparties.

34.3.5 For the avoidance of doubt, a Screen Rate Decision does not require unanimity among the Lenders and Hedging Counterparties.

##### **34.4 Amendment and waiver affecting Agents**

An amendment or waiver of any term of the Senior Finance Documents which relates to the rights and/or obligations of any Agent may not be effected without the prior written consent of that Agent.

##### **34.5 Amendment and Waiver of an Affected Lender Decision**

An Affected Lender Decision that relates solely to:

34.5.1 the Term Facility may not be effected without the prior consent of the Company and all of the Term Facility Lenders, and not any other Lenders;

34.5.2 the Revolving Credit Facility (other than any Additional Lender Facility) may not be effected without the prior consent of the Company and all of the Revolving Credit Facility Lenders (excluding any Additional Lenders party to an Additional Lender Facility Agreement providing for a revolving credit facility), and not any other Lenders; or

34.5.3 any Additional Lender Facility may not be effected without the prior consent of the Company and all of the Additional Facility Lenders in respect of that Additional Lender Facility, and not any other Lenders.

#### 34.6 **Replacement of Screen Rate**

If any Screen Rate is not available for a currency which can be selected for an Advance, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to that currency in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that other benchmark rate) may be made with the consent of the Required Lenders and the Company.

#### 35. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

#### 36. **LANGUAGE**

The English language shall be the only official and recognised language of this Agreement. If for any reason a translation of this Agreement is required, such translation shall in the event of any dispute be secondary to the original English version which shall take precedence.

#### 37. **GOVERNING LAW**

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

#### 38. **JURISDICTION**

##### 38.1 **Jurisdiction of English courts**

38.1.1 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 or any Wynn Non-Obligor Subordination Deed Party pursuant to this Agreement *provided* that nothing herein shall prevent any Senior Secured Creditor from disclosing any such information:

(a) to any other Senior Secured Creditor, or any Affiliate thereof that is bound by confidentiality obligations;

- (b) to any other Person pursuant to Clause 21.8 (*Disclosure of Information*) or clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority;
- (c) to any of its or its Affiliates' employees, directors, agents, auditors, attorneys, accountants and other professional advisors who or that is bound by confidentiality obligations;
- (d) upon the request or demand of any Governmental Authority having jurisdiction over it;
- (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Legal Requirement or the rules of any stock exchange on which the shares or other securities of such Senior Secured Creditor or any Affiliate thereof are listed or by any other competent supervisory or regulatory body;
- (f) if required to do so in connection with any litigation or similar proceeding;
- (g) that has been publicly disclosed other than in breach of this Clause;
- (h) in connection with the exercise of any remedy hereunder or under any other Senior Finance Document;
- (i) to any insurer, insurance broker or other service providers of such Senior Secured Creditor or any of its Affiliates who are under a duty of confidentiality to such Senior Secured Creditor or its Affiliate, as the case may be; or
- (j) to any rating agency or direct or indirect provider of credit protection to such Senior Secured Creditor or any of its Affiliates.

The obligations in this Clause 39 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Senior Secured Creditor until the earlier of:

- (A) the date that is 12 months after the Final Repayment Date in respect of the Term Facility (or if such Senior Secured Creditor is an Additional Lender, the later of (i) the date that is 12 months after the Final Repayment Date in respect of the Term Facility and (ii) the date that is 12 months after the Final Repayment Date in respect of the Additional Lender Facility in respect of which it is an Additional Lender); and
- (B) the date that is 12 months after the date on which such Senior Secured Creditor ceases to be a Senior Secured Creditor (unless such date falls after the date referred to in paragraph (A) above in respect of such Senior Secured Creditor, in which case, for the avoidance of doubt, the obligations in this Clause 39 (*Confidentiality*) shall cease to remain binding on the date referred to in paragraph (A) above in respect of such Senior Secured Creditor).

#### 40. **GAMING AUTHORITIES**

Each of the Senior Secured Creditors agrees to cooperate, having regard to its internal procedures and policies, with the reasonable requests of any and all gaming authorities in connection with the administration of their regulatory jurisdiction over the Company, any other Obligor or any Wynn Non-Obligor Subordination Deed Party, to the extent not inconsistent with any applicable legal, regulatory or contractual restrictions (including any duties of confidentiality) or the terms of the Senior Finance Documents, *provided* that the Senior Secured Creditors are indemnified for any cost, loss or liabilities incurred in connection with such cooperation.

41. **WAIVER OF IMMUNITY**

41.1.1 The parties agree and acknowledge that Clause 41.1.2 below will not affect or supersede (in any manner) under the laws of the Macau SAR the status of the concession for the operation of games of chance and other games in casinos granted to the Company under the Concession Contract.

41.1.2 The Company irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or any other grounds from:

- (a) suit;
- (b) jurisdiction of any court;
- (c) relief by way of injunction or order for specific performance or recovery of property;
- (d) attachment of its assets (whether before or after judgment); and
- (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction (and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any immunity in any such proceedings).

**Schedule 1**

**THE LENDERS AND HEDGING COUNTERPARTIES**

**Part A**

**Term Facility Lenders**

Bank of China Limited, Macau Branch

**Part B**

**Revolving Credit Facility Lenders**

Bank of China Limited, Macau Branch

**Part C**

**Hedging Counterparties**

DBS Bank Ltd.

**Schedule 2**

**CONDITIONS PRECEDENT**

**Part A**

**[Not used]**





**Part B 1**

**[Not used]**

**Part B2**

**(I) Conditions Precedent to each Advance under the Term Facility and the Revolving Credit Facility on and from the Sixth Amendment Effective Date**

In respect of the Advances to be made under the Term Facility and the Revolving Credit Facility on and from the Sixth Amendment Effective Date, as set out in Schedule 1 to the Common Terms Agreement Sixth Amendment Agreement, the Term Facility Agreement and the Revolving Credit Facility Agreement (as applicable).

**(II) Conditions Precedent to each Advance under each Additional Lender Facility on and from the Sixth Amendment Effective Date**

As set out in the applicable Additional Lender Facility Agreement.

**Part B3**

**[Not used]**

**Part C**  
**[Not Used]**

**Part D**

**[Not Used]**

**Part E**

**[Not Used]**

**Part F**

**[Not Used]**

**Part G**

**[Not Used]**

## Part H

### Specified Conditions Precedent

#### 1. Macau SAR approval

Receipt by the Intercreditor Agent of evidence that the Macau SAR government has:

- (a) approved the submission made by the Company to the Macau SAR government in connection with the incremental increase contemplated by paragraph (b) below; and
- (b) consented to the incremental increase in the Company's financial indebtedness in respect of the Upsized Amount,

together with:

- (i) any other approval, authorisation, confirmation, document or instrument from the Macau SAR government that the Intercreditor Agent (acting in its sole discretion and in consultation with the Macanese legal adviser to the Senior Secured Creditors) considers necessary or desirable; and

#### 2. a legal opinion of the Macanese legal adviser to the Senior Secured Creditors, in respect thereof and in respect of the validity, enforceability, effectiveness and ranking of the Mortgage (as well as confirming the Secured Obligations thereunder also cover the Upsized Amount) in form and substance satisfactory to the Intercreditor Agent, acting reasonably.**Due establishment, authority and certification**

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

- (a) either (A) attaches a copy of that Person's Governing Documents or (B) certifies that the copy of that Person's Governing Documents (which was previously delivered to the Intercreditor Agent on or about 14 September 2004 or subsequently) remains correct, complete and in full force and effect as at a date no earlier than the date on which the Upsize Advance is to be made;
- (b) attaches a copy of a board resolution or such other equivalent corporate authorisation approving the execution, delivery and performance of the Supplemental Security Documents referred to in paragraph 3 below to which it is a party, the terms and conditions thereof and the transactions contemplated thereby, authorising a named person or persons to sign such Supplemental Security Document and any document to be delivered by that Person pursuant to such Supplemental Security Documents and authorising the signatory of the relevant certificate to sign certificates in connection therewith;
- (c) (in the case of the Company only) certifies that each document listed in this Part H of Schedule 2 and delivered by an Obligor is correct, complete and in full force



and effect and has not been amended or superseded as at a date no earlier than the date on which the Upsize Advance is to be made; and

- (d) confirms that borrowing, guaranteeing or securing as appropriate, the total commitments of all Lenders in respect of the Term Facility and the Revolving Credit Facility would not cause any borrowing, guarantee, security or similar limit binding on any such Person to be exceeded;

### 3. Supplemental Security Documents

- (a) Receipt by the Intercreditor Agent of an original of each of the following documents (each, a "**Supplemental Security Document**"), in each case duly executed by the parties thereto:
  - (i) a Macau law mortgage (ranking after the Mortgage) granted by the Company over Wynn Macau and the Site (but excluding any horizontal property classified as a casino in accordance with article 42 of the Concession Contract) (the "**Supplemental Mortgage**");
  - (ii) an irrevocable power of attorney from the Company in favour of the Security Agent in connection with the Supplemental Mortgage (the "**Supplemental Power of Attorney**");
  - (iii) a Macau law pledge over certain rights derived from the ownership of the shares in the Company and any sale agreement relating to such shares (the "**Supplemental Assignment of Company Shareholder Rights**");
  - (iv) a Macau law pledge over certain rights derived from the ownership of the shares in Palo and any sale agreement relating to such shares (the "**Supplemental Assignment of Palo Shareholder Rights**");
  - (v) an English law security agreement granted by Wynn Asia 2 with respect to the proceeds of any sale of the shares in Wynn International and Wynn Asia 2's rights under any sale agreement relating to such shares (the "**Supplemental Wynn International Security Agreement**"); and
  - (vi) a Hong Kong law security agreement granted by Wynn Holdings with respect to the proceeds of any sale of the shares in Wynn HK and Wynn Holdings' rights under any sale agreement relating to such shares (the "**Supplemental Wynn HK Security Agreement**"),

and any other document entered into which the Intercreditor Agent and the Company agree prior to the date on which the Upsize Advance is made to designate as a Supplemental Security Document or a Senior Finance Document.

- (b) Each Supplemental Security Document has been duly authorised, executed and delivered by such of the Obligors party thereto and (save in respect of any registration required at the Companies House in England and Wales, the Hong Kong Companies Registry, the Conservatória dos Registos Comercial e de Bens Móveis in Macau SAR, the Conservatória do Registo Predial in Macau SAR, the

applicable Uniform Commercial Code filing office for local/county, state and federal Uniform Commercial Code filings and the Isle of Man Companies Registry, as applicable, based on the Supplemental Security Document subject to the filing) duly filed, notified, recorded, stamped and registered as necessary.

- (c) All conditions precedent to the effectiveness thereof have been satisfied or waived in accordance with their respective terms and each such Supplemental Security Document (save as provided in paragraph (b)) is in full force and effect accordingly.

4. **Legal opinions**

Receipt by the Intercreditor Agent of legal opinions from legal advisers to the Senior Secured Creditors as to:

- (a) Macau law;
- (b) Isle of Man law;
- (c) Cayman Islands law;
- (d) Hong Kong SAR law; and
- (e) English law.

5. **Fees and expenses**

Receipt by the Intercreditor Agent of evidence that:

- (a) all taxes, fees and other costs payable in connection with the execution, delivery, filing, recording, stamping and registering of the documents referred to in this Part H of Schedule 2; and
- (b) all fees, costs and expenses due to the Senior Secured Creditors and their advisers under the Senior Finance Documents on or before the date on which the Upsize Advance is made,

have been paid or shall be paid (to the extent that such amounts have been duly invoiced) by no later than the date on which the Upsize Advance is made.

6. **Security**

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

7. **Process agents**

Where such appointment is required under any Supplemental Security Document referred to in paragraph 2 above, a copy of the process agent's acceptance of its appointment by each applicable Obligor for the acceptance of legal proceedings.

**8. Other documents and evidence**

- (a) Evidence of the definitive registration with the Macau Real Estate Registry of the horizontal property comprised in any area of Wynn Macau classified as a casino in accordance with article 42 of the Concession Contract so that the casino area is registered as one unit separate and independent from the horizontal property contained in all the remaining areas of Wynn Macau upon obtaining all Permits required from the Macau SAR for such registration to be made.
- (b) An intercreditor agreement in form and substance satisfactory to the Additional Lender(s) under the relevant Additional Lender Facility Agreement to be entered into and the Required Lenders referred to in paragraph (a) of the definition of "Required Lenders" in Clause 1.1 (*Definitions*).
- (c) A copy of any other authorisation or other document, opinion or assurance which the Intercreditor Agent (acting reasonably) considers to be necessary or desirable (if it has notified the Company accordingly) in connection with the entry into and performance of the transactions contemplated by any Supplemental Security Document or for the validity and enforceability of any Supplemental Security Document.

**Schedule 3  
FORM OF ADVANCE REQUEST**

To: [ ] as Intercreditor Agent

[ ] as Term Facility Agent

Date: [ ]

Dear Sirs,

**Advance Request No. [ ]**

- 1. We refer to the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions referred to therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
- 2. This is an Advance Request given pursuant to Clause 3 (*Drawdown of Advances*) of the Common Terms Agreement.
- 3. We hereby give you notice that, upon the terms and subject to the conditions contained in the Common Terms Agreement and the Facility Agreements, we wish to borrow the

following Advances under the following Facilities on [*proposed Advance Date*] to be applied towards the following purposes:

[USD/HKD] [*amount*] under [the [Tranche A Facility and Tranche B Facility]] of the Term Facility to be applied towards a permitted use under the Term Facility Agreement.

4. We confirm that:
  - (i) the above purposes and Advances comply with the permitted use of the Facilities under the Facility Agreements and Clause 5 (*Purpose*) of the Common Terms Agreement and that no part of the above Advances shall be applied otherwise than as mentioned in paragraph 3 above;
  - (ii) each Advance is required for the purpose specified;
  - (iii) each condition specified in Clause 2.2 (*Conditions Precedent to each Advance*) of the Common Terms Agreement [and sub-paragraph 3.1.3 of Clause 3.1 (*Drawdown conditions*) of the Common Terms Agreement] is satisfied on the date of this Advance Request; and
  - (iv) since the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.
5. We attach signed but undated receipts for the Advances requested above and hereby authorise the Intercreditor Agent to date such receipts on the date such Advances are made.
6. The above Advances shall have a [first] Interest Period ending on [*date*].
7. The [proceeds/specified amounts] of the above Advances should be credited to, respectively, the following Accounts:  
[specify relevant Account and amount]
8. We further confirm, without any personal liability on the part of our Responsible Officer signing this Advance Request, that:
  - (i) no Default is continuing; and
  - (ii) the representations and warranties contained in Schedule 4 (*Representations and warranties*) of the Common Terms Agreement which are repeated by the Company pursuant to Clause 17.2 (*Timing*) of the Common Terms Agreement are true and correct in all material respects with reference to the facts and circumstances existing on the date of this Advance Request.

Yours faithfully,

---

Name:  
Responsible Officer  
for and on behalf of

## Wynn Resorts (Macau) S.A.

Attachments: [list]

### Schedule 4 REPRESENTATIONS AND WARRANTIES

#### 1. Organization

Each of the Obligors is duly organised or incorporated (as the case may be), validly existing and (if applicable) in good standing under the laws of its jurisdiction of organisation or incorporation (as the case may be) and has all requisite corporate or limited liability company power and authority to:

- (a) carry on its business as now conducted;
- (b) own or hold under lease and operate the Properties it purports to own or hold under lease;
- (c) carry on its business as now being conducted in respect of Wynn Macau and the Cotai Project;
- (d) incur the Financial Indebtedness contemplated hereunder; and
- (e) execute, deliver and perform under each of the Transaction Documents to which it is a party and create any Lien on its Property contemplated thereunder.

#### 2. Authorization; No Conflict

2.1 Each of the Obligors has taken all necessary corporate or limited liability company action, as the case may be, to authorize the execution, delivery and performance of the Transaction Documents to which it is a party. Neither the execution, delivery or performance of each Transaction Document to which it is a party nor the consummation of the transactions contemplated thereby:

- (a) by each Obligor does or will contravene the formation or constitutional documents or any other material Legal Requirement then applicable to or binding on each such Obligor; or
- (b) does or will contravene or result in any breach or constitute any default under, or result in or require the creation or imposition of any Lien upon any of the Properties of any Obligor or under any security or agreement or instrument to which any Obligor is a party or by which it or any of its respective properties may be bound, except for Permitted Liens or as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

2.2 No consent, Permit or filing or other authorization with, notice to or other act by or in respect of, any Governmental Authority or any Person is required in connection with the borrowings under the Senior Finance Documents or with the execution, delivery, performance, validity or enforceability of any of the Transaction Documents, except consents, authorisations, recordings, stampings, filings, registrations and notices described in the definition of "Required Filings" in Clause 1.1 (*Definitions*).

#### 3. Legality, Validity and Enforceability

3.1 Each of the Transaction Documents to which any of the Obligors is a party is a legal, valid and binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity.

3.2 None of the Transaction Documents to which any of the Obligors is a party has been amended or modified except in accordance with this Agreement.

#### 4. Compliance with Law and Permits

As of the Sixth Amendment Effective Date, each Obligor is in compliance with all Legal Requirements (including Sanctions and Permits) in all material respects and no notices of any material violation of any Permit made or issued by or with a Governmental Authority relating to Wynn Macau or the Cotai Project have been issued, entered or received by any such Obligor (and which violation is continuing). As at the Sixth Amendment Effective Date, all Permits have been obtained or effected (to the extent they are then required) and are in full force and effect. The DICJ Authorisation, when obtained, is the only Permit required from any Governmental Authority in the Macau SAR to authorise the Company to incur the financial indebtedness referred to in the definition of "DICJ Authorisation" in Clause 1.1 (*Definitions*).

5. **[Not used]**

6. **Litigation**

There are no pending or, to any Obligor's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any Governmental Authority, to which any Obligor is a party or is subject, or by which any of them or any of their Properties is bound that, individually or collectively, could reasonably be expected to have a Material Adverse Effect.

7. **Financial Statements**

The financial statements of the Obligors, delivered to the Intercreditor Agent pursuant to Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) on or prior to the CP Satisfaction Date, were, and, in the case of financial statements to be delivered after the CP Satisfaction Date pursuant to paragraph 1 of Part A of Schedule 5 (*Covenants*) hereto, will be prepared in conformity with applicable GAAP and fairly present in all material respects the financial position of the entities described in such financial statements as of the respective dates thereof and the results of operations and cash flows of the entities described therein for each of the periods then ended subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. No such financial statement fails to disclose any material: Guarantee Obligations, contingent liabilities or liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, required to be reflected therein.

8. **Security Interests**

8.1 As of the Sixth Amendment Effective Date, save in respect of any Excluded Subsidiary or Excluded Project (in respect of which (save for any Excluded Project located on the Cotai Site and assets comprised therein or connected thereto) it is acknowledged that no Senior Secured Creditors have any Lien) and except for the obtaining of any consents or approvals, recording, filing, registration, giving of notice or other similar action as described in the definition of "Required Filings" in Clause 1.1 of this Agreement or Schedule 2 (*Conditions Precedent*) and paragraph 15 of Part A of Schedule 5 (*Covenants*) (in the case of Schedule 2 (*Conditions Precedent*) which Permits, consents, authorisations, registrations, filings and notices have, unless otherwise indicated on such schedule, been obtained or made and are in full force and effect):

- (a) the security interests granted or purported to be granted to the Senior Secured Creditors pursuant to the Security Documents in the Project Security (notwithstanding, without limitation, the Substitution) constitute as to Properties included in the Project Security existing on the date on which this representation is made or deemed to be made or repeated and, with respect to subsequently acquired Properties included in the Project Security, will constitute, a perfected security interest under all applicable law and/or the UCC and grant the Senior Secured Creditors superior priority and rights in respect of the full amount of the Obligations over the rights of any third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, subject to the rights and priorities of Permitted Liens;
- (b) all such action as is necessary has been taken to establish, perfect and maintain the Senior Secured Creditors' rights in and to the Project Security, including any obtaining of consents or approvals, recording, filing, registration, giving of notice or other similar action; and
- (c) each of the Security Documents is effective to create a legal, valid, binding and enforceable security interest in the Project Security described therein and proceeds and products thereof.

Each of the Obligors has properly delivered or caused to be delivered to the Security Agent all Project Security that requires perfection of the Lien and security interest described above by possession.

8.2 As of the Sixth Amendment Effective Date, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (a) the pledge or grant by the Obligors of the Liens purported to be created in favour of the Secured Parties pursuant to any of the Security Documents, or (b) the exercise by the Security Agent, or any of the other Secured Parties of any rights or remedies in respect of any Project Security (whether specifically granted or created pursuant to any of the Security Documents or created or provided for by applicable law), except for registrations, filings, giving of notices or recordings contemplated by paragraph 8.1 of this Schedule 4 or as described in definition of "Required Filings" in Clause 1.1 (*Definitions*) or Schedule 2 (*Conditions Precedent*).

8.3 As of the Sixth Amendment Effective Date, except such as may have been filed in favour of the Security Agent as contemplated by paragraph 8.1 of this Schedule 4 or as set forth in Schedule 2 (*Conditions Precedent*), no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Project Security is on file in any filing or recording office in the United States of America or elsewhere.

9. **No Existing Defaults**

- 9.1 No Event of Default has occurred which is continuing.
- 9.2 None of the Obligors, or, to the Company's knowledge, the Performance Bond Provider or any other Major Project Participant is in default under or with respect to any of its material Contractual Obligations under any of the Transaction Documents to which it is a party, which default (in the case only of a Major Project Participant other than an Obligor) could reasonably be expected to have a Material Adverse Effect.
10. **Taxes**
- 10.1 Each of the Obligors has filed, or caused to be filed, all tax and informational returns that are required to have been filed by it (taking into account any grace periods granted in respect thereof) in any jurisdiction and all such tax and informational returns are correct and complete in all material respects. Each of the Obligors has paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by it, to the extent the same have become due and payable (other than (a) those taxes that it is contesting in good faith and by appropriate proceedings and (b) those taxes not yet due, *provided* that with respect to each of sub-paragraph (a) and (b) of this paragraph 10.1, it has established reserves therefor in amounts that are adequate for the payment thereof and are required by applicable GAAP.
- 10.2 None of the Obligors has incurred any material tax liability in connection with Wynn Macau or the Cotai Project or the other transactions contemplated by the Transaction Documents which has not been disclosed in writing to the Intercreditor Agent, including as disclosed in the financial statements delivered to the Intercreditor Agent under this Agreement.
- 10.3 There are no Liens for Taxes on any of the Properties of any of the Obligors other than Liens permitted pursuant to paragraph 3(a) of Part B of Schedule 5 (*Covenants*) hereto.
- 10.4 The Company is resident only in its jurisdiction of incorporation for Tax purposes.
- 10.5 It is not required to make any Tax Deduction from any payment it may make under any Senior Finance Document to a Senior Secured Creditor.
11. **Business, Debt, Etc.**
- 11.1 The Obligors have not conducted any business other than a Permitted Business and the Substitution. The Obligors have no place of business outside the Macau SAR except (in the case of the Company) as otherwise permitted under Part B of Schedule 5 (*Covenants*) or, in the case of any other Obligor, outside its jurisdiction of incorporation. No Obligor has any outstanding Financial Indebtedness other than (in the case of the Company) Permitted Financial Indebtedness or (in the case of any other Obligor) as permitted by the Senior Finance Documents to which it is a party.
- 11.2 In any proceedings taken in its jurisdiction of incorporation in relation to the Senior Finance Documents to which it is a party, no Obligor is or will be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process, save that, pursuant to the laws of the Macau SAR, the concession for the operation of games of chance and other games in casinos granted to the Company under the Concession Contract is not subject to attachment.
- 11.3 Each Obligor's execution of the Senior Finance Documents to which it is a party constitutes, and its exercise of its rights and performance of its obligations thereunder will constitute, private and commercial acts done and performed for private and commercial purposes.
12. **Environmental Laws**
- 12.1 Each Obligor is in compliance with all applicable material Environmental Laws in all material respects and, so far as it is aware, there are no circumstances that could at any time be reasonably expected to prevent or interfere with such compliance.
- 12.2 No Environmental Claim has been made which has not been fully discharged, released, satisfied or withdrawn, except for any Environmental Claim that would not have, or would not reasonably be expected to have, a Material Adverse Effect.
- 12.3 As at the Sixth Amendment Effective Date:
- (a) each Obligor has obtained all Environmental Licences required for the carrying on of its business as currently conducted and has complied with the terms and conditions of such Environmental Licences except where, in each case, the failure to have so obtained or complied would not constitute a Material Adverse Effect; and
- (b) there are no past or present acts, omissions, events or circumstances that would form, or are reasonably likely to form, the basis of any Environmental Claim against any Obligor that in either case would have, or would reasonably be expected to have, a Material Adverse Effect.
- 12.4 There are, to its knowledge, no circumstances that may prevent or interfere in any material respect with the compliance of each Obligor with the terms and conditions of all Environmental Licenses required for the carrying on of that Obligor's

business.

13. [Not Used]

14. [Not used]

15. **Sufficiency of Funds**

As of the first day of each Fiscal Quarter of the Company and as of each Advance Date, the Company has sufficient Funds to operate its business as it is then conducted and pay its debts when due.

16. **Sufficiency of Interests and Major Project Documents**

16.1 The Company (or, prior to a Permitted Cotai Reorganisation and in the case of the Cotai Site, Palo) is the sole legal and beneficial owner of, and has good title to, or has a valid leasehold interest in, the land comprised in the Site and the Cotai Site, and each Obligor has good and valid title to, or a valid license or leasehold interest in, and all appropriate authorisations to use all its Property necessary to conduct its business. None of the Pledged Stock is subject to any Lien except for Permitted Liens.

16.2 Each Major Project Document (excluding any Resort Management Agreements) is in full force and effect, enforceable against the Persons party thereto in accordance with its terms, subject only to bankruptcy and similar laws and principles of equity and except for any such Major Project Document that has expired by its terms.

17. **Intellectual Property**

Each Obligor owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. The use by the Company of the Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name does not infringe on the rights of any Person. The use by the Company of Intellectual Property other than Intellectual Property related to or otherwise associated with the Company's use of the "Wynn" name, does not infringe on the rights of any Person, except where such infringement, individually or collectively, would not reasonably be expected to have a Material Adverse Effect.

18. [Not Used]

19. **Fees and Enforcement**

Other than amounts that have been paid in full or will have been paid in full by the Sixth Amendment Effective Date, no fees or taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of any of the Transaction Documents then in effect.

20. **ERISA**

(a) There are no Plans.

(b) Assuming that the sources of funds for any credit extended hereunder does not constitute "plan assets" (within the meaning of section 3(42) of ERISA) of any employee benefit plan subject to Title I of ERISA or any plan subject to Section 4975 of the Code, neither the execution of the Transaction Documents nor the consummation of the transactions contemplated thereby will involve a "prohibited transaction" with respect to any such plans within the meaning of section 406 of ERISA or section 4975(c) of the Code which is not exempt under section 408 of ERISA or under section 4975(d) of the Code.

21. **Subsidiaries and Beneficial Interest**

21.1 *The Company*

(a) As of the Sixth Amendment Effective Date, the Executive Director legally and beneficially owns 20,010 Class A Shares (as defined in the Governing Documents of the Company), representing 10% of the total issued share capital and 10% of the Voting Stock of the Company;

(b) As of the Sixth Amendment Effective Date, Wynn HK, a company incorporated in the Hong Kong SAR, legally and beneficially owns 102,000 Class B Shares (as defined in the Governing Documents of the Company), representing 51% of the total issued share capital and 51% of the Voting Stock of the Company; and

(c) As of the Sixth Amendment Effective Date, Wynn International, a company incorporated in the Isle of Man, legally and beneficially owns 78,000 Class C Shares (as defined in the Governing Documents of the Company), representing 39% of the total issued share capital and 39% of the Voting Stock of the Company.



21.2 *Wynn HK*

As of the Sixth Amendment Effective Date, Wynn Holdings, a company incorporated in the Isle of Man, legally and beneficially owns 99% and beneficially owns 1%, and Wynn International, as nominee of Wynn Holdings, legally owns 1%, of the total issued share capital of Wynn HK.

21.3 *Wynn Holdings*

As of the Sixth Amendment Effective Date, Wynn International legally and beneficially owns 100% of Wynn Holdings.

21.4 *Wynn International*

As of the Sixth Amendment Effective Date, Wynn Asia 2, a company incorporated in the Cayman Islands, legally and beneficially owns 100% of the total issued share capital of Wynn International.

21.5 *Palo*

As of the Sixth Amendment Effective Date, the Company legally and beneficially owns 99.8%, and Wynn International and Wynn HK each legally and beneficially own 0.1%, of the total issued share capital of Palo.

21.6 Save as provided by the Security Documents or the Executive Director Option Agreement or as otherwise permitted by the Senior Finance Documents, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock issued by any Obligor (other than any Capital Stock in Wynn Asia 2). No Obligor has issued, or authorized the issuance of, any Disqualified Stock.

22. **Labour Disputes and Acts of God**

22.1 There are no strikes, lockouts, stoppages, slowdowns or other labour disputes against any Obligor pending or, to the knowledge of each Obligor, threatened that (individually or in the aggregate) could reasonably be expected to have a Material Adverse Effect.

23. **Liens**

Except for Permitted Liens, none of the Obligors have secured or agreed to secure any Financial Indebtedness by any Lien upon any of their present or future revenues or other Properties or Capital Stock. None of the Obligors have outstanding any Lien or obligation to create Liens on or with respect to any of their Properties (including, without limitation, revenues), other than Permitted Liens and as provided in the Security Documents.

24. **Title**

Save, in the case of any such Property which, pursuant to the Security Documents, is expressed to be subject only to the floating charge granted pursuant to the Floating Charge, to the extent such floating charge has not been consolidated and the absence of such title could not reasonably be expected to have a Material Adverse Effect, each of the Obligors owns and has good, legal and beneficial title to the Property upon which it purports to grant Liens pursuant to the Security Documents, free and clear of all Liens, except Permitted Liens.

25. [Not Used]

26. **Location of Accounts and Records**

The Company's (and each of its Subsidiaries') books of accounts and records are located at the Company's principal place of business in the Macau SAR.

27. **Solvency**

Each Obligor is, and after giving effect to:

- (a) the incurrence of all Financial Indebtedness;
- (b) the use of the proceeds of such Financial Indebtedness (including, in the case of the Company, the use of proceeds of Advances made under the Senior Finance Documents); and
- (c) obligations being incurred in connection with the Transaction Documents,

will be and will continue to be Solvent.

28. [Not Used]

29. **No subsidiaries**

Save as permitted hereunder, other than Palo, the Company has no subsidiaries and does not legally or beneficially own any Capital Stock in any Person.

30. **Pari Passu**

The payment obligations under the Senior Finance Documents of each of the Obligors rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.

31. **Insurance**

As at the Sixth Amendment Effective Date:

- (a) the Company and Palo are each insured by insurers of recognised financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are each engaged;
- (b) there is no outstanding insured loss or liability incurred by either the Company or Palo which is US\$10,000,000 (or its equivalent) or more which is not expected to be covered to the full extent of that loss or liability;
- (c) there has been no non-disclosure, misrepresentation or breach of any term of any material Insurance which would entitle any insurer of that Insurance to repudiate, rescind or cancel it or to treat it as avoided in whole or in part or otherwise decline any valid claim under it by or on behalf of any Obligor or member of the Group; and
- (d) the Company is not aware of any insurer of any material Insurance being in run-off or having entered into any insolvency proceedings which are still pending or current.

32. **Fiscal Year**

The fiscal year of each of the Obligors ends on 31 December of each calendar year.

33. **Accuracy of Information, etc.**

As of the Sixth Amendment Signing Date, or, in the case of the Information Memorandum, the date thereof, no statement or information contained in any document, certificate or written statement furnished to any Senior Secured Creditor, by or on behalf of any Obligor for use in connection with the transactions contemplated by any of the Senior Finance Documents, contained (when, in the case of any such document, certificate or written statement, read as a whole with all such documents, certificates and written statements furnished on or prior to the Sixth Amendment Signing Date to such Senior Secured Creditor) any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not misleading. As of the Sixth Amendment Signing Date, or, in the case of the Information Memorandum, the date thereof, the projections and pro forma financial information contained in the materials referenced above (including the Projections) are based upon good faith estimates and assumptions believed by management of the Obligors to be reasonable at the time made, it being recognized by the Senior Secured Creditors that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. As of the Sixth Amendment Signing Date, there are no facts known to any Obligor that could, individually or collectively, reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed in the Senior Finance Documents or in any other documents, certificates and written statements furnished to the Senior Secured Creditors for use in connection with the transactions contemplated by the Senior Finance Documents.

34. **Site and Site Easements**

The Site, the material Site Easements and the current use thereof comply in all material respects with all applicable Legal Requirements, except where the failure to comply would not reasonably be expected to have a Material Adverse Effect.

35. **Affiliate Agreements**

On the Sixth Amendment Effective Date, each Affiliate Agreement in effect as of the Sixth Amendment Effective Date has been entered into on arm's length terms and for full market value (or better, for the relevant Obligor), in compliance with the Concession Contract and all other applicable Legal Requirements and otherwise in compliance with the terms hereof.

36. **Wynn Asia 2**

As of the Sixth Amendment Effective Date, Wynn Asia 2 has not carried on any business other than holding shares in Wynn International, entering into the Senior Finance Documents as a Wynn Obligor, entering into all agreements that are necessary or desirable for the purpose of (i) maintaining its corporate status (including without limitation agreements for the

appointment of lawyers and auditors), (ii) the Substitution and (iii) complying with its obligations under the Finance Documents (as defined in the Deed of Appointment and Priority) (including without limitation the appointment of process agents).

- 37. [Not Used]
- 38. [Not Used]
- 39. [Not Used]
- 40. [Not Used]

## **Schedule 5 COVENANTS**

### **Part A Affirmative Covenants**

The Company shall:

**1. Financial Statements -** Furnish to the Intercreditor Agent:

- (a) not later than 90 days after the end of each Fiscal Year, a copy of the audited balance sheets (on a consolidated basis) of the Company prepared in accordance with IFRS, as at the end of such Fiscal Year and the related audited statements of income and of cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by the Auditors and prepared (in the case of the Company) for the Restricted Group only and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary; and
- (b) not later than 45 days after the end of each Fiscal Quarter of each Fiscal Year, the unaudited (on a consolidated basis) balance sheets of the Company prepared in accordance with IFRS, as at the end of such quarter and the related unaudited statements of income and of cash flows for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and prepared (in the case of the Company) for the Restricted Group only and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary.

All such financial statements shall be fair in all material respects (in the case of financial statements delivered pursuant to sub-paragraph (b) of this paragraph 1, subject to normal year-end audit adjustments) and were prepared in accordance with applicable GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such Auditors or Responsible Officer, as the case may be, and disclosed therein).

**2. Certificates; Other Information -** Furnish to the Intercreditor Agent:

- (a) concurrently with the delivery of any financial statements pursuant to paragraph 1 of this Part A:
  - (i) a certificate of a Responsible Officer of the Company certifying that the statement is fair in all material respects (subject, where relevant, to normal year-end audit adjustments);
  - (ii) a certificate of a Responsible Officer of the Company stating that, to the best of each such Responsible Officer's knowledge, the Company during such period has observed or performed all of its material covenants and other agreements, and that such Responsible Officer has obtained no actual knowledge of any Default except as specified in such certificate;
  - (iii) when applicable, in the case of quarterly or annual financial statements, a Compliance Certificate containing all information and calculations necessary for determining compliance by the Obligors with the provisions of this Agreement as of the last day of the applicable Fiscal Quarter or Fiscal Year, as the case may be; and
  - (iv) in the case of the Company, a list of each of its Accounts; and
- (b) for each calendar month during the period up to and including the first calendar month in which the Cotai Opening

Date has occurred, deliver to the Facility Agents and the Intercreditor Agent, within 45 days following the end of the relevant calendar month, a status report for the Cotai Project in reasonable detail.

- (c) no later than March 1 of each Fiscal Year, projections (the "**Projections**") of the Company and the Restricted Group for such Fiscal Year, including a projected balance sheet of the Company as of the end of such Fiscal Year and the related statements of projected cash flow and profit and loss and the assumptions supporting such Projections and prepared on a consolidated basis for the Restricted Group and without taking account of any contribution from any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary and, no less frequently than quarterly, significant revisions, if any, of such Projections with respect to such Fiscal Year, which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Company stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect and which such Projections shall demonstrate compliance with paragraph 1 of Part B of this Schedule (and, where applicable pursuant to the other terms of this Agreement, including or, as the case may be, taking into account any Contribution as further contemplated by (and as set out in) paragraph (d) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*));
  - (d) promptly, and in any event within ten Business Days after any Major Project Document is terminated (save upon expiration in accordance with its terms) or amended (save in respect of amendments of a purely administrative or mechanical nature which do not, in each case, adversely affect the interests of any of the Secured Parties) or any new Major Project Document is entered into (other than, in each case, any Resort Management Agreement), or upon becoming aware of any material default by any Person or the occurrence of any event under a Major Project Document (other than, in each case, any Resort Management Agreement) which, with the expiry of any grace period, the giving of notice or the making of any determination provided thereunder, or any combination of the foregoing, would give rise to a right to terminate (a "**Termination Event**"), a written statement describing such event with copies of such amendments or new Major Project Document and, with respect to any such terminations or material defaults, an explanation of any actions being taken by the Company with respect thereto;
  - (e) promptly, and in any event within 30 days of the end of each Fiscal Year, deliver to the Intercreditor Agent a certificate certifying that the insurance requirements of paragraph 10 or Part A of Schedule 5 (*Covenants*) have been implemented and are being complied with;
  - (f) [Not used];
  - (g) a copy of each written notice which is given under or pursuant to the Concession Contract, the Land Concession Contract or the Cotai Land Concession Contract by the Macau SAR to the Company (other than any administrative or routine notice which could not reasonably be expected to be prejudicial to the interests of the Secured Parties) promptly upon receipt of such notice;
  - (h) at the same time as the giving of any written notice under or pursuant to the Concession Contract, the Land Concession Contract or the Cotai Land Concession Contract by the Company to the Macau SAR (other than any administrative or routine notice which could not reasonably be expected to be prejudicial to the interests of the Secured Parties), a copy of such notice; and
  - (i) promptly, such additional financial and other information as the Intercreditor Agent may from time to time reasonably request.
3. [Not used]
4. [Not used]
5. [Not used]
6. **Management Letters** - Deliver to the Intercreditor Agent a copy of any "management letter" or other similar communication received by the Company or any other Obligor from the Auditors in relation to the Company's or any other Obligor's financial, accounting and other systems, management or accounts.
7. [Not used]
8. **Payment of Obligations** - To the extent not otherwise subject to valid subordination, standstill, intercreditor or similar arrangements, pay, discharge or otherwise satisfy (and ensure each other Obligor shall pay, discharge or otherwise satisfy) at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate (under the circumstances) proceedings and reserves in conformity with applicable GAAP with respect thereto have been provided on the books of the Company (and, where relevant, such other Obligor).

9. **Conduct of Business and Maintenance of Existence, etc.**

- (a) Preserve, renew and keep in full force and effect (and ensure each other Obligor shall preserve, renew and keep in full force and effect) its corporate or limited liability company existence and remain a Subsidiary of Wynn Resorts;
- (b) take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary (and ensure each other Obligor shall take all reasonable action to maintain all rights, privileges, franchises, Permits and licenses necessary) in the normal conduct of its business, except to the extent that failure to do so could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect; and
- (c) engage only in the businesses which are Permitted Businesses.

10. **Insurance and Property**

10.1 Keep (and ensure each other Obligor shall keep) all material Property and systems useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

10.2 Ensure (and, where applicable, ensure Palo shall ensure) that its or their Insurances:

- (a) are materially consistent with the Insurances in place as at the Sixth Amendment Effective Date, *provided* that such Insurances may be modified consistent with the availability of coverage in the international insurance market on reasonable commercial terms;
- (b) cover all risks that are required to be insured against under any applicable law or regulation; and
- (c) cover all risks which a prudent owner would insure against (as reasonably determined by the Company).

10.3 Ensure (and, where applicable, procure that Palo will ensure) that the Insurances are with, or it (or, where applicable or as the case may be, Palo) has ultimate recourse in respect of all insured losses under the Insurances to, an insurance company or underwriter which is of international standing and is not a captive insurer which is a member of the Restricted Group or an Obligor.

10.4 Ensure (and procure that each member of the Restricted Group will ensure) that its (and, where applicable, Palo's Insurances):

- (a) insure every tangible asset for its full replacement value (less any deductibles in accordance with the terms of the Insurances); and
- (b) in the case of any other asset or risk, provide cover up to a limit which a prudent owner would buy (as reasonably determined by the Company).

10.5 Ensure (and, where applicable, procure that Palo will ensure) that the Insurances taken out in respect of Wynn Macau and the Cotai Project comply with the following requirements:

- (a) the Company (and, if appropriate or applicable, Palo) must each be insured for its own insurable interest or, where appropriate, jointly insured, and separately from any other insured party, on a basis that:
  - (i) any non-disclosure, misrepresentation or breach by or on behalf of any one insured party will not prejudice the cover of any other insured party; and
  - (ii) insurers waive any and all rights of subrogation against the Company, any Obligor and any Secured Party;
- (b) the Company and, if appropriate or applicable, Palo must each be entitled to claim directly for any insured loss suffered by it;
- (c) the Company and, if appropriate or applicable, Palo must use reasonable endeavours to ensure that (at each applicable time) its insurance broker delivers a broker's letter of undertaking (substantially in the form delivered to the Intercreditor Agent by the Company prior to the Sixth Amendment Effective Date) on or before the expiry of the previously delivered broker's letter of undertaking, in substantially the same form as that previously delivered;
- (d) the Company and, if appropriate or applicable, Palo must each be free to assign all amounts payable to it under each of its or their Insurances and all its or their rights in connection with those amounts in favour of the Security Agent as agent and trustee for the Secured Parties; and
- (e) no limits of cover purchased under any Insurance are to be capable of being eroded below the limits which a prudent owner would maintain by reason of claims from Persons who are not Palo or the Company.

10.6 Ensure that it will (and, if appropriate or applicable, procure that Palo will):

- (a) promptly pay (or procure payment of) all premiums and do anything which is necessary to keep each of its Insurances in full force and effect for the term of the Insurances;
- (b) not do or allow anything to be done which may (and promptly notify the Intercreditor Agent of any event or circumstance which does or is reasonably likely to) entitle any insurer of any of its Insurances to repudiate, rescind or cancel it or to treat it as avoided in whole or in part or otherwise decline any valid claim under it by or on behalf of the Company or, as the case may be, Palo;
- (c) promptly notify the Intercreditor Agent of any event or occurrence giving rise to any aggregate loss or liability in excess of US\$10,000,000 (or its equivalent) in respect of which any member of the Restricted Group is entitled to make one or more claim under any Insurance;
- (d) keep the Intercreditor Agent advised of the progress of any such claim; and
- (e) not compromise or settle any claim for less than the amount claimed without the prior consent of the Intercreditor Agent where the aggregate loss or liability in respect of the event or occurrence concerned is more than US\$50,000,000 (or its equivalent).

10.7 Ensure (and, if appropriate or applicable, shall ensure Palo will ensure) that each of the Direct Insurers grants an assignment in favour of the Security Agent on behalf of the Secured Parties, over all of its rights, title and interest in any Reinsurance held from time to time and/or the Reinsurance proceeds (other than relating to any public liability, third party liability or legal liability insurance or any other insurances the proceeds of which are payable to employees of the Company or Palo). Each assignment shall at all times be in the form of the Assignment of Reinsurances dated on or about the date of this Agreement unless otherwise agreed by the Security Agent (acting on the instructions of the Intercreditor Agent).

10.8 Ensure that each such Direct Insurer gives notice to each Reinsurer with whom it has effected such Reinsurance in the form set out in Part 1 of Schedule 2 to the Assignment of Reinsurances and shall procure an acknowledgement from each such Reinsurer in the form set out in Part 2 of Schedule 2 to the Assignment of Reinsurances or such other form reasonably acceptable to the Security Agent.

10.9 For the purposes of this paragraph 10, if the Company or, where applicable, Palo (as the case may be) fails to maintain any contract of insurance which it is required to maintain under this Agreement in respect of Wynn Macau and the Cotai Project, the Intercreditor Agent may purchase the requisite insurance on its behalf. The Company or, where applicable, Palo (as the case may be) must immediately pay the costs and expenses of the Intercreditor Agent or any of its agents incurred in the purchase of that insurance.

10.10 For the purposes of this paragraph 10:

- (a) a "**prudent owner**" means a prudent owner and operator of any business, and of assets of a type and size, similar in all cases to those owned and operated by (in respect of Wynn Macau) the Company and (in respect of the Cotai Project) the Company and (prior to any Permitted Cotai Reorganisation) Palo in a similar location;
- (b) "**replacement value**" means the cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs; and
- (c) Insurance (the "**new Insurance**") shall be on reasonable commercial terms if (without prejudice to any other terms that may be commercially reasonable) the premium payable in respect of the new Insurance is not more than 125 per cent. of the premium paid by the Company or Palo (as the case may be) for the Insurance covering the same risks as the new Insurance in the immediately preceding year.

## 11. **Inspection of Property; Books and Records; Discussions**

- (a) Keep (and ensure each other Obligor shall keep) proper books of records and account in which full, true and correct entries in conformity with applicable GAAP and all Legal Requirements.
- (b) Subject to any Macau Gaming Laws, data protection laws or other applicable Legal Requirements restricting such actions and, where no Event of Default has occurred which is continuing, prior reasonable request and notice, procure (and ensure each other Obligor procures) that each of the Agents or their respective nominees (for purposes of this paragraph (b), each a "**Relevant Person**") be allowed reasonable rights of inspection and access during normal business hours to the Site, the Cotai Site, the Cotai Project, the Auditors and other Company and Obligor officers, the Company's and each other Obligor's accounting books and records and any other documents relating to the Company or Palo (or their respective businesses or assets) as they may reasonably require, and so as not unreasonably to interfere with the operations of the Company and to take copies of any documents inspected. Any information and documents made available for inspection by a Relevant Person pursuant to this paragraph (b) shall be made available subject to customary confidentiality undertakings being executed by such Relevant Person.

- (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(d) of this Part A, any notice of termination (other than expiration in accordance with the terms thereof), any notice of default sent or received by an Obligor or any Termination Event, in each case under any Major Project Document;
- (c) (i) any fact, circumstance, condition or occurrence at, on, or arising from, any of the Site or the Site Easements that results in non-compliance with any Environmental Law that has resulted or could reasonably be expected to result in a Material Adverse Effect or result in any liability for any Senior Secured Creditor, and (ii) any Environmental Claim pending or, to the Company's or any other Obligor's knowledge, threatened against the Company or any other Obligor or, to the Company's or any other Obligor's knowledge, pending or threatened against any contractor or any subcontractor arising in connection with its occupying or conducting operations on or in respect of Wynn Macau, the Cotai Project, the Site or the Site Easements which, in connection with any of the forgoing matters specified in this sub-paragraph (c)(ii), could reasonably be expected to have a Material Adverse Effect or result in any liability for any Senior Secured Creditor;
- (d) any change in the Responsible Officers of the Company or any other Obligor, and such notice shall include a certified specimen signature of any new officer so appointed and, if requested by any Facility Agent or the Intercreditor Agent, evidence of the authority of such new Responsible Officer;
- (e) [Not used]
- (f) [Not used]
- (g) [Not used]
- (h) any (i) default or event of default (or alleged default) by the Company or any other Obligor under any Major Project Document or (ii) litigation, investigation or proceeding which may exist at any time between the Company or any other Obligor and any Governmental Authority, that in either case, could reasonably be expected to have a Material Adverse Effect;
- (i)
  - (i) within twenty days after the Company receives actual notice of a Proceeding or Proceedings instigated or threatened in writing involving an alleged liability of, or claims against or affecting, the Company, Wynn HK, Wynn International, Wynn Asia 2 or any other Obligor where any such Proceeding has, or may reasonably be expected to have, a Material Adverse Effect; or
  - (ii) upon any officer of the Company or any other Obligor obtaining knowledge thereof, the instigation or written threat of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting the Company or any other Obligor, or any Property of the Company or any other Obligor (collectively, "**Proceedings**") not previously disclosed in writing by the Company to the Lenders (including pursuant to paragraph (i)(i) above) that, in any case (i) is reasonably likely to give rise to a Material Adverse Effect or (ii) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions under the Transaction Documents, or any material development in any such Proceeding;
- (j) [Not used]
- (k) [Not used]; and
- (l) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this paragraph shall be accompanied by a statement of a Responsible Officer of the Company setting forth reasonable details of the occurrence referred to therein and stating what action the Company and/or the relevant Obligor proposes to take with respect thereto.

13. **Environmental Laws; Permits**

- 13.1 [Not used]
- 13.2 Comply (and ensure each other Obligor complies) with all applicable Environmental Laws and Environmental Licences (save for any failure to comply that could not reasonably be expected to have a Material Adverse Effect).
- 13.3 Provide copies of any notices from any Governmental Authority of non-compliance with any material Environmental Law or Environmental Licence and any notices of any material Environmental Claims to the Intercreditor Agent.
- 13.4 Deliver to the Intercreditor Agent with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Intercreditor Agent in relation to any matters disclosed pursuant to this paragraph 13.

14. **Hedging**

Comply with the Hedging Arrangements and not enter (and ensure no other Obligor enters into) into any other Swap Agreement or derivative transaction other than any Permitted Swap Transaction and the Hedging Arrangements.

15. **Additional Collateral, Discharge of Liens, etc.**

15.1 With respect to any Property acquired by the Company or any other Obligor after the Sixth Amendment Signing Date as to which the Senior Secured Creditors do not have a perfected security interest, subject to compliance with applicable Macau Gaming Laws and restrictions on the grant of Liens permitted pursuant to paragraph 3 of Part B of this Schedule, promptly:

- (a) execute and deliver (and ensure each other Obligor executes and delivers) to the Intercreditor Agent such amendments to the Security Documents or execute and deliver such other documents as the Intercreditor Agent, acting reasonably, deems necessary or advisable to grant to the Senior Secured Creditors a security interest in such Property; and
- (b) take all actions necessary or advisable to grant to the Senior Secured Creditors a perfected first priority security interest in such Property (subject to Permitted Liens).

In addition to the foregoing, in the event any such Property acquired after the Sixth Amendment Signing Date consists of land or other Property with respect to which a recording or registration in the real property or other records of an appropriate jurisdiction is required or advisable in order to perfect a security interest therein, promptly (and, in any event, within 30 days following the date of such acquisition):

- (i) execute and deliver (and ensure each other Obligor executes and delivers) a mortgage, substantially in the form of the Mortgage (with such modifications, if any, as are necessary to comply with Legal Requirements that the Security Agent may reasonably request), such mortgage to be recorded in the real property records of the appropriate jurisdiction, or execute and deliver to the Security Agent for recording a supplement to the Mortgage, in either case pursuant to which the Company or other Obligor grants to the Senior Secured Creditors a Lien on such Property subject only to Permitted Liens; and
- (ii) execute and/or deliver (and ensure each other Obligor executes and/or delivers) such other documents or provide such other information in furtherance thereof as the Security Agent may reasonably request, including delivering documents and taking such other actions which would have been required pursuant to Clause 2 (*Conditions Precedent*) if such Property were part of the Project Security at the CP Satisfaction Date.

15.2 Notwithstanding anything to the contrary in this paragraph 15, sub-paragraph 15.1 shall not apply to:

- (i) any Property created or acquired after the Sixth Amendment Signing Date, as applicable, as to which the Intercreditor Agent has reasonably determined that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining or maintaining a perfected security interest therein;
- (ii) any Subconcession proceeds or any Property purchased with Subconcession proceeds (which is neither comprised in Wynn Macau or the Cotai Project nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company);
- (iii) any works of art, antiquities, precious stones, precious metals or other similar assets (which are not of a type that will become affixed to the Site or, as the case may be, the Cotai Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of Wynn Macau or, as the case may be, the Cotai Project);
- (iv) any Property comprised in or derived from Resort Management Agreements (which is neither comprised in Wynn Macau or the Cotai Project nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company save for amounts received by the Company or another Obligor in respect of any Excluded Project



located on the Cotai Site and the entry into or performance of obligations under, any Cotai Resort Management Agreement); or

(v) stock or other ownership interests in Excluded Subsidiaries and Excluded Projects.

15.3 Notwithstanding anything to the contrary in this paragraph 15 or the Senior Finance Documents, (unless otherwise agreed by the Company and the Intercreditor Agent or the Security Agent) neither the Company nor Palo shall at any time be required to grant any Lien over its rights under any contract for the design, development, construction, operation or maintenance of the Cotai Project entered into between a contractor (or an equipment supplier or a service provider) and the Company or Palo, as the case may be.

15.4 Notwithstanding anything to the contrary in this paragraph 15 or the Senior Finance Documents, the Company shall not (and no Obligor shall) at any time be required to grant, create, incur or assume any Lien over any Property or assets described in and set forth in paragraph 15.2 above.

#### 16. **Use of Proceeds and Revenues**

16.1 Use the proceeds of each of the Facilities only for the purposes specified or allowed in this Agreement and the Facility Agreement relating to such Facility.

16.2 Ensure that all of its funds and those of any other Obligor and all other amounts received by it or any other Obligor (other than (i) any Subconcession proceeds or amounts received by the Company or another Obligor in respect of any Excluded Subsidiaries or Excluded Projects or its entry into, or performance of its obligations under, any Resort Management Agreement (but including amounts received by the Company or another Obligor in respect of any Excluded Project located on the Cotai Site and the entry into, or performance of obligations under, any Cotai Resort Management Agreement) and (ii) any Excluded Amounts paid into an Excluded Account) are deposited into any Account or combination of Accounts and otherwise in accordance with the provisions of this Agreement and that it and each other Obligor otherwise complies with Schedule 6 (*Accounts*).

#### 17. **Compliance with Laws, Major Project Documents, etc.; Permits**

17.1 Comply (and ensure that each Obligor, each member of the Group and each Excluded Subsidiary complies) in all material respects with all material Legal Requirements (including, without limitation, all Anti-Terrorism Laws, Money Laundering Laws and Anti-Bribery Laws), and its Governing Documents.

17.2 Comply (and ensure each other Obligor complies), duly and promptly, in all material respects with its material obligations and enforce all of its material rights under all Major Project Documents, except in the case of any Resort Management Agreement, where the failure to comply could not reasonably be expected to threaten the Concession Contract, the Cotai Land Concession Contract or the Land Concession Contract.

17.3 From time to time obtain, maintain, retain, observe, keep in full force and effect and comply (and ensure that each other Obligor and each other member of the Restricted Group complies) in all material respects with the terms, conditions and provisions of all Permits made or issued by or with a Governmental Authority as shall now or hereafter be necessary under applicable laws.

17.4 Comply (and ensure each Obligor complies) with all Legal Requirements related to the Land Concession Contract, the Cotai Land Concession Contract and the Concession Contract.

18. **Pari Passu Ranking** - Procure that the obligations of the Company and each other Obligor under the Senior Finance Documents do and shall rank at least *pari passu* with all its other present and future unsecured and unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally.

19. **Further Assurances** - From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as any of the Intercreditor Agent or the Security Agent may reasonably request, for the purposes of implementing or effectuating the provisions of the Senior Finance Documents, or of more fully perfecting or renewing the rights of the Senior Secured Creditors with respect to the Project Security (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other Property acquired after the date of the Senior Finance Documents by the Company or any other Obligor which may be deemed to be part of the Project Security) pursuant to the Senior Finance Documents. Upon the exercise by the Intercreditor Agent, the Security Agent or any other Senior Secured Creditor of any power, right, privilege or remedy pursuant to any of the Senior Finance Documents which requires any consent, approval, notification, registration or authorisation of any Governmental Authority, the Company shall execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Intercreditor Agent, the Security Agent or such Senior Secured Creditor may reasonably be required to obtain from the Company or any other Obligor for such governmental consent, approval, notification, registration or authorisation.

20. [Not used]

21. [Not used]

22. **Preserving Project Security** - Undertake and cause the other 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 or, as the case may be, other Obligor's rights and title and the respective rights of the Senior Secured Creditor to the Project Security,

including the making or delivery of all filings and registrations, the payments of fees and other charges, the issuance of supplemental documentation, the discharge of all claims or other liens other than Permitted Liens adversely affecting the respective rights of the Senior Secured Creditors to and under the Project Security and the publication or other delivery of notice to third parties.

23. [Not used]

24. **Termination of Concession Contract** - Notify the Intercreditor Agent promptly upon receiving:

- (a) notice of any formal consultations with the Macau SAR as contemplated by paragraph B1(c) of the Gaming Concession Consent Agreement in relation to any termination and cessation of the Concession Contract (but for the avoidance of doubt not including consultations relating to the potential extension of the Concession Contract);
- (b) notice of any formal consultations with the Macau SAR (i) as contemplated by paragraph C1 of the Land Concession Consent Agreement in relation to any termination or rescission of the Land Concession Contract or (ii) in relation to any termination or rescission of the Cotai Land Concession Contract (but for the avoidance of doubt not including consultations relating to the potential extension of the Land Concession Contract or the Cotai Land Concession Contract);
- (c) any notice from the Macau SAR pursuant to clause 3 of article 80 of the Concession Contract; or
- (d) any notice from the Macau SAR pursuant to clause 4 of article 80 of the Concession Contract,

and keep the Intercreditor Agent fully apprised thereof.

25. [Not used]

26. **Sufficiency of Funds**

Ensure that it together with each other Obligor has, at all times, sufficient Funds to operate its business as it is then conducted and pay its debts when due.

27. **Additional Obligors**

27.1 Notwithstanding any other provision to the contrary in this Agreement or the other Senior Finance Documents, promptly (and in any case within 30 days of such formation, creation or acquisition) shall ensure that any newly formed, created or acquired (directly or indirectly) Subsidiary (other than any Excluded Subsidiary) of the Company or any other Obligor, agrees to be subject to the obligations under the terms of the Senior Finance Documents and to grant such Liens in respect of its Property as may be required by the terms of the Senior Finance Documents by:

- (a) giving not less than 5 Business Days prior written notice to the Intercreditor Agent (which shall promptly notify the Lenders) of such formation, creation or acquisition;
- (b) the Company confirming that no Default is continuing or would occur as a result of the formation, creation or acquisition of such proposed Subsidiary or as a result of such proposed Subsidiary becoming an Obligor; and
- (c) delivering to the Intercreditor Agent all of the documents and other evidence required by it in relation to the relevant Subsidiary (in form and substance reasonably satisfactory to the Intercreditor Agent), including (without limitation):
  - (i) accession by the relevant Subsidiary to the Subordination Deed and the Guarantee; and
  - (ii) any other documentation and evidence reasonably required by the Intercreditor Agent to ensure that the relevant Subsidiary makes such representations and warranties and is subject to such obligations under the terms of the Senior Finance Documents and grants such Liens in respect of its Property,

in each case on such terms and by such instrument or combination of instruments as the Intercreditor Agent reasonably deems necessary or desirable; and *provided* that the Intercreditor Agent shall have informed the Company of all such documents and evidence to be required by the Intercreditor Agent within a reasonable time after receiving the notice set forth in paragraph 27.1(a).

27.2 The Intercreditor Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance reasonably satisfactory to it) all the documents and other evidence referred to in paragraph 27.1(c) above.

27.3 Following the giving of any notice pursuant to paragraph 27.2 above, if the accession of such additional Obligor obliges the Intercreditor Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, promptly upon the request of the Intercreditor Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Intercreditor Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Intercreditor Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an additional Obligor.

## 28. **Cotai Site Excluded Project**

28.1 Ensure that to the extent any Excluded Project located on a portion of the Cotai Site is funded by the proceeds of any Advance, such funding is applied solely towards the financing or refinancing of the development costs incurred in relation to such Excluded Project (it being agreed that such development costs include, but are not limited to, costs and expenses related to design, development, land acquisition, construction, site preparation, equipping, pre-opening expenses and capitalized interest).

28.2 Ensure that prior to the earlier of the entry into of any contract for and the commencement of the construction of an Excluded Project on a portion of the Cotai Site, the conditions set out in paragraphs (i) to (iii) (inclusive) of the definition of "Excluded Project" in Clause 1.1 (*Definitions*) are met and that such conditions continue to be met for the duration of the period during which such Excluded Project remains located on a portion of the Cotai Site.

## 29. **Executive Director Substitutions**

Procure that each of the steps set out in paragraphs (a) to (d) (inclusive) of the definition of "Executive Director Substitution" in Clause 1.1 (*Definitions*) occurs in relation to any Disposition by an Executive Director of any or all of the Executive Director Shares and that any cancellation of the Existing Executive Director Shares only occurs in connection with an Executive Director Substitution and the issuance of New Executive Director Shares to a New Executive Director.

## 30. **Wynn Macau and the Cotai Project**

Ensure that the Company continues to own and operate Wynn Macau and, after its construction, Palo, (or following a Permitted Cotai Reorganisation, the Company), continues to own and Palo and/or the Company continues to operate the Cotai Project, in each case, as integrated casino resorts.

## 31. **OFAC**

31.1 Ensure that it (and each other Obligor and each member of the Group):

- (a) is not the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or any other Sanctions;
- (b) is not located, organised or residing in any Designated Jurisdiction, or participating in or facilitating a transaction or business in a Designated Jurisdiction or, subject to the proviso in sub-paragraph (i) below, involving any Person who is the subject of Sanctions; and
- (c) subject to the proviso in sub-paragraph (ii) below, on the Sixth Amendment Effective Date, none of its directors, officers, agents, employees or affiliates (as defined in Rule 405 under the U.S. Securities Act of 1933, as amended) (a "**relevant OFAC person**") are the subject of any U.S. sanctions administered by OFAC or any other Sanctions,

*provided* that the Company will not (and no other Obligor will) be in breach of:

- (i) the relevant part of paragraph 31.1(b) above, if the relevant Obligor does not have knowledge or reason to believe that the relevant Person is the subject of Sanctions; or
- (ii) paragraph 31.1(c) above, if the relevant Obligor does not have knowledge or reason to believe that the relevant OFAC person is the subject of U.S. sanctions administered by OFAC or any other Sanctions on the Sixth Amendment Effective Date.

31.2 Ensure that it shall not (and no other Obligor or member of the Group or any Excluded Subsidiary shall) directly or indirectly use the proceeds of the Facilities, or lend, contribute or otherwise make available such proceeds to any other Person, for the purpose of financing the activities of any Person that, at the time of such financing, is the subject of any U.S. sanctions administered by OFAC or any other Sanctions, or in any Designated Jurisdiction.

31.3 Without prejudice to paragraph 31.2 above, ensure that none of its funds or assets (and none of the funds or assets of any other Obligor, any member of the Group or any Excluded Subsidiary) which are used to pay any amount due pursuant to this Agreement or any other Senior Finance Document shall constitute funds knowingly obtained from transactions with or relating to Designated Persons or Designated Jurisdiction.

31.4 Ensure that it (and each other Obligor and each member of the Group):

- (a) has in place customary procedures designed to identify if any of its (or any other Obligor's or any member of the Group's) directors, officers and agents, at the time of its engagement with or appointment of such relevant OFAC persons, is the subject of any U.S. sanctions administered by OFAC or any other Sanctions; and
- (b) will terminate its engagement with or appointment of any of its relevant OFAC person promptly upon it or any other Obligor or any member of the Group having knowledge of such relevant OFAC person being the subject of any U.S. sanctions administered by OFAC or any other Sanctions.

## 32. **FCPA**

32.1 Ensure that it (and each other Obligor and each member of the Group):

- (a) does not; and
- (b) subject the proviso at the end of this paragraph, none of its (and each other Obligor's and each member of the Group's) directors, officers, agents, employees or other Persons associated with or acting on behalf of any member of the Group (a "**relevant FCPA person**") shall,

use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; make any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violate any provision of the U.S. Foreign Corrupt Practices Act of 1977 (the "**FCPA**") or make any bribe, rebate, payoff, influence payment, kickback or other unlawful payment prohibited under any applicable law or regulation equivalent to the FCPA (such law or regulation, together with the FCPA, being "**Anti-Bribery Laws**"), *provided* that (in the case of paragraph (b) above) an Obligor or member of the Group will not be in breach of this paragraph 32.1 if the relevant Obligor or member of the Group does not have knowledge or reason to believe that the relevant FCPA person is engaged in any of the activities set out in this paragraph 32.1.

32.2 Ensure that it (and each other Obligor and each member of the Group):

- (a) has in place customary procedures designed to monitor the engagement by its (and each other Obligor's and each member of the Group's) directors, officers and employees in any of the activities set out in paragraph 32.1 above; and
- (b) will terminate or, if prohibited under applicable law from so terminating, take appropriate remedial or disciplinary action (including, without limitation, promptly relieving such relevant FCPA person of his or her duties and other responsibilities) and commence the termination of (and diligently pursue such action and termination) its (and each other Obligor's and each member of the Group's) engagement with or appointment of any of its (and each other Obligor's and each member of the Group's) relevant FCPA person promptly upon it or any other Obligor or any member of the Group having knowledge that that relevant FCPA person has engaged in any of the activities set out in paragraph 32.1 above.

## 33. **Money Laundering Laws**

33.1 Ensure that:

- (a) it (and each other Obligor and each member of the Group) is in material compliance with all applicable anti-money laundering laws (including but not limited to applicable financial record keeping and reporting requirements and money laundering statutes in Macau, and, to the best of its (and each other Obligor's and each member of the Group's) knowledge and belief, all jurisdictions in which it, each Obligor and each member of the Group conducts business or which are otherwise applicable to it, each other Obligor and each member of the Group) and all applicable rules, regulations and guidelines issued, administered or enforced by any Governmental Authority pursuant to such laws (collectively, "**Money Laundering Laws**");
- (b) on the Sixth Amendment Effective Date, no action, suit or proceeding by or before any court or Governmental Authority, authority or body or any arbitrator involving any Obligor or any member of the Group with respect to

Money Laundering Laws is pending and, subject to the proviso at the end of this paragraph 33.1, no such actions, suits or proceedings are threatened or contemplated; and

- (c) on the date of each Advance Request, there is no such action, suit or proceeding pending which may reasonably be expected to have a Material Adverse Effect.

No Obligor or member of the Group will be in breach of paragraph 33.1(b) in respect of the actions, suits or proceedings referred to therein if the relevant Obligor or member of the Group does not have knowledge of the relevant actions, suits or proceedings on the Sixth Amendment Effective Date.

- 33.2 Ensure that it (and each other Obligor and member of the Group) is in material compliance with the U.S. International Money Laundering Abatement and the U.S. Terrorism Financing Act of 2001.

#### 34. **Anti-Terrorism Laws**

- 34.1 Subject to the proviso at the end of this paragraph 34.1, it shall ensure that neither it nor any other Obligor or any member of the Group, nor any of its or their respective brokers or other agents acting or benefiting in any capacity in connection with any Advance:

- (a) is in violation of any Anti-Terrorism Law;
- (b) is a Designated Person; or
- (c) is dealing in any property or interest in property blocked pursuant to any Anti-Terrorism Law,

*provided* that Obligor or any member of the Group will not be in breach of this paragraph 34.1 in respect of the circumstances or activities of any brokers or agents of any Obligor or any member of the Group which are restricted under paragraphs 34.1(a) to 34.1(c) above (inclusive) if that Obligor or member of the Group does not have knowledge of the relevant circumstances or activities.

- 34.2 Ensure that it (and each other Obligor and member of the Group):
- (a) has in place customary procedures designed to identify, at the time of engagement with or appointment of its (and each other Obligor's and member of the Group's) broker or agent acting or benefiting in any capacity in connection with any Advances, if any of the circumstances or activities that are restricted under paragraphs 34.1(a) to 34.1(c) above (inclusive) applies to or is undertaken by such broker or agent; and
- (b) terminates its (and each other Obligor's and member of the Group's) engagement with or appointment of any such broker or agent promptly upon it, any other Obligor or any member of the Group having knowledge that any of the circumstances or activities that are restricted under paragraphs 34.1(a) to 34.1(c) above (inclusive) applies to or is undertaken by that broker or agent.

### **PART B** **Negative Covenants**

The Company shall not directly or indirectly:

#### 1. **Financial Condition Covenants**

- (a) *Leverage Ratio* - Permit the Leverage Ratio as at the last day of any period of four full consecutive Fiscal Quarters ending on any Quarterly Date in any Fiscal Year set forth below to exceed the ratio set forth below opposite such Fiscal Year:

<b>Fiscal Year</b>	<b>Leverage Ratio</b>
2018	4.75:1
2019	4.25:1
2020 and thereafter	4.00:1

*provided* that, for purposes of calculating EBITDA pursuant to this paragraph 1(a) for any period which is less than four full Fiscal Quarters, EBITDA shall be calculated on an annualised basis commencing on the first day following the first full quarter after all conditions precedent set forth in Schedule 1 (*Conditions Precedent*) to the Common Terms Agreement Sixth Amendment Agreement have been satisfied and the first Advance has been made under the Term Facility.

- (b) *Interest Coverage Ratio* - Permit the Interest Coverage Ratio for each period of four full consecutive Fiscal Quarters ending on each Quarterly Date in any Fiscal Year to be less than 2.0:1 at any time.

## 2. **Limitation on Financial Indebtedness**

2.1 Create, incur, assume or allow to remain outstanding (or permit any other Obligor to create, incur, assume or allow to remain outstanding) any Financial Indebtedness, except:

- (a) Financial Indebtedness of the Company or Palo created under any Senior Finance Document (other than an Additional Lender Facility Agreement), the Performance Bond Facility, any Shareholder Loan, any Subordinated Debt or any Guarantee Obligations represented by the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract or clause 7 of the Cotai Land Concession Contract;
- (b) Financial Indebtedness of the Company or Palo (including Capital Lease Obligations) secured by Liens permitted by paragraph 3(l) of this Part B *provided* that any recourse in respect of such Financial Indebtedness is limited solely to the Property secured by such Liens;
- (c) Financial Indebtedness of the Company or Palo in an aggregate principal amount not to exceed USD50,000,000 or its equivalent at any time *provided* that the provider (or providers) of such Financial Indebtedness do not (in respect of such Financial Indebtedness) have the benefit of any Lien over or in respect of the Project Security (or any part thereof) (save for a Lien referred to in paragraph 3(i) of Part B of Schedule 5 (*Covenants*)) to the extent that such attachment or judgment Lien arises in respect of that Financial Indebtedness above or a Lien referred to in paragraph 3(m) of Part B of Schedule 5 (*Covenants*));
- (d) Financial Indebtedness of the Company or Palo incurred for the purpose of repaying the balance of the principal amount owing to all Lenders *provided* the Intercreditor Agent is satisfied that upon the incurrence of such Financial Indebtedness or immediately thereafter the Release Date (without reference to paragraph (b) of the definition of "Release Date" in Clause 1.1 (*Definitions*)) will occur;
- (e) Financial Indebtedness of the Company or Palo *provided* that the Leverage Ratio as at the most recent Quarterly Date, if determined on a *pro forma* basis after giving effect to the creation, assumption or sufferance to exist of such Financial Indebtedness (when taken together with all such other Financial Indebtedness of the Company permitted pursuant to this paragraph 2.1(e) but, for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)), would not exceed the ratio set forth opposite that Quarterly Date in paragraph 1(a) and *further provided* that the provider (or providers) of such Financial Indebtedness do not (in respect of such Financial Indebtedness) have the benefit of any Lien over or in respect of the Project Security (or any part thereof) (save for a Lien referred to in paragraph 3(i) of Part B of Schedule 5 (*Covenants*)) to the extent that such attachment or judgment Lien arises in respect of that Financial Indebtedness above or a Lien referred to in paragraph 3(m) of Part B of Schedule 5 (*Covenants*));
- (f) Financial Indebtedness of the Company, pursuant to one or more Additional Lender Facility Agreements:
- (i) in an aggregate principal amount not to exceed USD1,000,000,000 or its equivalent;
- (ii) on terms no more favourable to any creditor to which such Financial Indebtedness is owed than those to which (i) the Revolving Credit Facility made available pursuant to the Revolving Credit Facility Agreement referred to in paragraph (a) of the definition of "Revolving Credit Facility Agreement" in Clause 1.1 (*Definitions*) of this Agreement are subject (in respect of any Additional Lender Facility that is a revolving credit facility) or (ii) the Term Facility is subject (in respect of any Additional Lender Facility that is a term loan facility) (*provided that* such Financial Indebtedness will be tranching as agreed between the Company and all such creditors (A) between US dollars and Hong Kong dollars and (B) further tranching (if required) to address any requirements of any creditor for its participations thereunder to be applied solely to finance costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming);
- (iii) *provided* (x) each such creditor has executed and delivered to the Intercreditor Agent a duly completed Additional Lender's Accession Deed and Finance Party Accession Undertaking (also executed, in the case of the latter, by the Intercreditor Agent and all parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent), whereupon, provided the other conditions of this paragraph

2.1(f) have also been satisfied, such creditor shall become a party hereto as an Additional Lender and that creditor and each of the other parties hereto shall assume obligations towards, and acquire rights against, one another accordingly or (y) the Financial Indebtedness is otherwise on terms satisfactory to the Intercreditor Agent concerning the relationship between each creditor and the Senior Secured Creditors, including the exercise of rights against the Company and any other Obligor and the sharing and enforcement of the Security and any other liens over Property of the Company or any other Obligor; and

*further provided* that it shall be a condition to the making of any Advance under an Additional Lender Facility Agreement that the Company shall, prior to the making of such Advance, procure that (1) evidence that the Macau SAR government has (a) consented to the increase in the Company's financial indebtedness contemplated by the proposed Additional Lender Facility Agreement and (b) confirmed that any approval, authorisation, confirmation, document or instrument from the Macau SAR government that the Intercreditor Agent (acting in its sole discretion and in consultation with the Macanese legal adviser to the Senior Secured Creditors) considers necessary or desirable in connection with the Additional Lender Facility continues to apply with respect to such financial indebtedness, together with a legal opinion of the Macanese legal adviser to the Senior Secured Creditors, in respect thereof and in respect of the validity, enforceability, effectiveness and ranking of the Mortgage (as well as confirming the Secured Obligations thereunder also cover such Additional Lender Facility) is provided to the Intercreditor Agent (in each case in form and substance satisfactory to the Intercreditor Agent, acting reasonably) and (2) if the evidence contemplated by sub-clause (1)(b) above is not provided, all documents and other evidence listed in paragraphs 2 to 8 (inclusive) of Part H of Schedule 2 (*Conditions Precedent*) have been provided to the Intercreditor Agent, in each case in form and substance satisfactory to it (and as if references in those paragraphs to "Upsize Advance" were deemed to be references to the "Advance under the Additional Lender Facility");

- (g) Financial Indebtedness of a Wholly Owned Subsidiary of the Company which is an Obligor (a "**Subsidiary Obligor**") to any other Subsidiary Obligor or to the Company;
  - (h) Financial Indebtedness of the Company to any Subsidiary Obligor;
  - (i) Guarantee Obligations of the Company or any Obligor incurred, assumed or allowed to remain outstanding with respect to any WML Debt *provided that* (i) such WML Debt is not secured by any Lien granted by any Obligor or any member of the Group, (ii) such WML Debt does not have any scheduled amortisation prior to the Final Repayment Date of any Facility (as determined: (A) in respect of the Term Facility, as of the Sixth Amendment Effective Date; and (B) in respect of any Additional Lender Facility which provides for a Term Loan Facility, as of the date of that Additional Lender Facility Agreement), (iii) such WML Debt has a stated maturity that extends beyond the later of (A) the Revolving Credit Facility Termination Date (as determined as of the Sixth Amendment Effective Date), (B) the Final Repayment Date of the Term Facility (as determined as of the Sixth Amendment Effective Date), (C) the Final Repayment Date of any Additional Lender Facility which provides for a Term Loan Facility (as determined as of the date of the Additional Lender Facility Agreement); and (D) the final repayment date of any Additional Lender Facility which provides for a revolving credit facility (as determined as of the date of the Additional Lender Facility Agreement), (iv) no Default has occurred and is continuing or could reasonably be expected to occur as a result of incurring, assuming or allowing to remain outstanding such Guarantee Obligations, (v) incurring, assuming or allowing to remain outstanding such Guarantee Obligations does not and could not otherwise reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Finance Documents and (vi) any event of default (howsoever described) in respect of the WML Debt which references or concerns in any way the First Ranking Liabilities (as defined in the Deed of Appointment and Priority), or any part thereof, will only occur on (in respect of non-payment of any of the First Ranking Liabilities) such non-payment event of default occurring as contemplated by Schedule 10 (*Events of Default*) of this Agreement and (in respect of any other events or circumstances described in Schedule 10 (*Events of Default*) of this Agreement) will only occur upon the Intercreditor Agent issuing written notice to the Company pursuant to (or taking steps contemplated by) Clause 19.2 (*Remedies following an Event of Default*) of this Agreement; and
  - (j) other Financial Indebtedness approved in writing by the Intercreditor Agent,
- (together, "**Permitted Financial Indebtedness**").

### 3. **Limitation on Liens**

Create, incur, assume or permit to subsist (or permit any other Obligor to create, incur, assume or permit to subsist) any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

- (a) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, *provided that* adequate reserves with respect thereto are maintained on the books of the Company and the relevant Obligor in conformity with applicable GAAP;

- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts which are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceeding (such contest proceedings conclusively operating to stay the sale of any portion of the Project Security on account of such Lien);
- (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation *provided* that if such pledges are being contested, appropriate reserves (determined in accordance with the applicable GAAP are maintained on the books of the Company and the relevant Obligor);
- (d) deposits by or on behalf of the Company (or the Obligor) to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, appeal bonds and other obligations of a like nature incurred in the ordinary course of business;
- (e) easements, rights-of-way, restrictions, encroachments and other similar encumbrances and other minor defects and irregularities in title, in each case incurred in the ordinary course of business that, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of the Company (or the Obligor);
- (f) Liens created pursuant to paragraph 15.2 of Part A of this Schedule 5;
- (g) Liens created pursuant to the Security Documents;
- (h) licenses of patents, trademarks and other intellectual property rights granted by the Company (or the Obligor) in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of the Company (or the Obligor);
- (i) any attachment or judgment Lien not constituting an Event of Default;
- (j) Liens in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (k) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any Site and Site Easements or the Cotai Site and Cotai Site Easements;
- (l) Liens securing Financial Indebtedness of the Company or Palo incurred pursuant to paragraph 2.1(b) of this Part B to finance the acquisition of fixed or capital assets *provided* that:
  - (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets (or the refinancing of such Financial Indebtedness as otherwise permitted hereunder);
  - (ii) such Liens do not at any time encumber any Property other than the Property (and proceeds of the sale or other disposition thereof) financed by such Financial Indebtedness; and
  - (iii) the Property financed by such Financial Indebtedness is not of a type that will become affixed to the Site (and/or all or any part of the buildings therein) or the Cotai Site Facilities such that the removal thereof could reasonably be expected to materially interfere with the ongoing ordinary course of operations of Wynn Macau or the Cotai Project;
- (m) Liens on cash deposited with, or held for the account of, the Company or Palo securing reimbursement obligations owing by the Company or Palo and permitted to be incurred by it pursuant to paragraph 2.1(c) above under performance bonds, guaranties, commercial or standby letters of credit, bankers' acceptances or similar instruments or the guarantee required to be issued pursuant to clause 7 of the Land Concession Contract or clause 7 of the Cotai Land Concession Contracts, granted in favour of the issuers of such performance bonds, guaranties, commercial letters of credit or bankers' acceptances, so long as (i) any cash used as security for such reimbursement obligations is invested (if at all) in Permitted Investments only (to the extent the Company or Palo has the right to direct the investment thereof) and is segregated from the Company's or Palo's general cash accounts so that such Liens attach only to such cash and Permitted Investments and (ii) the amount of cash and/or Permitted Investments secured by such Liens does not exceed 110% of the amount of the Financial Indebtedness secured thereby (ignoring any interest earned or paid on such cash and any dividends or distributions declared or paid in respect of such Permitted Investments);
- (n) without prejudice to Schedule 6 (*Accounts*), Liens arising by reason of any netting or set-off arrangements entered into by the Company or any other Obligor in the normal course of its banking arrangements and the standard account operating procedures of the bank for the purpose of netting debit and credit balances;
- (o) Liens arising under title transfer or retention of title arrangements entered into by the Company or any other Obligor in the normal course of its trading activities on the counterparty's standard or usual terms *provided* that such



arrangements shall be limited to Property of an aggregate value not exceeding USD1,000,000 or its equivalent; and

(p) other Liens approved in writing by the Intercreditor Agent.

#### 4. **Limitation on Fundamental Changes**

Enter (and ensure no other Obligor shall enter) into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its Property or business, except:

- (a) that each of the Company and Palo may dispose of any of its Property in accordance with paragraph 5 of this Part B; and
- (b) for any voluntary liquidation, winding up or dissolution of, or similar action with respect to, Palo after a Permitted Cotai Reorganisation.

#### 5. **Limitation on Disposition of Property**

Dispose (and ensure no other Obligor shall dispose) of any of its Property (including, without limitation, receivables and leasehold interests), whether now owned or hereafter acquired, or issue or sell any Capital Stock to any Person, except:

- (a) the Disposition for fair market value on arm's length commercial terms in the ordinary course of business of any Property or obsolete or worn out Property or Property no longer used or useful in the business of the Company or the Obligor *provided* that such Disposition could not reasonably be expected to materially adversely affect Wynn Macau, the Cotai Project or any of the Project Security and either:
  - (i) the Net Cash Proceeds from the disposal of all such Property (excluding shares in any Obligor) do not exceed in aggregate an amount equal to USD100,000,000 or its equivalent in any Fiscal Year when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year; or
  - (ii) where such Net Cash Proceeds referred to in sub-paragraph (i) above exceed in aggregate an amount equal to USD100,000,000 or its equivalent in any Fiscal Year (when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year), such Net Cash Proceeds are reinvested within 12 months of receipt in assets used by the Company or any other Obligor in the conduct of its Permitted Business at Wynn Macau and/or the Cotai Project (and pending such reinvestment are deposited and retained in an Account) and, if such Net Cash Proceeds are not so reinvested within 12 months of receipt, are applied in mandatory prepayment of the Advances pursuant to paragraph 2 of Schedule 9 (*Mandatory Prepayment*);
- (b) the Disposition of cash (in each case in transactions otherwise permitted under this Agreement), Investments permitted pursuant to paragraph 8 of this Part B, inventory (in the ordinary course of business), receivables (in connection with the collection thereof and otherwise as customary in business activities of the type conducted by the Company) and cash or non-cash prizes and other complimentary items for customers customary in business activities of the type conducted by the Company;
- (c) the sale or issuance of the Company's or any other Obligor's Capital Stock (other than Disqualified Stock) to its direct Shareholders *provided* that such Capital Stock is fully paid upon such issuance (or, as the case may be, sale) and is subject to the Liens created under the Company Share Pledge or such other Liens created under the Senior Finance Documents with regard to such other Obligor's Capital Stock;
- (d) the entry into of any leases or licences with respect to any space on or within the Site or the Cotai Site Facilities where the entry into of such leases or licences is not otherwise prohibited by the terms of the Senior Finance Documents or the cancellation of the Existing Executive Director Shares in connection with an Executive Director Substitution and the issuance of New Executive Director Shares to a New Executive Director;
- (e) any Property purchased using the Company's Subconcession proceeds (which is neither comprised in Wynn Macau or the Cotai Project nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company);
- (f) any Property associated with an Excluded Subsidiary or Excluded Project (which is neither comprised in Wynn Macau or the Cotai Project (other than, in the case of an Excluded Project on the Cotai Site, the grant of any right or interest to use the Cotai Site pursuant to a Cotai Resort Management Agreement) nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company);
- (g) any Property associated with Resort Management Agreements (which is neither comprised in Wynn Macau or the Cotai Project (other than, in the case of an Excluded Project on the Cotai Site, the grant of any right or interest to use

the Cotai Site pursuant to a Cotai Resort Management Agreement) nor necessary or desirable to ensure the full benefit of Wynn Macau or the Cotai Project to the Company);

- (h) the incurrence of Liens permitted under paragraph 3 of this Part B;
- (i) any Event of Eminent Domain *provided* that the requirements of Schedule 9 (*Mandatory Prepayment*) are complied with in connection therewith;
- (j) subject to compliance with paragraph 17 of this Part B, the Company may enter into Subconcessions;
- (k) any Disposition by the Company to a Subsidiary Obligor or by a Subsidiary Obligor to the Company *provided* that the requirements of paragraph 15 of Part A of this Schedule 5 are satisfied with respect to the acquisition by the transferee of the Disposed Property;
- (l) the Disposition by Palo to the Company of Palo's interest in the Cotai Site (whether by assignment, novation, transfer or replacement of the Cotai Land Concession Contract or otherwise) and/or Palo's ownership of, or interest in, other assets relating to the Cotai Site and/or the Cotai Project pursuant to a Permitted Cotai Reorganisation *provided* that the conditions in the proviso in the definition of "Permitted Cotai Reorganisation" in Clause 1.1 (*Definitions*) are satisfied with respect to the same; or
- (m) any Disposition not falling within any of the preceding sub-paragraphs of this paragraph 5 made with the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld).

## 6. **Limitation on Restricted Payments**

### 6.1

- (a) Declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund (and ensure each other Obligor which is a Subsidiary of the Company shall not declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund) for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of the Company (including any Equity) or such other Obligor, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Company or such other Obligor;
- (a) enter (and ensure each other Obligor which is a Subsidiary of the Company shall not enter) into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a "**Derivatives Counterparty**") obligating the Company or such other Obligor to make payments to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock;
- (b) make any repayment of, or pay any interest on or other amount in respect of (and ensure each other Obligor shall not make any repayment of, or pay any interest on or other amount in respect of) the Performance Bond Facility or any other Subordinated Debt (including any Equity) or any WML Debt;
- (c) make any payment of IP Fees;
- (d) make any payment of Corporate Administrative Fees; or
- (e) take any action or make any payment permitted pursuant to, or in connection with any transaction permitted pursuant to, paragraph 10 of this Part B,

(collectively, "**Restricted Payments**") except (i) to the extent constituting payment of any Restricted Payment by any Subsidiary Obligor to the Company or (ii) the Company and each Obligor may:

- (i) pay dividends, distributions or other payments if (A) permitted under paragraphs 6.2 or 17(d) of this Part B or (B) made using any amounts derived from or under (i) any Resort Management Agreement or (ii) any Excluded Project or Excluded Subsidiary;
- (ii) make payments permitted in accordance with the Deed of Appointment and Priority;
- (iii) pay Approved IP Fees and Approved Corporate Administrative Fees *provided* that, in each case, no Event of Default has occurred and is continuing or would result from such payment;
- (iv) pay to any of its Affiliates the direct cost incurred by that Affiliate (excluding any internal administration charges, internal handling fees, internal mark-ups or any other internal fees, costs, charges or impositions of a similar nature levied, imposed or charged by that Affiliate) for the acquisition of any assets, or the

procurement or any services, to be used by the Company or such Obligor in its Permitted Business at or directly related to Wynn Macau and/or the Cotai Project;

- (v) make dividends, distributions or other payments (including loans or advances), directly or indirectly, for the purpose of paying any amount with respect to WML Debt *provided* that (i) such payment would not cause the aggregate amount of such payments made pursuant to this paragraph (v) to exceed USD150,000,000 in any Fiscal Year and (ii) had the WML Debt (and any Guarantee Obligations of the Company or Obligors in connection therewith) been incurred immediately prior to the last Quarterly Date to occur before the incurrence of such WML Debt, the Company would, as at that Quarterly Date, still have been in compliance with paragraph 1 of Part B of this Schedule 5 (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)); and
- (vi) without prejudice to paragraph 6.2, make any payment (other than a payment permitted pursuant to any of sub-paragraphs (i) to (v) (inclusive) above) pursuant to, or in connection with any transaction permitted pursuant to, paragraph 10 of Part B of this Schedule 5 subject to compliance with applicable Legal Requirements and *provided* that (A) no Event of Default has occurred and is continuing or would otherwise result from the making of such payment and (B) had such payment been made immediately prior to the most recent Quarterly Date, the Company would, as at that Quarterly Date, still have been in compliance with paragraph 1 of Part B of this Schedule 5 (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)).

6.2 At any time after the first Quarterly Date, the Company and each Subsidiary Obligor may declare and/or pay (other than a declaration or payment permitted pursuant to paragraphs 6.1(i)(B), 6.1(ii), 6.1(iii), 6.1(iv) or 6.1(v)) at the times set out in paragraph 6.3 of this Part B by way of dividend or other distribution or make other Restricted Payments, subject to compliance with applicable Legal Requirements and *provided* that all of the following conditions have been satisfied:

- (i) no Event of Default has occurred and is continuing or might reasonably be expected to occur as a result of the declaration and/or payment of such dividend or other distribution or Restricted Payment; and
- (ii) had such declaration, payment, distribution or other Restricted Payment been made immediately prior to the most recent Quarterly Date, the Company would, as at that Quarterly Date, still have been in compliance with paragraph 1 of Part B of this Schedule 5 (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)).

6.3 Any payment or making of dividends or other distribution or Restricted Payment under paragraph 6.2 of this Part B may be made once in each Fiscal Quarter (or such other date or with such other frequency as may be agreed by the Intercreditor Agent) *provided that* where such payment or making of dividends or other distributions or Restricted Payments is proposed to be made in the Fiscal Quarter immediately following the end of the previous Fiscal Year, that payment or making of dividends or other distributions or Restricted Payments shall be made after the date of prepayment of Advances under the Facilities in respect of Excess Cash Flow pursuant to paragraph 4 of Schedule 9 (*Mandatory Prepayment*).

6.4 The financial ratios set out in paragraph 6.2 of this Part B shall be tested by reference to the financial statements of the Company delivered pursuant to paragraph 1(a) of Part A of this Schedule 5 and/or each Compliance Certificate delivered pursuant to paragraph 2(a) of Part A of this Schedule 5.

7. **[Not used]**

## 8. **Limitation on Investments**

Make (and ensure that no other Obligor shall make) any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting an ongoing business from, or make any other investment in, any other Person (all of the foregoing, "**Investments**"), except:

- (a) Investments by the Company in any of its Wholly Owned Subsidiaries (other than any Excluded Subsidiary) which is an Obligor;
- (b) extensions of trade credit in the ordinary course of business (including, without limitation, advances to patrons of Wynn Macau or the Cotai Project casino and gaming operations consistent with ordinary course gaming operations) *provided* that such extensions are in compliance with all Legal Requirements;
- (c) Permitted Investments;
- (d) Investments made using any amounts derived from or under (i) the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary;

- (e) Investments in any Excluded Subsidiary or Excluded Project or any third party whose primary business is the development, construction, ownership and operation of hotel resorts and casinos, *provided* that such Investments are made using amounts which are not required to be applied for any other purpose under or in connection with the Senior Finance Documents;
- (f) loans and advances to employees of the Company or Palo in the ordinary course of business (including, without limitation, for travel, entertainment and relocation expenses) in an aggregate amount not to exceed USD5,000,000 or its equivalent at any one time outstanding;
- (g) Investments consisting of securities received in settlement of debt created in the ordinary course of business and owing to the Company or in satisfaction of judgments;
- (h) acquisition of Advances in connection with a Permitted Loan Repurchase;
- (i) loans and advances permitted under paragraph 6.1(v) of this Part B;
- (j) in addition to Investments otherwise expressly permitted by this paragraph 8, so long as no Default shall have occurred and be continuing or would result therefrom and no Material Adverse Effect shall have occurred and be continuing or would result therefrom, Investments by the Company or any other Obligor in an aggregate amount (valued at cost) not to exceed USD50,000,000 or its equivalent at any one time outstanding;
- (k) Guaranteed Obligations of the Company or any Obligor incurred or assumed or allowed to remain outstanding (in accordance with paragraph 2.1(i) of this Part B with respect to any WML Debt; and
- (l) any Specified Equity Contributions made by way of equity as contemplated by (and, to the extent, and in the manner permitted by) the definition thereof and the definition of "Specified Equity Contributions Conditions", each as set out in Clause 1.1 (*Definitions*).

**9. Limitation on Optional Payments and Modifications of Governing Documents**

- (a) Make or offer to make (and ensure no other Obligor makes or offers to make) any optional or voluntary payment, prepayment, repurchase or redemption of, or otherwise voluntarily or optionally defease, any Financial Indebtedness, or segregate funds for any such payment, prepayment, repurchase, redemption or defeasance, or enter into any derivative or other transaction with any Derivatives Counterparty obligating the Company to make payments to such Derivatives Counterparty as a result of any change in market value of such Financial Indebtedness, other than (i) the prepayment of (A) Financial Indebtedness incurred under the Senior Finance Documents in accordance with the terms of the Senior Finance Documents, (B) Permitted Financial Indebtedness (excluding any Subordinated Debt) or (ii) Permitted Loan Repurchases or (C) any Subordinated Debt in accordance with the terms of the Subordination Deed; or
- (b) amend or modify, or permit the amendment or modification of (and ensure no other Subsidiary Obligor amends, modifies or permits the amendment or modification of) its Governing Documents in any manner adverse to any of the Secured Parties (other than where such amendment or modification could not reasonably be expected to have a Material Adverse Effect).

**10. Limitation on Transactions with Affiliates**

Enter (and ensure that no other Obligor shall enter) into any single transaction, or series of transactions, whether related or not (including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, the entry into of any contract or the amendment, novation, supplementation, extension or restatement of any existing contract) with any Affiliate of the Company unless:

- (a) the relevant transaction is:
  - (i) a genuine commercial transaction on terms that are not less favourable to the Company or applicable Obligor than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of the Company; and
  - (ii) is not prohibited by the Listing Rules, or
- (b) the relevant transaction is between the Company and its Wholly Owned Subsidiary (other than any Excluded Subsidiary) which is an Obligor.

**11. Limitation on Sales and Leasebacks**

Save as permitted pursuant to paragraph 5 of this Part B, enter (and ensure that no other Obligor shall enter) into any arrangement with any Person providing for the leasing by the Company or such other Obligor as lessee of Property which

has been or is to be sold or transferred by the Company or such other Obligor to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of the Company or such other Obligor.

**12. Limitation on Changes in Fiscal Periods**

Permit the Fiscal Year of the Company or any other Obligor to end on a day other than December 31 or change the Company's or any other Obligor's method of determining Fiscal Quarters.

**13. Limitation on Negative Pledge Clauses**

Enter into any agreement that prohibits or limits the ability (and ensure that no other Obligor enters into any agreement that prohibits or limits the ability) of the Company or any other Obligor to create, incur or assume any Lien upon any of its Property or revenues, whether now owned or hereafter acquired, to secure the Obligations other than:

- (a) the Senior Finance Documents;
- (b) the Concession Contract;
- (c) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby and proceeds thereof);
- (d) in connection with WML Debt (*provided* that the terms of such WML Debt shall not prohibit the creation, incurrence, assumption or subsistence of any Lien in favour of the Secured Parties existing or contemplated under the Senior Finance Documents as such documents are in effect at the time such WML Debt is incurred); and
- (e) as required by applicable Legal Requirements.

**14. Limitation on Lines of Business**

- (a) Enter (and ensure that no other Obligor enters) into any business activities, whether directly or indirectly, other than Permitted Businesses.
- (b) Establish (and ensure that no other Obligor establishes) any representative office other than (in the case of the Company) marketing offices or other place of business in a jurisdiction outside the Macau SAR or its place of incorporation unless (in the case of the Company) such office or place of business has been notified to the Intercreditor Agent, the requirements of paragraph 15 of Part A of this Schedule 5 have been satisfied in respect of any Property of the Company which may at any time be located in such jurisdiction within 30 days of such establishment and the Company has taken all such steps as may be required in such jurisdiction to perfect, maintain and protect the Security.

**15. Restrictions on Changes**

**15.1 Concession Contract, Land Concession Contract, Cotai Land Concession Contract, the Performance Bond Facility Agreement and the Concession Contract Performance Bond**

Agree to any amendment to or termination of, or assign, transfer, cancel or waive any of its rights under the Concession Contract, the Land Concession Contract, the Cotai Land Concession Contract, the Performance Bond Facility Agreement or the Concession Contract Performance Bond without obtaining the prior written consent of the Intercreditor Agent (other than: (i) any amendments required by any Macau SAR Governmental Authority, (ii) in relation to the Cotai Land Concession Contract, to increase the gross construction area and/or the contract premium payable thereunder *provided that*, where such increase is contemplated in connection with an Excluded Project located or to be located on the Cotai Site, the entire Cotai Site must remain part of the Project Security and subject to the Palo Mortgage and there shall be no adverse effect on the validity or enforceability of, or the effectiveness or ranking of any Security as a result of the Excluded Project being located on the Cotai Site and *further provided*, in each case, that such increase is in accordance with the applicable Macau SAR Legal Requirements and could not reasonably be expected to be prejudicial to the interests of any of the Secured Parties, (iii) any mechanical or administrative amendments of which reasonable prior notice has been given and which could not reasonably be expected to be prejudicial to the interests of any of the Secured Parties, (iv) in relation to the Cotai Land Concession Contract, in connection with a Permitted Cotai Reorganisation and (v) in relation to the Land Concession Contract, to increase the gross construction area and/or the contract premium payable thereunder *provided*, in each case, that such increase is in accordance with the applicable Macau SAR Legal Requirements and could not reasonably be expected to be prejudicial to the interests of any of the Secured Parties).

**15.2 Other Contracts**

- (a) Agree to any amendment to (or variation or supplement of) or waive any of its rights under the IP Agreement where

such amendment or waiver changes or has (or could reasonably be expected to have) the effect of changing any of the percentages used in the calculation of the IP Fees in a manner that would increase such IP Fees.

- (b) Directly or indirectly enter into, amend, modify, terminate, supplement or waive a right or permit or consent to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or give any consent or exercise any other discretion under (and ensure that no other Obligor directly or indirectly enters into, amends, modifies, terminates, supplements or waives a right or permits or consents to the amendment, modification, termination (except expiration in accordance with its terms), supplement or waiver of any of the provisions of, or gives any consent or exercises any other discretion under) any Resort Management Agreement unless each claim, interest, liability and right of recourse of any kind of any counterparty to that Resort Management Agreement against or in the Company, Palo or any other member of the Restricted Group or any of their respective assets (including, without limitation, Wynn Macau and the Cotai Project) is and remains at all times limited to an aggregate amount equal to all revenues derived by the Company (or, as the case may be, Palo) in respect of that Excluded Project and any other assets of the Company (or, as the case may be Palo) comprised in that Excluded Project (and which do not form part of and are not necessary to ensure to the Restricted Group the full benefit of Wynn Macau or the Cotai Project).

#### 16. **Limitation on Formation and Acquisition of Subsidiaries**

Without the prior written consent of the Intercreditor Agent (such consent not to be unreasonably withheld), form, create or acquire (and ensure that no other Obligor forms, creates or acquires) any direct or indirect Subsidiary other than any Obligor or (in the case of the Company and the Company's Subsidiaries) any Excluded Subsidiary.

#### 17. **Limitation on Subconcessions**

Grant or enter into any Subconcession unless:

- (a) no breach of the Concession Contract shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession;
- (b) no Event of Default shall exist and be continuing at the time such Subconcession is granted or entered into or would occur after or as a result of granting or entering into such Subconcession (or immediately after any renewal or extension thereof at the option of the Company);
- (c) such Subconcession and any business or other activities carried out pursuant thereto shall be self-contained and shall not adversely affect the operation of Wynn Macau or the Cotai Project (excluding the ability of the Company to grant further Subconcessions), no breach or termination thereof shall result in a breach or an entitlement to terminate the Concession Contract, the Company shall have no responsibility nor any liability, actual or contingent, for the performance by the subconcessionaire of its obligations under or in respect of the Subconcession and, subject to receipt by the Intercreditor Agent of evidence reasonably satisfactory to it, neither the Subconcession nor any business or other activities carried out pursuant thereto could otherwise reasonably be expected to materially interfere with, impair or detract from the operation of Wynn Macau or the Cotai Project or otherwise have a Material Adverse Effect; and
- (d) if any cash or cash proceeds are paid or received in respect of the grant or entry into such Subconcession, it shall first be deposited into an Account and, after deduction and payment therefrom of all Taxes, costs and expenses incurred in connection with such payment, receipt, grant or entry, may thereafter be used, applied, 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 (and ensure that no other Obligor, directly or indirectly, sells with recourse, or discounts or otherwise sells for less than the face value thereof) any of its notes or accounts receivable other than an assignment for purposes of collection in the ordinary course of business.

#### 19. **Compliance**

Use or permit the use of Wynn Macau or the Cotai Project in any manner that could result in such use becoming a non-conforming use under any applicable land use law, rule or regulation that is a Legal Requirement.

20. **[Not used]**

21. **Amendment to Transaction Documents**

Enter (and ensure that no other Obligor enters) into any agreement (other than the Senior Finance Documents) restricting its ability to amend any of the Transaction Documents where such entry could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Finance Documents

22. **No Other Powers of Attorney**

Execute or deliver (and ensure that no other Obligor executes or delivers) any agreement creating any powers of attorney (other than powers of attorney for signatories of documents permitted or contemplated by the Transaction Documents), or similar documents, instruments or agreements, except to the extent such documents, instruments or agreements comprise part of the Security Documents or are required to be executed or delivered in the Company's or such other Obligor's ordinary course of business.

23. **[Not used]**

25. **Casino and Gaming Zone Areas**

Solely with respect to Wynn Macau (and not the Cotai Project or any Excluded Project), designate any area as a casino or gaming zone unless such designation would not cause the aggregate area which is classified as casino or gaming zones by the Macau SAR to exceed 40,000m<sup>2</sup> or such designation is to comply with a requirement imposed on the Company unilaterally by the Macau SAR.

26. **Junkets**

Enter into or permit to subsist any arrangement with any gaming junket-tour promoters, directors or cooperators unless such Persons and any such arrangement are in compliance with the requirements of the Concession Contract and all other applicable Legal Requirements and the Company shall monitor the activities of such Persons in regard to such arrangements and shall take all necessary or appropriate reasonable measures to ensure such compliance.

27. **[Not used]**

**Schedule 6**  
**ACCOUNTS**

**1. Accounts**

**1.1 Accounts**

- (a) The members of the Restricted Group may (but shall not be required to) maintain in accordance with the requirements of this Schedule 6 and the Senior Finance Documents, operating, disbursement and other accounts (which as of the Sixth Amendment Signing Date comprise of the following bank accounts maintained by the Company):
- (i) an account denominated in US dollars opened in Macau and designated "Term Facility USD Disbursement Account";
  - (ii) an account denominated in HK dollars opened in Macau and designated "Term Facility HKD Disbursement Account";
  - (iii) an account denominated in US dollars opened in Macau and designated "Project Facility USD Disbursement Account";
  - (iv) an account denominated in HK dollars opened in Macau and designated "Project Facility HKD Disbursement Account";
  - (v) an account denominated in US dollars opened in Macau and designated "USD Operating Account";
  - (vi) an account denominated in HK dollars opened in Macau and designated "HKD Operating Account";
  - (vii) an account denominated in Patacas opened in Macau and designated "MOP Operating Account";
  - (viii) an account denominated in US dollars opened in Macau and designated "USD Debt Service Account";
  - (ix) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Account";
  - (x) an account denominated in US dollars opened in Macau and designated "USD Debt Service Reserve Account";
  - (xi) an account denominated in HK dollars opened in Macau and designated "HKD Debt Service Reserve Account";
  - (xii) an account denominated in Patacas opened in Macau and designated "Special Gaming Tax Account";
  - (xiii) an account denominated in Patacas opened in Macau (being the account referred to in paragraph B6 of the Gaming Concession Consent



Agreement) and an account denominated in US dollars opened in Macau, together designated "Compensation Proceeds Account"; and

(xiv) an account opened in Macau and designated "Upfront Premium Account",

in each case, subject to Security under the relevant Senior Finance Documents and each, for the purposes of the Senior Finance Documents, also an Account.

(b) [Not Used]

(c) Any member of the Restricted Group may open one or more additional operating, disbursement or other accounts *provided* that such accounts satisfy the requirements of the definition of "Account" in Clause 1.1 (*Definitions*).

## 1.2 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 relevant member of the Restricted Group with the relevant Account Bank in accordance with the Account Bank's usual practice and may from time to time be sub-divided into such sub-accounts as that member of the Restricted Group may reasonably request.

## 1.3 Restrictions

Each member of the Restricted Group shall maintain each of its Accounts (and shall procure that each other Account is maintained) as a separate account with the relevant Account Bank and:

(a) none of the restrictions contained in this Schedule on the withdrawal of funds from Accounts shall affect the obligations of any Obligor to make any payments of any nature required to be made to the Senior Secured Creditors on the due date for payment thereof in accordance with any of the Senior Finance Documents; and

(b) no withdrawal shall be made from any Account if it would cause such account to become overdrawn.

## 1.4 Credits to Accounts

Save as otherwise provided in any of the Security Documents after enforcement thereof, each member of the Restricted Group shall credit, and shall procure that there is credited, to the Accounts all such amounts as are provided for in this Agreement and ensure that such other credits are made thereto as are required to be made pursuant to any other provision of any other Senior Finance Document.

## 1.5 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 relevant member of the Restricted Group and the relevant Account Bank, and the

relevant member of the Restricted Group shall ensure that such interest is credited to such account at such time or times as may be agreed from time to time between that member of the Restricted Group and the Account Bank or, failing agreement, in arrears on 31 December.

## 1.6 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

No member of the Restricted Group will open or maintain any accounts other than:

- (i) the Accounts;
- (ii) any account opened by the Company for the deposit of any amounts derived from or under (i) subject to paragraph 17 of Part B of Schedule 5 (*Covenants*), the grant of any Subconcession, (ii) any Resort Management Agreement or (iii) any Excluded Project or Excluded Subsidiary; and
- (iii) any Excluded Accounts,

except with the prior approval of the Intercreditor Agent.

## 2. Permitted Investments

### 2.1 Power of Investment

The Company may require, subject as provided in this Agreement, that such part of the amounts outstanding to the credit of any Account as it considers prudent shall be invested from time to time in Permitted Investments in accordance with this paragraph 2.

### 2.2 Procedure for Investment

2.2.1 Unless held for the account of the Company or other member of the Restricted Group and secured by first ranking fixed charge in favour of the Security Agent pursuant to a Charge over Accounts, the Company shall ensure that all Permitted Investments are made in the name of the Company and secured by a first ranking fixed lien in favour of the Security Agent in such form and on such terms as the Intercreditor Agent may reasonably require.

2.2.2 The Company will at all times seek to match the maturities of the Permitted Investments made out of moneys standing to the credit of an Account having regard to the availability of Permitted Investments which are readily marketable, and shall liquidate (or procure that there are liquidated) Permitted Investments to the extent necessary for the purposes of payment of any amount due under the Senior Finance Documents.

2.2.3 The Company shall ensure that all documents of title or other documentary evidence of ownership with respect to Permitted Investments made out of any Account are held in the possession of or for the benefit of the Security Agent and, if any such document or other evidence comes into the possession or control of the Company or any other Obligor, it shall procure that the same is delivered immediately to the Security Agent.

## 2.3 Realisation

2.3.1 The Company shall ensure that, whenever any Investment Proceeds or Investment Income is received in respect of a Permitted Investment made from amounts standing to the credit of an Account the Investment Proceeds and the Investment Income are:

- (a) reinvested in further Permitted Investments; or
- (b) paid into the relevant Account from which the Permitted Investment derives

2.3.2 The Company shall give (and shall ensure that each other Obligor gives) directions to the relevant Account Bank under paragraph 2.3.1 of this Schedule 6 and otherwise exercise its rights hereunder in such manner as will ensure compliance with the applicable provisions of the Senior Finance Documents with respect to Accounts, Permitted Investments, Investment Proceeds and Investment Income.

## 2.4 Non-qualifying criteria

If any Permitted Investment ceases to be a Permitted Investment, the Company will upon becoming aware thereof procure that the relevant investment is replaced by a Permitted Investment or by cash.

## 2.5 Accounts include Permitted Investments

2.5.1 Subject to sub-paragraph 2.5.2 of this Schedule 6, any reference herein to the balance standing to the credit of one of the Accounts will be deemed to include a reference to the Permitted Investments in which all or part of such balance is for the time being invested. In the event of any dispute as to the value of the credit of an Account pursuant to this paragraph 2.5, that value shall be determined in good faith by the Intercreditor Agent. If the Company so requests, the Intercreditor Agent will give the Company details of the basis and method of that determination.

2.5.2 If the amount standing to the credit of any Account (excluding for this purpose any amount deemed to be included pursuant to sub-paragraph 2.5.1 of this Schedule 6) is insufficient to make a payment under the Senior Finance Documents when due out of such Account, the Security Agent is authorised, in its discretion and without any liability for loss or damage thereby incurred by the Company or any other Obligor, to require the relevant Account Bank or, as the case may be, the Company to sell or otherwise realise, or to enter into any exchange transaction with respect to, (or, as the case may be, to require the

Company to ensure any other Obligor so sells or otherwise releases or enters into any exchange transaction) any Permitted Investment concerned with that Account to the extent that the same is, in the opinion of the Intercreditor Agent, necessary for the payment of any amount due under the Senior Finance Documents which could not otherwise be paid out of the cash balance standing to the credit of the relevant Account.

## 2.6 Information

Commencing with the quarter in which a Permitted Investment is first made on behalf of the Company or any other Obligor, the Company shall, together with any other statement to be provided under this Schedule, ensure the delivery to the Security Agent of a schedule of the investments made, realised or liquidated during the quarter in respect of each Account, in such detail as the Intercreditor Agent may reasonably require.

## 2.7 No Responsibility

No Senior Secured Creditor will be responsible for any loss, cost or expense suffered by any Obligor in respect of any of its actions or those of any Account Bank in relation to the acquisition, disposal, deposit or delivery of Permitted Investments pursuant to this Agreement save for any such loss, cost or expense directly caused by its gross negligence or wilful misconduct. The Account Banks shall be acting solely for and on behalf of the Company (or the relevant other Obligor) in acquiring, holding or disposing of any Permitted Investment.

## 3. General Account Provisions

### 3.1 Transfers/Withdrawals

Save as otherwise agreed in writing with the Intercreditor Agent, the Company shall ensure that where this Schedule expressly provides for the making of payments to, or withdrawals or transfers from any Account, no other payments to, or, as the case may be, other withdrawals or transfers from, such Account shall be made except as expressly permitted under this Schedule or under the Security Documents.

### 3.2 Application of Amounts

The Company shall ensure that all amounts withdrawn or transferred from any Account for application in or towards making a specific payment or meeting a specific liability shall be applied in or towards making that payment or meeting that liability, and for no other purpose.

### 3.3 Default

3.3.1 Notwithstanding any other provisions of this Schedule, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to give notice to any Account Bank and the relevant member of the Restricted Group in whose name the Account has been opened instructing the Account Bank not to act on the instructions or requests of that member of the Restricted Group in relation to any sums at any such time standing to the credit of any of the Accounts

and the Company and that member of the Restricted Group shall procure that the Account Bank shall, in accordance with the Charges over Accounts and the Account Bank Notices and Acknowledgements, not so act and the Company or, as the case may be, any other member of the Restricted Group shall not be entitled (and the Company shall ensure such other member of the Restricted Group is not entitled) to give or make any further such instructions or requests.

3.3.2 Notwithstanding the other provisions of this Agreement, at any time following an Enforcement Notice, the Intercreditor Agent may request the Security Agent to:

- (i) give written notice to any Account Bank (with a copy to the relevant member of the Restricted Group in whose name the Account has been opened) that the Security Agent shall be the sole signatory in relation to the Accounts;
- (ii) apply the credit balances in the Accounts in or towards repayment of the Facilities and such other liabilities of the Obligors as the Intercreditor Agent may elect; and
- (iii) generally use amounts standing to the credit of the Accounts at its discretion in order to discharge the Obligors' obligations under the Transaction Documents,

and, pursuant to the Charges over Accounts and the Account Bank Notices and Acknowledgements, the Company and the relevant member of the Restricted Group in whose name the Account has been opened shall procure that the Account Bank so acts and makes such payments accordingly.

#### 3.4 Review of Accounts

The Company and each other member of the Restricted Group irrevocably grants, solely for the purposes of its role as agent of the Senior Secured Creditors hereunder, (and the Company shall ensure each such other member of the Restricted Group shall so grant) the Security Agent or any of its appointed representatives access to review the books and records of the Accounts (and shall irrevocably authorise (and the Company shall ensure each other member of the Restricted Group authorises) each Account Bank to disclose the same to the Security Agent and its appointed representatives) and irrevocably waives (and the Company shall ensure each other member of the Restricted Group so waives) any right of confidentiality which may exist in respect of such books and records solely to the extent necessary to allow disclosure of such books and records to any Senior Secured Creditor and its advisers *provided* that, to the extent any such right of confidentiality does exist and the information comprised in such books and records is not otherwise in the public domain or required to be notified by the Company or any other member of the Restricted Group or the Account Bank to any of the Senior Secured Creditors and subject to any requirement to disclose any such information pursuant to any Legal Requirement or any other regulatory or stock exchange requirement, any Senior Secured Creditor or adviser to whom such disclosure is made shall undertake to the Company to keep the information comprised therein confidential.

### 3.5 Statements

The Company and each other member of the Restricted Group shall arrange (and the Company shall ensure each such member of the Restricted Group so arranges) for each Account Bank to provide to the Security Agent, at the latter's request:

- (a) a list of all Accounts maintained with it;
- (b) upon the reasonable request of the Security Agent, in respect of each calendar month, a statement of the balance of and each payment into and from each of the Accounts and the global amount of interest earned on each such Account during the preceding three month period or, if less, since the opening of the relevant Account; and
- (c) such other information concerning the Accounts as the Security Agent may require.

### 3.6 Waiver of Rights

#### 3.6.1 Waiver of rights by the Company

Save as provided in this Agreement, the Company and each other member of the Restricted Group agrees not to (and the Company shall ensure each other member of Restricted Group does not) exercise any right which it (or such other member of the Restricted Group) may have under any applicable law to direct the transfer of any amount standing to the credit of an Account to the Company or any other member of the Restricted Group or its order or to direct the transfer of any Permitted Investment to the Company or any other member of the Restricted Group or to its order.

#### 3.6.2 Waiver of rights by Account Banks

The Company and each other member of the Restricted Group shall procure (and the Company shall ensure each such other member of the Restricted Group procures) that each Account Bank acknowledges and agrees that each Account and Permitted Investment is the subject of a Lien in favour of the Senior Secured Creditors collectively and acknowledges and agrees that (save, in the case of the Performance Bond Provider, as permitted pursuant to (i) section 2.6 of the Performance Bond Facility Agreement prior to the issuance of an Enforcement Notice) it is not entitled to, and shall undertake not to, claim or exercise any lien, right of set-off, combination of accounts or other right, remedy or security with respect to:

- (a) moneys standing to the credit of such Account or in the course of being credited to it or any earnings; or
- (b) any Permitted Investment.

### 3.7 Closing of Accounts

The Company and each other member of the Restricted Group may close any Account and instruct each Account Bank to transfer any credit balances on any Account maintained with it *provided that* all balances standing to the credit of any such Account are transferred before the closure of such Account to another account or combination of accounts *provided that* each such account satisfies the requirements of the definition of "Account" in Clause 1.1 (*Definitions*).

#### **Schedule 7 INSURANCE**

[NOT USED]

#### **Schedule 8 HEDGING ARRANGEMENTS**

1. The Company may (but is under no obligation to) enter into agreements to the extent necessary to ensure that an amount equal to the higher of:
  - (a) at least 30% of the aggregate amount then drawn under the Term Loan Facilities; and
  - (b) an equivalent amount of USD750,000,000,is subject, through interest rate swaps, caps, collars or other products agreed with the Intercreditor Agent, to either a fixed interest rate or interest rate protection for such period as reflects the repayment schedule for such Facility and is no less than twelve (12) months.
2. No Obligor may enter into any derivative transaction, other than Hedging Agreements as contemplated by paragraph 1 above and any Permitted Swap Transaction *provided that* no counterparty to any such Permitted Swap Transaction shall have any Liens or any right to share in the Security or any interest in the Project Security.
3. Only a Lender or an Affiliate of a Lender may act as a Hedging Counterparty in respect of the Hedging Arrangements required by paragraph 1 above.
4. The Hedging Agreements are to be on the terms of the 1992 standard International Swap & Dealers Association, Inc. Master Agreement (the "**ISDA Master Agreement**") and the ISDA Schedule, together with such amendments as are acceptable to the Intercreditor Agent, acting reasonably. All Hedging Agreements for swap transactions will provide for full two way payments (with the Company being a Fixed Rate Payer (as defined in the 2000 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc. (the "**2000 Definitions**")) and the Hedging Counterparty being a Floating Rate Payer (as defined in the 2000 Definitions)) and the payment measure and payment method for such swap transactions in the event of early termination, whether upon a "Termination Event" or an "Event of Default", shall be "Second Method" and "Market Quotation" respectively. Terms in quotations in this paragraph 4 shall have the meaning ascribed in the ISDA Master Agreement.
5. The Hedging Counterparties in respect of the Hedging Agreements required pursuant to paragraph 1 above shall have equal security over the assets of the Company with the Senior Secured Creditors in accordance with the terms of this Agreement and the Deed of Appointment and Priority.
6. [Not used]
7. In paragraph 8 and paragraph 11 below, "**Realised Hedge Loss**" means, in relation to a Hedging Counterparty at any time, the amount (if any) payable (but unpaid) by the Company to such Hedging Counterparty under the Hedging Agreement to which such Hedging Counterparty is a party (but excluding any default interest) upon an early termination of any transaction or transactions thereunder which has been terminated in accordance with paragraph 9 below. The amount is to be calculated on a net basis across the transactions under such Hedging Agreement in accordance with the terms of the applicable Hedging Agreement.
8. Payments due from the Company under the Hedging Agreements, including any Realised Hedge Loss plus any accrued default interest in accordance with paragraph 10 below, shall (save for any such amounts paid by another Obligor) be a Financing Cost.
9. Except with the prior consent of the Intercreditor Agent acting reasonably, no amendments may be made to a Hedging Agreement to an extent that might reasonably be expected to result in:

- (a) any payment under the Hedging Agreement being required to be made by the Company on any date other than the dates originally provided for in the Hedging Agreement;
- (b) the Company becoming liable to make an additional payment under any Hedging Agreement which liability does not arise from the original provisions of the Hedging Agreement; or
- (c) the Company becoming liable to make any payment under the Hedging Agreement in any currency other than in the currency provided for under the original provisions of the Hedging Agreement.

10.

- (a) The Company may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement and with the approval of the Intercreditor Agent acting reasonably *provided* that the approval of the Intercreditor Agent shall not be required in the case of any termination by reason of illegality when the requirements of paragraph 1 above are met following such termination.
- (b) A Hedging Counterparty may terminate a transaction under a Hedging Agreement prior to its stated maturity only in circumstances provided for in such Hedging Agreement.
- (c) Unless a Hedging Counterparty has already exercised such rights in accordance with sub-paragraph (b) above, the Intercreditor Agent may require a Hedging Counterparty to terminate transactions under a Hedging Agreement where a declaration has been made by the Intercreditor Agent pursuant to Clause 19.2.2 (*Remedies following an Event of Default*).
- (d)
  - (i) If at any time the aggregate amount of the "**Notional Amounts**" (as defined in the 2000 Definitions) of all Hedging Agreements and Permitted Swap Transactions at such time are greater than 125% of the principal amounts outstanding under the Term Loan Facilities, the Company shall immediately unwind in order of maturity (unless otherwise agreed by the Intercreditor Agent) sufficient transactions under the Hedging Agreements and Permitted Swap Transactions and pay associated breakage costs on:
    - (A) the first Payment Date (as defined in the 2000 Definitions); or
    - (B) where the Overhedging Date falls within 5 Business Days (as defined in the relevant Hedging Agreement or Permitted Swap Transaction) prior to such first Payment Date, the second Payment Date,in respect of such transaction immediately succeeding the Overhedging Date, such that the Intercreditor Agent is satisfied that, following such terminations, the aggregate Notional Amounts of all transactions under all Hedging Agreements and Permitted Swap Transactions is not less than 30% and not more than 125% of the principal amounts outstanding under the Term Loan Facilities.
  - (ii) For the purposes of the above paragraph, the "**Overhedging Date**" means any date on which the aggregate Notional Amounts of all Hedging Agreements and Permitted Swap Transactions are greater than 125% of the principal amounts outstanding under the Term Loan Facilities.

11. In the event that a Hedging Agreement is terminated and the Company fails to pay any Realised Hedge Loss, such Realised Hedge Loss shall comprise an Unpaid Sum and interest shall accrue in respect thereof accordingly.

## APPENDIX 1

### FORM OF HEDGING COUNTERPARTY'S DEED OF ACCESSION

THIS DEED dated [ ] is supplemental to (i) a common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. as Company and the Senior Secured Creditors (as defined therein) and (ii) each of the Security Documents as defined in the Common Terms Agreement to which the Senior Secured Creditors are expressed to be party (the "**Security Documents**").

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[*name of new Hedging Counterparty*] (the "**New Hedging Counterparty**") of [*address*] hereby agrees with each other Person who is or who becomes a party to the Common Terms Agreement that with effect on and from the date of this Deed it shall be bound by the Common Terms Agreement and be entitled to exercise rights and be subject to obligations thereunder as a Hedging Counterparty.

The New Hedging Counterparty hereto agrees with each other Person who is or who becomes a party to the Security Documents that with effect on and from the date of this Deed it shall be bound by each of the Security Documents and be entitled to exercise



rights and be subject to obligations thereunder as a Senior Secured Creditor.

The initial telephone number, fax number, address and person designated by the New Hedging Counterparty for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[ ]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by ( )

[*insert name of New Hedging* ( )

*Counterparty and execution* ( )

*clause appropriate thereto* ( )

*and to manner of execution*] ( )

**Schedule 9**  
**MANDATORY PREPAYMENT**

1. To the extent that any Equity Issuance Proceeds are received by (or paid to the order of) the Company or any other Obligor, the Company shall ensure that an amount equal to the amount of such Equity Issuance Proceeds (excluding any such Equity Issuance Proceeds derived from any Equity to the extent such Equity is required or permitted under this Agreement to fund the design, development, construction, ownership, operation, maintenance or refurbishment of Wynn Macau or the Cotai Project or, for the avoidance of doubt, any Specified Equity Contributions) shall be applied on the next Interest Payment Date after such receipt (or payment) towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and, pending such application, shall be deposited and retained in an Account.
2. With respect to the Net Cash Proceeds from any Asset Sale (where such Net Cash Proceeds exceed in aggregate an amount equal to USD100,000,000 or its equivalent in any Fiscal Year when taken together with any other Net Cash Proceeds received by the Company or any other Obligor in respect of any Asset Sale in that Fiscal Year) made by the Company or any other Obligor as to which the Company or any other Obligor has not re-invested such Net Cash Proceeds within 12 months of receipt in assets used by the Company or any other Obligor in the conduct of its Permitted Business at Wynn Macau and/or the Cotai Project, such Net Cash Proceeds shall be applied on the next Interest Payment Date after the date falling 12 months from the date of receipt towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and, pending such application, shall be deposited and retained in an Account.
3. On the next Interest Payment Date following the date on which the Company or any other Obligor receives:
  - (a) any Termination Proceeds; or
  - (b) any Eminent Domain Proceeds which, when taken together with all other Eminent Domain Proceeds received, exceed, in aggregate, USD1,000,000 or its equivalent,the Company shall ensure that such proceeds are applied towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and, pending such application, shall be deposited and retained in an Account.
4. If, for any Fiscal Year for which any payment in respect of Excess Cash Flow is required to be made and for which there shall be Excess Cash Flow, the Company shall apply the ECF Percentage of such Excess Cash Flow towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*). Each such prepayment shall be made on the next Interest Payment Date following the earlier of:
  - (a) the date on which the financial statements of the Company referred to in paragraph 1 of Part A of Schedule 5 (*Covenants*), for the Fiscal Year with respect to which such prepayment is made, are required to be delivered to the Lenders; and

(b) the date such financial statements are actually delivered,

and, pending such application, shall be deposited and retained in an Account.

5. An amount equal to any Insurance Proceeds (other than those received by the Company or any other Obligor for any single loss or series of related losses not in excess of USD50,000,000 or its equivalent) shall be applied to the prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) on the next Interest Payment Date falling not less than 30 days after the Company's or Obligor's receipt of such Insurance Proceeds, unless each of the following conditions are satisfied or waived by the Intercreditor Agent within such 30 day period, in which event such amounts shall be applied to the repair or restoration of Wynn Macau or the Cotai Project, as appropriate:

- (a) the damage or destruction does not constitute the destruction of all or substantially all of Wynn Macau or the Cotai Project, as the case may be;
- (b) an Event of Default has not occurred and is continuing (other than an Event of Default resulting solely from such damage or destruction) and after giving effect to any proposed repair and restoration, no Event of Default will result from such damage or destruction or proposed repair and restoration;
- (c) the Company certifies that repair or restoration of Wynn Macau or the Cotai Project, as the case may be, to a condition substantially similar to its condition immediately prior to the event or events to which the relevant Insurance Proceeds relate, is technically and economically feasible within a 12 month period;
- (d) the Company delivers to the Intercreditor Agent a plan (the "**Repair Plan**") describing the nature of the repairs or restoration to be effected and the anticipated costs and schedule associated therewith; and
- (e) the Company certifies that (A) the Company has sufficient funds to achieve construction completion of Wynn Macau or the Cotai Project, as the case may be, to operate its business as it is then conducted and pay its debts when due and (B) a sufficient amount of funds is or will be available to the Company to make all payments on Financial Indebtedness which will become due during and following the repair period and, in any event, to maintain compliance with the covenants set forth in paragraph 1 of Part B of Schedule 5 (*Covenants*) during such repair period (and including or, as the case may be, taking into account any Contribution as further contemplated by (and as set out in) paragraph (d) of the definition of "Specified Equity Contribution Conditions" in Clause 1.1 (*Definitions*)),

and, pending such application, such amount shall be deposited and retained in an Account.

The Company shall procure that all such repair and restoration of Wynn Macau or the Cotai Project (as the case may be):

- (a) is diligently pursued and promptly completed; and

- (b) does not materially prejudice or adversely affect the interests of the Senior Secured Creditors hereunder or under the applicable Project Security or the Security.

After Insurance Proceeds have been applied to the repair or restoration of Wynn Macau or the Cotai Project, as the case may be, as provided in this Agreement, any excess Insurance Proceeds shall be applied on the next Interest Payment Date thereafter to the prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*).

6. [Not used.]
7. If all or substantially all of Wynn Macau or the Cotai Project is lost, damaged or destroyed or declared by any relevant Insurer to be a constructive total loss, the Company shall prepay and cancel the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and prepay all other amounts outstanding under the Senior Finance Documents within 90 days or, if earlier, upon receipt of Insurance Proceeds in respect of such loss, damage, destruction or declaration.
8. On the next Interest Payment Date following the date on which the Company or any other Obligor receives any Claim Proceeds in relation to a Major Project Document (other than a Resort Management Agreement that is not a Cotai Resort Management Agreement), the Company shall apply an amount equal to such proceeds towards prepayment and cancellation of the Facilities in accordance with Clause 8.3 (*Mandatory Prepayment*) and, pending such application, shall deposit and retain such proceeds in an Account.
9. If a Property Mandatory Prepayment Event occurs at any time, the Company shall on the Business Day immediately following the date on which the Property Mandatory Prepayment Event occurs (a) prepay and cancel the Facilities in accordance with Clause 8.3 (*Mandatory prepayment*) and (b) prepay all other 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
- (i) the Company shall have failed to pay any interest on any Advance within 5 days after any such interest becomes due in accordance with the terms of the relevant Senior Finance Document; or
- (ii) any other Obligor or a Wynn Non-Obligor Subordination Deed Party shall have failed to pay any other amount payable under any Senior Finance Document within 10 days after any such other amount becomes due in accordance with the terms of the relevant Senior Finance Document or in the event that any such other amount becomes due without a notice being given to the relevant Obligor, 10 days after notice to the relevant Obligor of the non-payment of such amount.

- (b) Any representation or warranty made or deemed made by any Obligor or a Wynn Non Obligor Subordination Deed Party in any Senior Finance Document to which it is a party or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with any Senior Finance Document shall prove to have been incorrect in any material respect (or, in the case of the representations and warranties set out in paragraphs 21.1, 21.2 and 21.3 of Schedule 4 (*Representations and Warranties*), in any respect) on or as of the date made or deemed made, and, in the case of an Obligor (other than the Company or a Wynn Obligor) or a Wynn Non-Obligor Subordination Deed Party, such event, could reasonably be expected to give rise to a Material Adverse Effect, *provided* that no Event of Default under this paragraph (b) will occur if the misrepresentation is capable of remedy and remedied within 30 days of the earlier to occur of (i) the Intercreditor Agent giving notice of such misrepresentation to the relevant Obligor or Wynn Non Obligor Subordination Deed Party (as the case may be) and (ii) the relevant Obligor or Wynn Non Obligor Subordination Deed Party (as the case may be) becoming aware of such misrepresentation.
- (c) The Company shall default in the observance or performance of:
- (i) paragraph 12(a) of Part A of Schedule 5 (*Covenants*) and, other than in respect of a Default arising by reason of paragraphs (v), (w) or (z) of Schedule 10 (*Events of Default*), such default shall continue unremedied for a period of 30 days;
  - (ii) paragraph 12(b) of Part A of Schedule 5 (*Covenants*) in so far as it relates to the Concession Contract or the Land Concession Contract;
  - (iii) paragraph 24 of Part A of Schedule 5 (*Covenants*);
  - (iv) paragraph 1 of Part B of Schedule 5 (*Covenants*) and such default shall continue unremedied for a period of 5 days;  
or
  - (v) [Not used].
- (d) Any Obligor or the Performance Bond Provider (or a Wynn Non-Obligor Subordination Deed Party) shall default in the observance or performance of any other covenant or agreement contained in any Senior Finance Document to which it is a party (other than as provided in paragraphs (a) through (c) of this Schedule), and such default shall continue unremedied for a period of 30 days or, *provided* the relevant Obligor or the Performance Bond Provider (or Wynn Non-Obligor Subordination Deed Party) is diligently pursuing action to remedy the default and it is of a nature that it is capable of being remedied, 60 days after the earlier of:
- (i) the Company or such Obligor (or such Wynn Non-Obligor Subordination Deed Party) becoming aware of such default; and
  - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such default.
- (e) Save where paragraph (a) of this Schedule applies, the Company or any other Obligor (or, in relation to any Financial Indebtedness that is Guaranteed WML Debt, WML or

any Obligor that has incurred, assumed or allowed to remain outstanding any Guarantee Obligation with respect to such Guaranteed WML Debt) shall:

- (i) default in making any payment of any principal of any Financial Indebtedness (including, without limitation, any Guarantee Obligation, but excluding the Advances) on the scheduled due date with respect thereto;
- (ii) default in making any payment of any interest on any such Financial Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Financial Indebtedness was created; or
- (iii) default in the observance or performance of any other agreement or condition relating to any such Financial Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition (or any declaration by the holder of such Financial Indebtedness by reason thereof) is to cause immediately such Financial Indebtedness to become due prior to its stated maturity or (in the case of any such Financial Indebtedness constituting a Guarantee Obligation) to become payable,

*provided* that a default event or condition described in sub-paragraphs (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute a Default or Event of Default unless, at such time, the aggregate amount of the default in the principal payment in the case of sub-paragraph (i), the default in the interest payment in the case of sub-paragraph (ii) and the amount accelerated in the case of sub-paragraph (iii) of this paragraph (e) exceeds USD25,000,000 or its equivalent in the case of the Company and the other Obligors taken as a whole (or, where such default event or condition relates to Financial Indebtedness that is Guaranteed WML Debt, WML and any Obligors that have incurred, assumed or allowed to remain outstanding any Guarantee Obligation with respect to such Guaranteed WML Debt taken as a whole).

- (f)
  - (i) Any Obligor or the Performance Bond Provider shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, (x) seeking to have an order for relief entered with respect to itself, or seeking to adjudicate itself a bankrupt or insolvent, or (y) seeking reorganization, administration, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to itself or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for itself or for all or any substantial part of its assets, or any Obligor or the Performance Bond Provider shall make a general assignment for the benefit of its creditors, but excluding in the case of sub-paragraph (A)(y) any voluntary liquidation, winding-up or dissolution of, or similar action with respect to, Palo after a Permitted Cotai Reorganisation;
  - (i) there shall be commenced against any Obligor or the Performance Bond Provider any case, proceeding or other action of a nature referred to in sub-paragraph (i) above that (A) results in the entry of an order for relief as specified in sub-paragraph (i)(A) or (i)(B) above or any such adjudication or appointment and

(B) where such order, adjudication or appointment may under applicable law be dismissed, discharged or bonded, remains undismissed, undischarged or unbonded for a period of 60 days (or such shorter period as may be specified pursuant to any applicable law);

- (ii) there shall be commenced against any Obligor or the Performance Bond Provider any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief and such order shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;
- (iii) any Obligor or the Performance Bond Provider shall consent to, approve, or acquiesce in, any of the acts set forth in sub-paragraphs (i), (ii) or (iii) above; or
- (iv) any Obligor or the Performance Bond Provider shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due,

*provided* that no Event of Default shall be deemed to have occurred under this paragraph (f) as a result of any such action, event of condition by, against or concerning the Performance Bond Provider if:

- (v) immediately upon (and, in any event, no more than five Business Days after) becoming aware or receiving notice thereof, the Company gives notice to the Intercreditor Agent of its intention to replace the Performance Bond Provider; and
- (vi) within 60 days (or such shorter period as may be required pursuant to the Concession Contract) after such action, event or condition has occurred, the Company shall have made application to the Macau SAR for a replacement Performance Bond Provider who is acceptable to the Intercreditor Agent, acting reasonably.

(g) [Not used]

(h) One or more judgments or decrees shall be entered against the Company or any other Obligor involving for the Company and the other Obligors taken as a whole a liability (not paid or covered by insurance) of USD50,000,000 or its equivalent or more, and all such judgments or decrees, in either case, shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof.

(i) Any of the Senior Finance Documents shall cease, for any reason (other than pursuant to the terms thereof or, in respect of any Palo Security Document, as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation), to be in full force and effect, or any Obligor (or a Wynn Non Obligor Subordination Deed Party, in respect of the Subordination Deed only) shall in writing to any Senior Secured Creditor in the event that any Senior Secured Creditor is seeking to exercise its rights or in any Proceedings so assert, or any Lien created or acknowledged by any of the Security

Documents shall cease to be enforceable and of the same effect and priority purported to be created or acknowledged thereby.

- (j) The Company or any other Obligor shall breach or default under in any material respect any material term, condition, provision, covenant, representation or warranty contained in any Major Project Document (other than as set forth in the proviso at the end of this paragraph (j)) and such breach or default shall continue unremedied for 30 or, save in the case of any payment default, provided the Company or such Obligor is diligently pursuing action to remedy the default and it is of a nature that is capable of being remedied, 60 days after the earlier of:
- (i) the Company or such Obligor becoming aware of such breach or default; and
  - (ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default,
- provided that:*
- (A) in respect of a Resort Management Agreement, this paragraph (j) shall only apply to any such breach or default under such Resort Management Agreement where such breach or default has not been remedied as set forth above and such breach of default could reasonably be expected to prejudice:
    - (i) the Concession Contract (or any rights, benefits or interests arising thereunder);
    - (ii) the Land Concession Contract (or any rights, benefits or interests arising thereunder); or
    - (iii) the Cotai Land Concession Contract (or any rights, benefits or interests arising thereunder) and such prejudice could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents; and
  - (B) in respect of the Cotai Land Concession Contract, this paragraph (j) shall only apply to such breach or default under the Cotai Land Concession Contract where such breach or default has not been remedied as set forth above and such breach of default could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents).
- (k) Any party (other than the Company) shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Major Project Document (other than as set forth in the proviso at the end of this paragraph (k)) and such breach or default shall continue unremedied for 90 days after the earlier of:
- (i) the Company or any other Obligor becoming aware of such breach or default; and



(ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such breach or default, and such breach or default could reasonably be expected to have a Material Adverse Effect,

*provided that:*

(A) in respect of a Resort Management Agreement, this paragraph (k) shall only apply to any such breach or default under such Resort Management Agreement where such breach or default has not been remedied as set forth above and such breach of default could reasonably be expected to prejudice:

(i) the Concession Contract (or any rights, benefits or interests arising thereunder);

(ii) the Land Concession Contract (or any rights, benefits or interests arising thereunder); or

(iii) the Cotai Land Concession Contract (or any rights, benefits or interests arising thereunder) and such prejudice could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents; and

(B) in respect of the Cotai Land Concession Contract, this paragraph (k) shall only apply to such breach or default under the Cotai Land Concession Contract where such breach or default has not been remedied as set forth above and such breach of default could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents).

(l) Any of the Transaction Documents shall terminate or be terminated or cancelled, become invalid or illegal or otherwise cease to be in full force and effect prior to its stated expiration date (other than any such termination, cancellation, invalidity, illegality or other ceasing to be in full force and effect prior to its stated expiration date in respect of any Palo Security Document as a result of the matters contemplated by Clause 18.3.4(a) (*Permitted Cotai Reorganisation; Release of Palo Security*) of this Agreement following a Permitted Cotai Reorganisation) *provided* that the occurrence of any of the foregoing events with respect to the Cotai Land Concession Contract shall constitute an Event of Default under this paragraph (l) only if the same could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Senior Finance Documents and *provided* further that the occurrence of any of the foregoing events with respect to any Major Project Document (other than the Concession Contract, the Land Concession Contract, the Cotai Land Concession Contract or the IP Agreement) shall constitute an Event of Default under this paragraph (l) only if the same could reasonably be expected to result in a Material Adverse Effect and the same shall continue unremedied for 90 days after the earlier of:

(i) the Company or any other Obligor becoming aware of such occurrence; and

(ii) receipt by the Company of notice from the Intercreditor Agent or any Lender of such occurrence,

*provided* that in the case of any such Major Project Document (other than the Concession Contract, the Land Concession Contract, the Cotai Land Concession Contract or the IP Agreement), if the occurrence is not the result of the breach or default by an Obligor in any material respect of any material term, condition, provision, covenant, representation or warranty, then no Event of Default shall be deemed to have occurred as a result thereof under this paragraph (l) if the Company provides written notice to the Intercreditor Agent immediately upon (but in no event more than 10 Business Days after) the Company or such other Obligor becoming aware of such occurrence that it intends to replace such Major Project Document and:

- (A) the Company obtains a replacement obligor or obligors for the affected party;
- (B) the Company or such other Obligor enters into a replacement Major Project Document on terms no less beneficial to the Company or such other Obligor and the Senior Secured Creditors in any material respect than the Major Project Document being replaced within 60 days of such occurrence, *provided* that the replacement Major Project Document may require the Company or such other Obligor to pay amounts under the replacement Major Project Document in excess of those that would have been payable under the replaced Major Project Document; and
- (C) in the reasonable opinion of the Intercreditor Agent, such occurrence, after considering any replacement obligor and replacement Major Project Document and the time required to implement such replacement, has not had and could not reasonably be expected to have a Material Adverse Effect.

(m) A Change of Control shall occur.

(n) Any Subordinated Debt or the Performance Bond Facility Agreement shall cease, for any reason, to be validly subordinated to the Obligations of the Obligors as provided in the Senior Finance Documents and the documentation, instruments or other agreements related to the Subordinated Debt, as the case may be.

(o) [Not used]

(p) [Not used]

(q) [Not used]

(r) (i) The Company shall abandon Wynn Macau or (ii) Palo (or, following a Permitted Cotai Reorganisation, the Company) shall abandon the Cotai Project or otherwise cease to pursue it (development of the Cotai Project having ceased for a period of at least ninety days) where such abandonment or cessation could reasonably be expected to have an adverse effect on the ability of the Company or any other Obligor to perform its payment obligations under the Finance Documents.

(s) Any call or drawing made by the Macau SAR under the Concession Contract Performance Bond unless the Concession Contract Performance Bond is fully reinstated

within 30 days thereof in accordance with the Concession Contract, no other Event of Default has occurred or will result from such reinstatement.

- (t) [Not used]
- (u) The authority or ability of the Company or any other Obligor to conduct its business or operations as currently conducted and as proposed to be conducted, or a material part thereof, is wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any Governmental Authority.
- (v) [Not used]
- (w) [Not used]
- (x) [Not used]
- (y) [Not used]
- (z) [Not used]
- (aa) [Not used]
- (bb) A Material Adverse Effect has occurred which is continuing.
- (cc) The parties acknowledge the provisions of Clause 19.1.2 (*Events of Default*) of this Agreement.

**Schedule 11**  
**TRANSFERS AND ACCESSION**

**Part A**

**Form of Agent's Deed of Accession**

THIS DEED dated [ ] is supplemental to each of the Senior Finance Documents as defined in a common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the Senior Secured Creditors (as defined therein) to which [*name of existing Agent*] is expressed to be a party (the "**Senior Finance Documents**").

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

[*name of new Agent*] (the "**New Agent**") of [*address*] hereby agrees with each other Person who is or who becomes a party to the Senior Finance Documents that with effect on and from the date of this Deed it shall be bound by the Senior Finance Documents and be entitled to exercise rights and be subject to obligations thereunder as [*specify Agent*].

The Facility Office of the New Agent is located at [ ].

The initial telephone number, fax number, address and Person designated by the New Agent for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[ ]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by ( )

[*insert name of new Agent and* )

*execution clause appropriate* )

*thereto and to manner of* )

execution] )

## Part B

### Form of Novation Certificate

To: [ ] as Intercreditor Agent

#### NOVATION CERTIFICATE

relating to [description of the relevant Facility Agreement] (the "**Facility Agreement**") dated [date of the relevant Facility Agreement] between Wynn Resorts (Macau) S.A. (the "**Company**") and [list other parties] and the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between the Company and the Senior Secured Creditors (as defined therein).

1. Terms defined in the Common Terms Agreement shall, subject to any contrary indication, have the same meanings herein and the principles of construction and rules of interpretation set out therein shall also apply. The terms Lender, Transferee, Proposed Transfer Date, Lender's Participation and Amount Transferred are defined in the schedule hereto.
2. The Lender confirms that the Lender's Participation is an accurate summary of its participation in the Facility Agreement and requests the Transferee to accept and procure the transfer by novation to the Transferee of a percentage of the Lender's Participation (equal to the percentage that the Amount Transferred is of the aggregate of the component amounts (as set out in the schedule hereto) of the Lender's Participation the "**Transferred Percentage**") by counter-signing and delivering this Novation Certificate to the Intercreditor Agent at its address for the service of notices specified in the Common Terms Agreement, in accordance with Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement. The Lender assigns, subject to the aforementioned acceptance by the Transferee, a proportion of the rights and benefits held by the Lender (in its capacity as such) under or in connection with the Senior Finance Documents which proportion shall be equal to the Transferred Percentage.
3. The Transferee hereby requests the Intercreditor Agent to accept this Novation Certificate as being delivered to the Intercreditor Agent pursuant to and for the purposes of Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement so as to take effect in accordance with the terms thereof on the Proposed Transfer Date or on such later date as may be determined in accordance with the terms thereof.
4. The Transferee confirms that it has received a copy of each of the Senior Finance Documents together with such other information as it has required in connection with this transaction and that it has not relied and shall not hereafter rely on the Lender to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and shall not rely on the Lender to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Obligors, Wynn Macau or the Cotai Project.
5. The Transferee hereby undertakes with the Lender and each of the other parties to the Facility Agreement that it shall perform in accordance with their terms all those

obligations which by the terms of the Facility Agreement shall be assumed by it after delivery of this Novation Certificate to the Intercreditor Agent and satisfaction of the conditions (if any) subject to which this Novation Certificate is expressed to take effect.

6. The Transferee also agrees that, with effect from the Proposed Transfer Date or such later date as may be determined in accordance with Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement, it shall be bound by the terms of:
  - (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]                      [Transferee]

By:                              By:

Date:                            Date:

[     ]

as Intercreditor Agent

By:

Date:

**Administrative Details of Transferee**

Address:

Contact Name:

Account for Payments:

Standing Payment Instruction:

Fax:

Telex:

Telephone:

---

\* Details of the Lender's undrawn Available Commitment should not be completed after the last day of the Availability Period.

## Part C

### Form of Confidentiality Undertaking

To: [Insert name of potential Transferee/participant]

[Date]

Dear Sirs,

We understand that you are considering [acquiring an interest (the "**Acquisition**") in/accepting an appointment as facility agent under [description of the relevant Facility Agreement] (the "**Facility Agreement**")/accepting an appointment as intercreditor agent under the Senior Finance Documents (the "**Appointment**") in relation to the design, development, construction, ownership, operation and maintenance of the Wynn Macau hotel, retail and destination gaming resort project ("**Wynn Macau**") and the Wynn Palace hotel, retail and destination gaming resort project (the "**Cotai Project**"). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. *Confidentiality Undertaking* You undertake (a) to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, (b) to use the Confidential Information only for the Permitted Purpose, (c) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(c) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it, and (d) not to make enquiries of any of the Obligors or any of their officers, directors, employees or professional advisers relating directly or indirectly to the [Acquisition/Appointment].
2. *Permitted Disclosure* We agree that you may disclose Confidential Information:
  - (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)] or upon becoming aware that Confidential Information has been disclosed in breach of this letter.
4. *Return of Copies* If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2[(c)/(b)] above.
5. *Continuing Obligations* The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party to [or otherwise acquire (by assignment or sub-participation) an interest, direct or indirect, in] the [Facility Agreement/Senior Finance Documents] or (b) twelve months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).
6. *No Representation; Consequences of Breach, etc* You acknowledge and agree that:
  - (a) neither we nor any Obligor nor any of our or their respective officers, employees or advisers (each a "**Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and
  - (b) we or any Obligor may be irreparably harmed by the breach of the terms hereof and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.
7. *No Waiver; Amendments, etc* This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege hereunder will operate as a

waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges hereunder. The terms of this letter and your obligations hereunder may only be amended or modified by written agreement between us.

8. *Inside Information* You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and you undertake not to use any Confidential Information for any unlawful purpose.
9. *Nature of Undertakings* The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of each Obligor.
10. *Third party rights*
  - (a) Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this letter.
  - (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
  - (c) The parties to this letter do not require the consent of the Relevant Persons to rescind or vary this letter at any time.
11. *Governing Law and Jurisdiction* This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.
12. *Definitions* In this letter (including the acknowledgement set out below) terms defined in or by reference to the Facility Agreement shall, unless the context otherwise requires, have the same meaning, the principles of construction and rules of interpretation referred to therein shall also apply and:

"**Confidential Information**" means any information relating to Wynn Macau, the Cotai Project, any Obligor, the Transaction Documents, any agreement relating to the [Facility Agreement/Senior Finance Documents] and/or the [Acquisition/Appointment] provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you thereafter, other than from a source which is connected with the Obligors and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

"**Obligors**" means Wynn Resorts (Macau) S.A. and certain other persons, as defined in the Senior Finance Documents, who have a direct or indirect interest in its share capital.

"**Permitted Purpose**" means considering and evaluating whether to [enter into/accept] the [Acquisition/Appointment].

"**Project Documents**" means the documents entered into by Wynn Resorts (Macau) S.A. and its contractors or subcontractors in connection with Wynn Macau.

"**[Purchaser/Appointee] Group**" means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 2006).

"**Senior Finance Documents**" means the Facility Agreement, the Common Terms Agreement dated 14 September 2004 between Wynn Resorts (Macau) S.A. and certain financial institutions and other Senior Finance Documents as defined in such Common Terms Agreement.

"**Transaction Documents**" means the Senior Finance Documents and the Project Documents.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of

*[Insert name of Lender/Agent]*

To: [Lender/Agent]

The Obligors

We acknowledge and agree to the above:

.....

For and on behalf of

**[Potential Transferee/participant/appointee]**

Date:

**Schedule 12  
[NOT USED]**

**Schedule 13  
[NOT USED]**

**Schedule 14  
FORM OF ADDITIONAL LENDER'S ACCESSION DEED**

THIS DEED dated [ ] is supplemental to a common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the Senior Secured Creditors (as defined therein).

Words and expressions defined in the Common Terms Agreement have the same meaning when used in this Deed and the principles of construction and rules of interpretation set out therein shall also apply.

*[name of Additional Lender]* (the "**New Additional Lender**") of *[address]* hereby agrees with each other person who is or who becomes a party to the Common Terms Agreement that with effect on and from the date of this Deed it shall be bound by the Common Terms Agreement and be entitled to exercise rights and be subject to obligations thereunder as an Additional Lender.

The initial telephone number, fax number, address and person designated by the New Additional Lender for the purposes of Clause 29 (*Notices*) of the Common Terms Agreement are:

[ ]

This Deed is governed by and shall be construed in accordance with English law.

Executed as a deed by )

*[insert name of Additional* )

*Lender and execution clause* )

*appropriate thereto and to* )

*manner of execution]* )

**Schedule 15  
FORM OF COMPLIANCE CERTIFICATE**

To: [ ] as Intercreditor Agent

Date: [ ]

Dear Sirs,

We refer to an agreement (the "**Common Terms Agreement**") dated 14 September 2004 between Wynn Resorts (Macau) S.A. and the financial institutions named therein as Senior Secured Creditors. Terms defined in the Common Terms Agreement shall bear the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.

We confirm on [insert date of relevant financial statements] the following:

	Actual	Required
1. Leverage Ratio	[ ]	[ ]
2. Interest Coverage Ratio	[ ]	[ ]

	Actual
3. Excess Cash Flow*	

—

[\* *Excess Cash Flow calculation to be included only if the Leverage Ratio for the relevant period is greater than 4.5:1*]

We attach the information and calculations necessary for determining the above ratios and amounts.

We hereby confirm that no Default has occurred and is continuing.

OR

We hereby give you notice of the occurrence of the following Default which is continuing:

[ ].

We set out below the steps being taken to remedy such Default:

[ ].

Yours faithfully,

\_\_\_\_\_  
Name:  
Responsible Officer  
for and on behalf of  
**Wynn Resorts (Macau) S.A.**

**Schedule 16**  
**[NOT USED]**

**Schedule 17**  
**[NOT USED]**

**Schedule 18**  
**[NOT USED]**

**Schedule 19**  
**[NOT USED]**





## SIGNATURES

### The Company

#### WYNN RESORTS (MACAU) S.A.

By: /s/ Jason M. Schall

Jason M. Schall  
Authorised Signatory

Address: Wynn Macau, Rua Cidade de Sintra, NAPE  
Macau  
Tel: +853 2888 9966  
Fax: +853 2832 9966  
Attention: Chief Financial Officer

With a copy to:

Wynn Resorts (Macau) S.A.

Address: Wynn Macau, Rua Cidade de Sintra, NAPE  
Macau  
Tel: +853 2888 9966  
Fax: +853 2832 9966  
Attention: Legal Department of Wynn Resorts (Macau) S.A.

**The Hedging Counterparties**

**DBS BANK LTD.**

By: /s/ Louisa Chau

Address: 10/F, The Center, 99 Queen's Road Central, Central, Hong Kong

Tel: +852 3668 5685

Fax: +852 2806 5457

Attention: Mr. Johnson WONG

With a copy to:

Address: 18/F, The Center, 99 Queen's Road Central, Hong Kong

Tel: +852 3668 1948

Fax: +852 2167 8635

Attention: Mr. Colum TING

**The Term Facility Lender**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun  
Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau  
Tel: +853 8792 1639 / 8792 1661  
Fax: +853 8792 1659 / 8792 0308  
Attention: Mr. James Wong / Ms.Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau  
Tel: +853 8792 1705 / 8792 1729  
Fax: +853 8792 1677  
Attention: Ms. Venus Huang / Ms. Candy Shen

**The Revolving Credit Facility Lender**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun  
Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau  
Tel: +853 8792 1639 / 8792 1661  
Fax: +853 8792 1659 / 8792 0308  
Attention: Mr. James Wong / Ms.Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau  
Tel: +853 8792 1705 / 8792 1729  
Fax: +853 8792 1677  
Attention: Ms. Venus Huang / Ms. Candy Shen



**The Outgoing Global Coordinating Lead Arrangers**

**MORGAN STANLEY SENIOR FUNDING, INC.**

By: /s/ Alysha Salinger

WYNN – EXECUTION PAGES TO COMMON TERMS AGREEMENT SIXTH AMENDMENT AGREEMENT

**TAI FUNG BANK LIMITED**

By: /s/ Irene, Lou Kit I

Ms. Irene, Lou Kit I

/s/ Kou Wa Kin

Mr. Kou Wa Kin

Address: 418 Alameda Dr. Carlos d'Assumpcao, Macau

Tel: +853 8797 0353 / +853 8797 0328

Fax: +853 2875 2716

Attention: Mr. Kou Wa Kin / Mr. Edward Leong (Credit Operation Department)

Email: [credit@taifungbank.com](mailto:credit@taifungbank.com) / [kouwakin@taifungbank.com](mailto:kouwakin@taifungbank.com)

**UBS AG HONG KONG BRANCH**

By: /s/ Maria Chua

Maria Chua, Director

/s/ Joe Cheung

Joe Cheung, Executive Director



**The Mandated Lead Arrangers and Bookrunners**

**BANCO NACIONAL ULTRAMARINO, S.A.**

By: /s/ Tou Kei San

Tou Kei San

/s/ Violet Chui Po Lin

Violet Chui Po Lin

Address: No. 22, Avenida de Almeida Ribeiro, Macau

Tel: (853) 83989146 / (853) 83989106

Fax: (853) 28331206 / (853) 28356867

Attention: Mr. Teren Cheong / Ms. Violet Choi

**BANK OF AMERICA, N.A.**

By: /s/ Joyce Chan

Joyce Chan, Managing Director

Address: 52/F, Cheung Kong Center, 2 Queen's Road Central, Central, Hong Kong

Fax: +852 3508 2914

Attention: Elena Ng

WYNN – EXECUTION PAGES TO COMMON TERMS AGREEMENT SIXTH AMENDMENT AGREEMENT

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun  
Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau  
Tel: +853 8792 1639 / 8792 1661  
Fax: +853 8792 1659 / 8792 0308  
Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau  
Tel: +853 8792 1705 / 8792 1729  
Fax: +853 8792 1677  
Attention: Ms. Venus Huang / Ms. Candy Shen

**BNP PARIBAS HONG KONG BRANCH**

By: /s/ Mary Hse

Mary Hse

/s/ Charmaine Lo

Charmaine Lo

Address: 63/F, Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Tel: +852 2909 8770 / +852 2909 8790 / +852 2909 8510

Fax: +852 2970 0296

Attention: Charmaine Lo / Chris Lau / Kathleen Cheung

**DBS BANK LTD.**

By: /s/ Stockor Ng

Stockor Ng, Senior Vice President, Team Head

Address: 18/F, The Center, 99 Queen's Road Central, Central, Hong Kong

Tel: +852 3668 1905 / 3668 8410 / 3668 1805

Fax: +852 28776703

Attention: Ms. Tracy PAU / Ms. Wincy TEA / Mr. Stockor NG

WYNN – EXECUTION PAGES TO COMMON TERMS AGREEMENT SIXTH AMENDMENT AGREEMENT

**INDUSTRIAL AND COMMERCIAL BANK OF CHINA (MACAU) LIMITED**

By: /s/ Mr. Huang Xianjun

/s/ Mr. Yang Peng

Address: 18/F., ICBC Tower, Macau Landmark, 555 Avenida da Amizade, Macau

Fax: +853 8398 2160 / +853 2858 4496

Attention: Alex Li / Eric Chan / Ginny Hoi / Linda Chan / Lillian Hong / Selene Ren/ Frankie Wan

**SUMITOMO MITSUI BANKING CORPORATION**

By: /s/ William G. Karl

William G. Karl, Executive Officer

Address: 277 Park Avenue, New York, NY 10172

Tel: 212-224-4735

Fax: 212-224-4887

Attention: John Corrigan

WYNN – EXECUTION PAGES TO COMMON TERMS AGREEMENT SIXTH AMENDMENT AGREEMENT

**THE BANK OF NOVA SCOTIA**

By: /s/ Andy Poon

Address: Suite 2401, Central Tower, 28 Queen's Road Central, Hong Kong

Fax number: +852 2527 2526

Attention: Philip Ng / Kenneth Ho



**UNITED OVERSEAS BANK LIMITED**

By: /s/ George Tung  
George Tung, Managing Director & Head, Wholesale Banking, Hong Kong

Address: 23/F., 3 Garden Road, Central, Hong Kong

Fax: 852 2596 0113

Attention: Stephen Ko / Kelvin Wong

With a copy to:

Address: Unit 11-16, 16/F Millennium City 5, 418 Kwun Tong Road, Kwun Tong, Kowloon,  
Hong Kong

Fax: 852 2501 5738

Attention: Estella Chan / Amy Wong / Cyrus Chau / Dennis Yue / Terry Wong / Percy Ning /  
Karl Luu / Tommy Fung

**The Mandated Lead Arrangers**

**BANK OF COMMUNICATIONS CO., LTD. MACAU BRANCH**

By: /s/ Mr. Leng San

Address: 16F, AIA Tower, No. 251A-301 Avenida Comercial De Macau, Macau

Tel: +853-28286611

Fax: +853-28286686

Attention: Ariel Tang / Alvis Lao

**The Lead Arrangers**

**BANCO COMERCIAL DE MACAU, S.A.**

By: /s/ Chong Sou Keong

/s/ Chiu Yuk Fai

Address: Avenida da Praia Grande, No. 572, Macau

Credit matters, waivers and amendments

Address: Avenida da Praia Grande, No. 572, Macau

Tel: +853 8791 0251 / 0255 / 0259

Fax: +853 2271 5521

Attention: Mr. Simon Chong / Mr. Alex Chou / Ms. Iris Ip

Email: simon\_csk@bcm.com.mo / alex\_ccs@bcm.com.mo / iris\_isw@bcm.com.mo

Administration and operations matters

Address: Avenida da Praia Grande, No. 572, Macau

Tel: +853 8791 0280 / 0299 / 0295

Fax: +853 8791 0276

Attention: Ms. Lillian Tang / Ms. Phoebe Chong / Ms. Nicole Wong

Email: lillian\_tfp@bcm.com.mo / phoebe\_cwu@bcm.com.mo / nicole\_whk@bcm.com.mo

**CMB WING LUNG BANK LIMITED MACAU BRANCH**

By: /s/ Mr. Guo Zhi Hang

/s/ Mr. Lam Weng Nin

Address: CMB Wing Lung Bank Limited, Macau Branch, R/C-A, Finance and IT Center of Macau, Avenida Comercial de Macau, Nam Van Lake, Macau

Fax: +853 2857 5589 / +853 2875 0918

Attention: Mr. Philip Deng / Mr. William Fan

**YUANTA COMMERCIAL BANK CO., LTD.**

By: /s/ Wen Jeng Chang /s/ Tim Wang

Name: Wen Jeng Chang / Tim Wang

Title: Vice President / Senior Manager

Address: 3F, No.66, Sec.1, Dunhua S. Rd. Taipei 105 Taiwan

Tel: +886-2-21736699 #3393/3385/3399/3398

Fax: +886-2-27722513

Attention: Mandy Chen / Christine Lin / Wendy Chiang / Erin Wang

**The Arrangers**

**BANK SINOPAC COMPANY LIMITED, MACAU BRANCH**

By: /s/ Alex Chen

Alex Chen (acting by Cheong Lo, Cecilia Vice President)

Senior Vice President & Branch General Manager

Address: Avenida Doutor Mario Soares, Finance and IT Center of Macau 9/F, Macau

Tel: (853) 2871 5175

Fax: (853) 2871 5035 / (853) 2871 5186

**Credit matters**

Name: Mr. Ton Io / Mr. Henry Lien / Ms. Penny Huang / Ms. Coey Kuan

Address: Avenida Doutor Mario Soares, Finance and IT Center of Macau 9/F, Macau

Tel: (853) 8809 6817 / (853) 8809 6812 / (853) 8809 6705 / (853) 8809 6702

Fax: (853) 2871 5035 / (853) 2871 5186

E-mail: TonIo@sinopac.com / henry.lien@sinopac.com / penny0256@sinopac.com / coeykuan@sinopac.com

**Operations matters**

Name: Ms. Kama Leong / Ms. Shadow Ho / Ms. Maggie Chan / Ms. Annie Huang

Address: Avenida Doutor Mario Soares, Finance and IT Center of Macau 9/F, Macau

Tel: (853) 8809 6821 / (853) 8809 6827 / (853) 8809 6870 / (853) 8809 6876

Fax: (853) 2871 5035 / (853) 2871 5186

E-mail: kamaleong@sinopac.com / shadow.ho@sinopac.com / maggie.chan@sinopac.com / anniehuang@sinopac.com /  
LOAN-MO.BR@sinopac.com

**CHINA CONSTRUCTION BANK CORPORATION MACAU BRANCH**

By: /s/ Choi, Michael Chung-Man

Choi, Michael Chung-Man

/s/ Lau, Kenneth Chi-Keung

Lau, Kenneth Chi-Keung

Address: 5/F, Circle Square, 61 Avenida de Almeida Ribeiro, Macau

Fax: +853 8291 1834 / +853 8291 1854 / +853 8291 1839

Attention: Emily Shum / Carol Leong / Cheryl Chan

**DEUTSCHE BANK AG, SINGAPORE BRANCH**

By: /s/ Ananda Chakravorty

Ananda Chakravorty, Managing Director

/s/ Choo Ping Quek

Choo Ping Quek, Vice President

Address: Floor 14 One Raffles Quay, South Tower, Singapore 048583

Tel: +65 64235990

Fax: +65 62212306

Attention: Yvonne Choo / Xuan-Ren Chen



**FIRST COMMERCIAL BANK, MACAU BRANCH**

By: /s/ Ms. Mei-Jyh Wang

Address: Unit B&C, 16F Finance and IT Centre of Macau, Avenida Commercial de Macau

Fax: +853 2872 2772

Attention: Paul Fong / +853 8291 6148 / i99094@firstbank.com.tw

Jerry Su / +853 8291 6131 / i91021@firstbank.com.tw

Rita Tou / +853 8291 6123 / i17131@firstbank.com.tw

Public Email / i945a@firstbank.com.tw

**HUA NAN COMMERCIAL BANK, LTD. MACAU BRANCH**

By: /s/ Ms. Hsiao Ya Chin

Address: Avenida Doutor Mario Soares,  
Finance and IT Center of Macau,  
17th Floor B.C. Macau

Tel: +853-82971899 /+853-82971868

Fax: +853-28755915

Attention: Sonny Hsia / Candy Wong

Email: sonny.hsia@hncb.com / mo.loan@hncb.com

**JPMORGAN CHASE BANK, N.A., HONG KONG BRANCH**

By: /s/ Luke Lee

Luke Lee, Managing Director

Address: Level 28 Chater House, 8 Connaught Road, Central, Hong Kong

Fax: +852 3018 7230

Attention: Vivek Gupta / Stella Wong / Gabriel Yong / Shirley Wong

**MEGA INTERNATIONAL COMMERCIAL BANK CO., LTD., OFFSHORE BANKING BRANCH**

By: /s/ Chien-Chuang Chien

Chien-Chuang, Chien, Vice President & General Manager

Address: 10<sup>th</sup> Floor, No.100, Chi Lin Road, 10424, Taipei, Taiwan, R.O.C.

Fax number: +886-2-2563-7138

Attention: Grace Hsiao / Wendy Liu / Clare Hsieh

**The Second Ranking Finance Party**

**BANCO NACIONAL ULTRAMARINO, S.A.**

By: /s/ Tou Kei San

Tou Kei San

/s/ Violet Chui Po Lin

Violet Chui Po Lin

Address: No. 22, Avenida de Almeida Ribeiro, Macau

Tel: (853) 83989146 / (853) 83989106

Fax: (853) 28331206 / (853) 28356867

Attention: Mr. Teren Cheong / Ms. Violet Choi



**The Security Agent**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1705 / 8792 1729

Fax: +853 8792 1677

Attention: Ms. Venus Huang / Ms. Candy Shen

**The Intercreditor Agent**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1705 / 8792 1729

Fax: +853 8792 1677

Attention: Ms. Venus Huang / Ms. Candy Shen



**The Term Facility Agent**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1705 / 8792 1729

Fax: +853 8792 1677

Attention: Ms. Venus Huang / Ms. Candy Shen

**The Revolving Credit Facility Agent**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1705 / 8792 1729

Fax: +853 8792 1677

Attention: Ms. Venus Huang / Ms. Candy Shen

**The POA Agent**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1705 / 8792 1729

Fax: +853 8792 1677

Attention: Ms. Venus Huang / Ms. Candy Shen

**Exhibit 10.2.2**  
**EXECUTION VERSION**

**DATED 21 December 2018**

**WYNN RESORTS (MACAU) S.A.**  
as Company

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Term Facility Agent

and

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Term Facility Lender

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**TERM FACILITY AGREEMENT**  
**FIFTH AMENDMENT AGREEMENT**

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**THIS AGREEMENT** is dated 21 December 2018 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the "**Company**");
- (2) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Term Facility Agent**"); and
- (3) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Term Facility Lender**").

**RECITALS:**

- (A) The Company owns and operates Wynn Macau and the Cotai Project.
- (B) The Secured Parties have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents in connection with Wynn Macau and the Cotai Project for the refinancing of existing indebtedness and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).
- (C) It has been agreed to amend the Term Facility Agreement as set out below.

**IT IS AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Incorporation of defined terms

1.1.1 Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.

1.1.2 The principles of construction and rules of interpretation set out or referred to in the Schedule shall have effect as if set out in this Agreement.

1.1.3 Any references in the Senior Finance Documents to the "Hotel Facility Agreement" or the "Term Facility Agreement" shall be taken to be a reference to the Term Facility Agreement as set out in the Schedule, as further amended, consolidated, supplemented, confirmed, novated or replaced from time to time.

### 1.2 Clauses

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

## 2. AMENDMENT

With effect from the Sixth Amendment Effective Date (as defined in the Common Terms Agreement Sixth Amendment Agreement), the Term Facility Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Term Facility Agreement*).

## 3. OUTSTANDING TERM FACILITY ADVANCES

(a) On the occurrence of the Sixth Amendment Effective Date:

- (i) the Term Facility Lender's Tranche A Facility Commitment and Tranche B Facility Commitment shall be amended as set out in Schedule 1 (*The Term Facility Lenders*) of the Term Facility Agreement set out in the Schedule (*Amended Term Facility Agreement*);
- (ii) the borrowings of the Company under the Term Facilities (and the Interest Periods applicable to the outstanding Term Facility Advances) shall be as set out in the Completion Memorandum; and
- (iii) the amounts and currencies of the Term Facility Lender's participation in each Term Facility Advance shall be as set out in the Completion Memorandum.

(b) On and from the occurrence of the Sixth Amendment Effective Date, without prejudice to paragraph (a) above, the Existing Tranche C Advance shall be deemed to be, for all purposes under this Agreement, the Term Facility Agreement and the other Senior Finance Documents, an Advance (or, as the case may be, part of an Advance) under the Tranche B Facility.

## 4. CONTINUITY AND FURTHER ASSURANCE

### 4.1 Continuing obligations

The provisions of the Term Facility 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 Term Facility Agent and at its own expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

## 5. MISCELLANEOUS

### 5.1 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.

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

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

## SIGNATURES

### The Company

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

By: /s/ Jason M. Schall



Jason M. Schall  
Authorised Signatory

Address: Wynn Macau, Rua Cidade de Sintra, NAPE  
Macau  
Tel: +853 2888 9966  
Fax: +853 2832 9966  
Attention: Chief Financial Officer

With a copy to:

Wynn Resorts (Macau) S.A.

Address: Wynn Macau, Rua Cidade de Sintra, NAPE  
Macau  
Tel: +853 2888 9966  
Fax: +853 2832 9966  
Attention: Legal Department of Wynn Resorts (Macau) S.A.

**The Term Facility Agent**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +

Fax: +

Attention: Ms. Venus Huang/Ms. Candy Shen

**The Term Facility Lender**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Iao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +

Fax: +

Attention: Ms. Venus Huang/Ms. Candy Shen



**SCHEDULE**  
**AMENDED TERM FACILITY AGREEMENT**

DATED 14 SEPTEMBER 2004

**WYNN RESORTS (MACAU) S.A.**  
as Company

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Term Facility Agent

and

**THE TERM FACILITY LENDERS**  
referred to herein

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**TERM FACILITY AGREEMENT**

(as amended by the Hotel Facility Agreement Amendment Agreement dated 14 September 2005, the Hotel Facility Second Amendment Agreement dated 27 June 2007, the Term Facility Third Amendment Agreement dated 31 July 2012, the Term Facility Fourth Amendment Agreement dated 30 September 2015 and the Term Facility Fifth Amendment Agreement dated 21 December 2018)

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THIS AGREEMENT is made on 14 September 2004

**BETWEEN:**

- (1) WYNN RESORTS (MACAU) S.A. (the "Company");
- (2) BANK OF CHINA LIMITED, MACAU BRANCH (the "Term Facility Agent"); and
- (3) THE TERM FACILITY LENDERS (as defined below).

**WHEREAS:**

The Term Facility Lenders have agreed to make certain loan facilities available to the Company in connection with Wynn Macau and the Cotai Project for the refinancing of the Company's existing indebtedness and for general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements), in each case, upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 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 Term Facility Lender at any time and save as otherwise provided herein, the aggregate US dollar equivalent amount of Available Tranche A Commitment and Available Tranche B Commitment of such Term Facility Lender.

"**Available Facility**" means, at any time, the aggregate US dollar equivalent amount of the Available Tranche A Facility and the Available Tranche B Facility.

"**Available Tranche A Commitment**" means, in relation to a Term Facility Lender at any time, its Tranche A Facility Commitment **less:**

(a) the aggregate amount of its participation in any outstanding Advances (including, without limitation, the Existing Advances) under that Facility; and

(b) in relation to any Advance Request, the aggregate amount of its participation in any Tranche A Advance due to be made on or before the proposed Advance Date.

"**Available Tranche A Facility**" means, at any time, the aggregate amount of the Available Tranche A Commitments of all the Term Facility Lenders at such time.

"**Available Tranche B Commitment**" means, in relation to a Term Facility Lender at any time, its Tranche B Facility Commitment **less:**

(a) the aggregate amount of its participation in any outstanding Advances (including, without limitation, the Existing Advances) under that Facility; and

(b) in relation to any Advance Request, the aggregate amount of its participation in any Tranche B Advance due to be made on or before the proposed Advance Date.

"**Available Tranche B Facility**" means, at any time, the aggregate amount of the Available Tranche B Commitments of all the Term Facility Lenders at such time.

"**Common Terms Agreement**" means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Term Facility Lenders and Revolving Credit Facility Lenders, the Term Facility Agent, the Revolving Credit Facility Agent, the Intercreditor Agent and the Security Agent, as amended and restated by the Common Terms Agreement Amendment Agreement, the Common Terms Agreement Second Amendment Agreement, the Common Terms Agreement Third Amendment Agreement, the Common Terms Agreement Fourth Amendment Agreement, the Common Terms Agreement Fifth Amendment Agreement and the Common Terms Agreement Sixth Amendment Agreement.

"**Existing Advances**" means the Tranche A Advance in an amount equal to USD1,305,000,000, the Tranche B Advance in an amount equal to HKD6,208,800,000 and the Tranche C Advance (under and as defined in the Term Facility Agreement as amended, restated, supplemented and/or novated prior to the Sixth Amendment Effective Date) in an amount equal to HKD1,560,000,000 (the "**Existing Tranche C Advance**"), outstanding immediately prior to the Sixth Amendment Effective Date.

"**Final Repayment Date**" means 26 June 2022 or, if that day is not a Business Day, the immediately preceding Business Day.

"**HIBOR**" means, in relation to any Tranche B Advance:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for HK dollars or for the Interest Period for that Term Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Term Facility Agent at its request quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 a.m. (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Term Facility Advance (or, if such Screen Rate or arithmetic mean of rates, as the case may be, is less than zero per annum, zero per annum).

"**LIBOR**" means, in relation to any Tranche A Advance:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for US dollars or for the Interest Period for that Term Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Term Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

at or about 11:00 a.m. (London time) on the Quotation Day for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Term Facility Advance (or, if such Screen Rate or arithmetic mean of rates, as the case may be, is less than zero per annum, zero per annum).

"**Majority Term Facility Lenders**" means a Term Facility Lender or Term Facility Lenders whose US dollar equivalent participations in the Term Facility Advances then outstanding and undrawn Available Commitments amount in aggregate to more than 50% of the US dollar equivalent of the sum of all Term Facility Advances then outstanding and undrawn Available Commitments.

"**Margin**" means in relation to any Term Facility Advance hereunder on and from the Sixth Amendment Effective Date 1.750% per annum but, if the Leverage Ratio as at the most recent Quarterly Date thereafter (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in clause 1.1 (*Definitions*) of the Common Terms Agreement) is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the Margin) no Default has occurred and is continuing, the Margin will be the percentage per annum specified for that range:

<b>Leverage Ratio</b>	<b>Margin</b>
Less than 1.0	1.500%
Greater than or equal to 1.0 but less than 3.0	1.750%
Greater than or equal to 3.0 but less than 3.5	1.875%
Greater than or equal to 3.5 but less than 4.0	2.000%
Greater than or equal to 4.0 but less than 4.5	2.125%
4.5 or above	2.250%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions or expiry of the applicable periods specified above (or, where such Business Day falls less than five Business Days before the end of the then current Interest Period, from the commencement of the next Interest Period).

"**Party**" means a party to this Agreement.

"**Reference Banks**" means, in relation to:

(a) LIBOR, the principal London offices of Deutsche Bank AG and BNP Paribas; and

(b) HIBOR, the principal Hong Kong offices of Bank of China Limited, Hong Kong Branch, DBS Bank Ltd., Hong Kong Branch and Industrial and Commercial Bank of China (Asia) Limited,



or such other bank or banks designated from time to time by the Term Facility Agent provided that the consent of the Company shall be required if such designation is made prior to an occurrence of an Event of Default which is continuing.

"**Screen Rate**" means, in relation to:

- (a) LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for US dollars for the relevant period displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters; and
- (b) HIBOR, the Hong Kong interbank offered rate administered by the Hong Kong Association of Banks (or any other person which takes over the administration of that rate) for the relevant period displayed on page HKABHIBOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays the rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters.

If the agreed page is replaced or service ceases to be available, the Term Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Term Facility Lenders.

"**Term Facility**" means the Tranche A Facility and the Tranche B Facility.

"**Term Facility Advance**" means, as the context may require, a Tranche A Advance or a Tranche B Advance and "**Term Facility Advances**" shall mean each Tranche A Advance, each Tranche B Advance or any of them.

"**Term Facility Lender**" means a Tranche A Facility Lender or a Tranche B Facility Lender.

"**Term Facility Finance Documents**" means:

- (a) this Agreement;
- (b) the Common Terms Agreement;
- (c) any other Senior Finance Document to which a Term Facility Lender is a party in its capacity as a Term Facility Lender; and
- (d) any other document designated as such by the Term Facility Agent and the Company.

"**Term Facility Finance Parties**" means the Term Facility Agent and the Term Facility Lenders.

"**Term Facility Loan**" means the aggregate principal amount for the time being outstanding hereunder.

"**Tranche A Advance**" means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Tranche A Facility Lenders under the Tranche A Facility.

"**Tranche A Facility**" means the US dollar term loan facility granted to the Company under Clause 3.1.1 (*Tranche A Facility*).

"**Tranche A Facility Commitment**" means

- (a) in relation to the Original Tranche A Facility Lender, the amount set opposite its name under the column entitled "Tranche A Commitment" in Schedule 1 (*The Term Facility Lenders*) and the amount of any other Tranche A Facility Commitment transferred to it under this Agreement; and
- (b) in relation to any other Tranche A Facility Lender, the amount of any Tranche A Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche A Facility Lender**" means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*The Term Facility Lenders*) as a Tranche A Facility Lender (the "**Original Tranche A Facility Lender**"); or
- (b) has become party hereto as a Tranche A Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

"**Tranche B Advance**" means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Tranche B Facility Lenders under the Tranche B Facility.

"**Tranche B Facility**" means the HK dollar term loan facility granted to the Company under Clause 3.1.2 (*Tranche B Facility*).

"**Tranche B Facility Commitment**" means:

- (a) in relation to the Original Tranche B Facility Lender, the amount set opposite its name under the column entitled "Tranche B Commitment" in Schedule 1 (*The Term Facility Lenders*) and the amount of any other Tranche B Facility Commitment transferred to it under this Agreement; and
- (b) in relation to any other Tranche B Facility Lender, the amount of any Tranche B Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche B Facility Lender**" means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*The Term Facility Lenders*) as a Tranche B Facility Lender (the "**Original Tranche B Facility Lender**"); or
  - (b) has become party hereto as a Tranche B Facility Lender in accordance with Clause 13 (*Changes to the Parties*),
- and which has not ceased to be a party hereto in accordance with the terms hereof.

## 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 "**Term Facility Agent**" or "**Term Facility Lender**" shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and
- 1.2.3 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 Term Facility Finance Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors and not against any assets or property of any Operative, save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of an individual holding the Executive Director Shares, his or her liability shall be limited to his or her shares in the Company.

## 2. COMMON TERMS AGREEMENT

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

## 3. THE TERM FACILITY

### 3.1 Grant of the Term Facilities

### 3.1.1 **Tranche A Facility**

The Tranche A Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a US dollar term loan facility in an aggregate amount of USD1,305,000,000.

### 3.1.2 **Tranche B Facility**

The Tranche B Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar term loan facility in an aggregate amount of HKD7,768,800,000.

### 3.1.3 **[Not used]**

## 4. **PURPOSE**

4.1.1 The Company shall apply all amounts borrowed by it under the Term Facility to pay for the refinancing of existing indebtedness of the Company and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).

4.1.2 [Not Used]

4.1.3 [Not Used]

4.1.4 [Not Used]

## 5. **CONDITIONS PRECEDENT**

The provisions of clause 2 (*Conditions Precedent*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

## 6. **AVAILABILITY OF THE TERM FACILITY**

### 6.1 **Drawdown of Advances**

The provisions of clause 3 (*Drawdown of Advances*) and clause 4.1 (*Term Facility Availability Period*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

### 6.2 **Each Term Facility Lender's Participation**

6.2.1 It is acknowledged and agreed that, as at the Sixth Amendment Effective Date, the Existing Advances have been made, have been applied in accordance with the provisions of Clause 4 (*Purpose*) of the Term Facility Agreement (as amended, restated, supplemented and/or novated prior to the Sixth Amendment Effective Date) and are outstanding hereunder.

6.2.2 Each Tranche A Facility Lender will participate through its Facility Office in each Tranche A Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche A Commitment to the Available Tranche A Facility immediately prior to the making of that Tranche A Advance.

6.2.3 Each Tranche B Facility Lender will participate through its Facility Office in each Tranche B Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche B Commitment to the Available Tranche B Facility immediately prior to the making of that Tranche B Advance.

6.2.4 [Not Used]

6.2.5 [Not Used]

### 6.3 **Reduction of Available Commitment**

If a Term Facility Lender's Available Tranche A Commitment or, as the case may be, Available Tranche B Commitment is reduced in accordance with the terms hereof or the Common Terms Agreement after the Intercreditor Agent or the Term Facility Agent has received an Advance Request for a Tranche A Advance or, as the case may be, a Tranche B Advance and such reduction was not taken into account in the Available Tranche A Facility or, as the case may be, Available Tranche B Facility, then the amount of that Tranche A Advance or, as the case may be, Tranche B Advance shall be reduced accordingly.

## 7. **REPAYMENT**

### 7.1 **Repayment**

Subject to Clause 7.2 (*Final maturity*), the Company shall repay the Term Facility Loans in quarterly instalments by repaying on each Repayment Date amounts equal to the percentage set out next to the relevant Repayment Date in Schedule 2 (*Repayment Schedule*) of

the aggregate US dollar denominated Term Facility Advances and the aggregate HK dollar denominated Term Facility Advances outstanding as at the end of the last day of the Term Facility Availability Period.

## **7.2 Final maturity**

The Company shall repay on the Final Repayment Date all amounts outstanding or due and payable under the Term Facility on that day.

## **7.3 No re-borrowing**

The Company may not re-borrow any part of the Term Facility which is repaid.

## **8. PREPAYMENT AND CANCELLATION**

All prepayments of Term Facility Advances and cancellation of Available Commitments shall be made in accordance with clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement.

## **9. INTEREST**

### **9.1 Calculation of Interest**

The rate of interest on each Term Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

9.1.1 the Margin; and

9.1.2 LIBOR (in the case of a Tranche A Advance) or HIBOR (in the case of a Tranche B Advance).

### **9.2 Payment of interest**

Accrued interest on each Term Facility Advance is payable by the Company on the last day of each Interest Period relating to that Term Facility Advance.

### **9.3 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 Term Facility Advance, the Term Facility Agent shall notify each Term Facility Lender of the proposed amount of the relevant Term Facility Advance and the aggregate principal amount of the relevant Term Facility Advance allocated to such Term Facility Lender pursuant to Clause 6.2 (*Each Term Facility Lender's Participation*) and each Term Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Term Facility Agent for the account of the Company its said portion of such Term Facility Advance.

### **11.2 Interest rate determination**

The Term Facility Agent shall promptly notify the Company and the Term Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

### **11.3 Changes to interest rates**

The Term Facility Agent shall promptly notify the Company and the Term Facility Lenders of any change to any interest rate occasioned by the operation of clause 10 (*Changes to the Calculation of Interest*) of the Common Terms Agreement.

### **11.4 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 Term Facility Agent shall provide to the Company and each Term Facility Lender (with a copy to the Intercreditor Agent) a notice setting out the relevant scheduled payment of interest and scheduled repayment of principal under this Agreement at least 15 Business Days before such amounts fall due for payment by the Company.

## **12. [NOT USED]**

### 13.CHANGES TO THE PARTIES

#### 13.1Transfers by the Term Facility Agent

The Term Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Term Facility Finance Documents to a replacement Term Facility Agent appointed in accordance with the terms of the Common Terms Agreement.

#### 13.2Transfers by the Company

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Term Facility Finance Documents.

#### 13.3Transfers by the Term Facility Lenders

A Term Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Term Facility Finance Documents in accordance with clause 21.4 (*Assignment and Transfer by Lenders*), clause 21.5 (*Assignments by Lenders*) and clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement.

#### 13.4Assignment and Transfer Fees

On the date upon which an assignment takes effect pursuant to clause 21.5 (*Assignments by Lenders*) of the Common Terms Agreement or a transfer takes effect pursuant to clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreements, the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee in accordance with clause 21.7 (*Assignment and Transfer Fees*) of the Common Terms Agreement.

### 14.PAYMENTS

#### 14.1Payments

14.1.1All payments under this Agreement shall be made in accordance with clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

14.1.2Subject to clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company or a Term Facility Lender, the Company or, as the case may be, such Term Facility Lender shall make the same available to the Term Facility Agent for value on such due date and at such time and in such funds and to such account with such bank as the Term Facility Agent shall specify from time to time.

#### 14.2Partial Payments

14.2.1If the Term Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Term Facility Lenders under the Term Facility Finance Documents, the Term Facility Agent shall apply that payment towards the obligations of the Company under the Term Facility Finance Documents in the following order:

- (a)**first**, in or towards payment *pro rata* of all amounts paid by the Term Facility Lenders under clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (b)**secondly**, in or towards payment *pro rata* of all amounts paid by the Term Facility Lenders under Clause 15.3 (*Indemnity to Term Facility Agent*) but which have not been reimbursed by the Company;
- (c)**thirdly**, in or towards payment *pro rata* of all costs and expenses incurred by the Term Facility Lenders which the Company is obliged to reimburse;
- (d)**fourthly**, in or towards payment *pro rata* of all accrued but unpaid fees and commissions due to the Term Facility Lenders under the Term Facility Finance Documents;
- (e)**fifthly**, in or towards payment *pro rata* of all accrued but unpaid interest (including default interest) due to the Term Facility Lenders under the Term Facility Finance Documents;
- (f)**sixthly**, in or towards payment *pro rata* of any principal due to the Term Facility Lenders under the Term Facility Finance Documents but unpaid; and
- (g)**seventhly**, in or towards payment *pro rata* of any other sum due to the Term Facility Lenders under the Term Facility Finance Documents but unpaid.

14.2.2 The Term Facility Agent shall, if so directed by the Majority Term Facility Lenders, vary the order set out in sub-clause 14.2.1 above.

14.2.3 Sub-clause 14.2.1 above will override any appropriation made by the Company.

## **15. DECISION MAKING AMONGST TERM FACILITY LENDERS**

### **15.1 Decisions**

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purpose of any decision within the scope of clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement relating to this Agreement shall be the Term Facility Agent acting on the instructions of the Majority Term Facility Lenders.

### **15.2 Failure to Give Instructions**

If the Term Facility Agent gives notice to the Term Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Term Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Term Facility Lender which fails to respond by the date and time so specified shall have its portion of the Term Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Term Facility Agent by the Majority Term Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Term Facility Advances outstanding, the Available Commitments and portion of Term Facility Advances of such Term Facility Lender shall be deducted).

### **15.3 Indemnity to Term Facility Agent**

15.3.1 Each Term Facility Lender shall, rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Term Facility Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Term Facility Lenders (or, if all such amounts have been reduced to zero, such proportion determined immediately prior to such reduction) for the time being, indemnify the Term Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Term Facility Agent (other than by reason of the negligence or wilful misconduct of the Term Facility Agent) in acting as Term Facility Agent under any of the Senior Finance Documents (unless the Term Facility Agent has been reimbursed by the Company pursuant to a Senior Finance Document).

15.3.2 Provided that the Company is required to reimburse or indemnify the Term Facility Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Term Facility Lender, indemnify such Term Facility Lender in relation to any payment actually made by such Term Facility Lender pursuant to Clause 15.3.1 above.

## **16. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

## **17. GOVERNING LAW**

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

## 18. JURISDICTION

### 18.1 Jurisdiction of English courts

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a "**Dispute**").

18.1.2 The parties hereto agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 is for the benefit of the Term Facility Finance Parties only. As a result, no Term Facility Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Term Facility Finance Parties may take concurrent proceedings in any number of jurisdictions.

### 18.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Company:

18.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

18.2.2 agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.

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

## SCHEDULE 1 THE TERM FACILITY LENDERS

Term Facility Lender	Tranche A Commitment (USD)	Tranche B Commitment (HKD)
Bank of China Limited, Macau Branch	1,305,000,000	7,768,800,000
<b>Total</b>	1,305,000,000	7,768,800,000

## SCHEDULE 2 REPAYMENT SCHEDULE

Repayment Date	Percentage (%)
The 7 <sup>th</sup> Quarterly Date falling after the Sixth Amendment Effective Date	2.875
The 8 <sup>th</sup> Quarterly Date falling after the Sixth Amendment Effective Date	2.875
The 9 <sup>th</sup> Quarterly Date falling after the Sixth Amendment Effective Date	2.875
The 10 <sup>th</sup> Quarterly Date falling after the Sixth Amendment Effective Date	2.875

The 11 <sup>th</sup> Quarterly Date falling after the Sixth Amendment Effective Date	4.50
The 12 <sup>th</sup> Quarterly Date falling after the Sixth Amendment Effective Date	4.50
The 13 <sup>th</sup> Quarterly Date falling after the Sixth Amendment Effective Date	4.50
The 14 <sup>th</sup> Quarterly Date falling after the Sixth Amendment Effective Date or, if earlier, the Final Repayment Date	75.00%



**Exhibit 10.2.3**  
**EXECUTION VERSION**

**DATED 21 December 2018**

**WYNN RESORTS (MACAU) S.A.**  
as Company

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

and

**BANK OF CHINA LIMITED, MACAU BRANCH**  
as Revolving Credit Facility Lender

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**REVOLVING CREDIT FACILITY AGREEMENT**  
**SECOND AMENDMENT AGREEMENT**

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**THIS AGREEMENT** is dated 21 December 2018 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the "**Company**");
- (2) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Revolving Credit Facility Agent**"); and
- (3) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Revolving Credit Facility Lender**").

### **RECITALS:**

- (A) The Company owns and operates Wynn Macau and the Cotai Project.
- (B) The Secured Parties have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents in connection with Wynn Macau and the Cotai Project for the refinancing of existing indebtedness and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).
- (C) It has been agreed to amend the Revolving Credit Facility Agreement as set out below.

**IT IS AGREED** as follows:

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Incorporation of defined terms**

- 1.1.1 Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.
- 1.1.2 The principles of construction and rules of interpretation set out or referred to in the Schedule shall have effect as if set out in this Agreement.
- 1.1.3 Any references in the Senior Finance Documents to the "Revolving Credit Facility Agreement" shall be taken to be a reference to the Revolving Credit Facility Agreement as set out in the Schedule, as further amended, consolidated, supplemented, confirmed, novated or replaced from time to time.

#### **1.2 Clauses**

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

### **2. AMENDMENT**

With effect from the Sixth Amendment Effective Date (as defined in the Common Terms Agreement Sixth Amendment Agreement), the Revolving Credit Facility Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule

(*Amended Revolving Credit Facility Agreement*).

### **3.OUTSTANDING REVOLVING CREDIT FACILITY ADVANCES**

On the occurrence of the Sixth Amendment Effective Date:

- (a) the Revolving Credit Facility Lender's Tranche A Facility Commitment and Tranche B Facility Commitment shall be amended as set out in Schedule 1 (*The Revolving Credit Facility Lenders*) of the Revolving Credit Facility Agreement set out in the Schedule (*Amended Revolving Credit Facility Agreement*) to this Agreement;
- (b) the borrowings of the Company under the Revolving Credit Facilities (and the Interest Periods applicable to the outstanding Revolving Credit Facility Advances) shall be as set out in the Completion Memorandum; and
- (c) the amounts and currencies of the Revolving Credit Facility Lender's participation in each Revolving Credit Facility Advance shall be as set out in the Completion Memorandum.

### **4.CONTINUITY AND FURTHER ASSURANCE**

#### **4.1Continuing obligations**

The provisions of the Revolving Credit Facility Agreement shall, save as amended by this Agreement, continue in full force and effect.

#### **4.2Further assurance**

The Company shall, upon the written request of the Revolving Credit Facility Agent and at its own expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

### **5.MISCELLANEOUS**

#### **5.1Incorporation 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.

#### **5.2Counterparts**

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

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

## SIGNATURES

### The Company

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

By: /s/ Jason M. Schall

Jason M. Schall  
Authorised Signatory

Address: Wynn Macau, Rua Cidade de Sintra, NAPE  
Macau

Tel: +853 2888 9966

Fax: +853 2832 9966

Attention: Chief Financial Officer

With a copy to:

Wynn Resorts (Macau) S.A.

Address: Wynn Macau, Rua Cidade de Sintra, NAPE  
Macau

Tel: +853 2888 9966

Fax: +853 2832 9966

Attention: Legal Department of Wynn Resorts (Macau) S.A.

**The Revolving Credit Facility Agent**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Lao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +

Fax: +

Attention: Ms. Venus Huang / Ms. Candy Shen

**The Revolving Credit Facility Lender**

**BANK OF CHINA LIMITED, MACAU BRANCH**

By: /s/ Wong Lao Kun

Address: 13/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +853 8792 1639 / 8792 1661

Fax: +853 8792 1659 / 8792 0308

Attention: Mr. James Wong / Ms. Jade Gan

With a copy to:

Address: 17/F Bank of China Building  
Avenida Doutor Mario Soares, Macau

Tel: +

Fax: +

Attention: Ms. Venus Huang / Ms. Candy Shen

SCHEDULE  
**AMENDED REVOLVING CREDIT FACILITY AGREEMENT**

DATED 31 JULY 2012

**WYNN RESORTS (MACAU) S.A.**  
as Company

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

and

**THE REVOLVING CREDIT FACILITY LENDERS**  
referred to herein

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**REVOLVING CREDIT FACILITY AGREEMENT**  
(as amended by the Revolving Credit Facility Amendment Agreement dated 30 September 2015 and the Revolving  
Credit Facility Second Amendment Agreement dated 21 December 2018)

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**BETWEEN:**

- (1) **WYNN RESORTS (MACAU) S.A.** (the "**Company**");
- (2) **BANK OF CHINA LIMITED, MACAU BRANCH** (the "**Revolving Credit Facility Agent**"); and
- (3) **THE REVOLVING CREDIT FACILITY LENDERS** (as defined below).

**WHEREAS:**

The Revolving Credit Facility Lenders have agreed to make certain loan facilities available to the Company in connection with Wynn Macau and the Cotai Project for the refinancing of the Company's existing indebtedness and for general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements), in each case, upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless otherwise defined herein, all terms defined or referred in the Common Terms Agreement shall have the same meaning herein and in addition:

"**Advance Request**" means a request for a Revolving Credit Facility Advance in substantially the form set out in Schedule 2 (*Form of Advance Request for a Revolving Credit Facility Advance*).

"**Available Commitment**" means, in relation to a Revolving Credit Facility Lender at any time and save as otherwise provided herein, the aggregate US dollar equivalent amount of Available Tranche A Commitment and Available Tranche B Commitment of such Revolving Credit Facility Lender.

"**Available Facility**" means, at any time, the aggregate US dollar equivalent amount of the Available Tranche A Facility and the Available Tranche B Facility.

"**Available Tranche A Commitment**" means, in relation to a Revolving Credit Facility Lender at any time, its Tranche A Facility Commitment *less*:

(a) the aggregate amount of its participation in any outstanding Tranche A Advances (including, without limitation, the Existing Advances) (other than, in relation to any proposed Tranche A Advance, such Revolving Credit Facility Lender's participation in any Tranche A Advances that are due to be repaid or prepaid on or before the proposed Advance Date); and

(b) in relation to any proposed Tranche A Advance, the aggregate amount of its participation in any Tranche A Advances that are due to be made on or before the proposed Advance Date.

"**Available Tranche B Commitment**" means, in relation to a Revolving Credit Facility Lender at any time, its Tranche B Facility Commitment *less*:

(a) the aggregate amount of its participation in any outstanding Tranche B Advances (including, without limitation, the Existing Advances) (other than, in relation to any proposed Tranche B Advance, such Revolving Credit Facility Lender's participation in any Tranche B Advances that are due to be repaid or prepaid on or before the proposed Advance Date); and

(b) in relation to any proposed Tranche B Advance, the aggregate amount of its participation in any Tranche B Advances that are due to be made on or before the proposed Advance Date.

"**Available Tranche A Facility**" means, at any time, the aggregate amount of the Available Tranche A Commitments of all the Revolving Credit Facility Lenders at such time.

"**Available Tranche B Facility**" means, at any time, the aggregate amount of the Available Tranche B Commitments of all the Revolving Credit Facility Lenders at such time.

"**Common Terms Agreement**" means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Term Facility Lenders and Revolving Credit Facility Lenders, the Term Facility Agent, the Revolving Credit Facility Agent, the Intercreditor Agent and the Security Agent, as amended and restated by the Common Terms Agreement Amendment Agreement, the Common Terms Agreement Second Amendment Agreement, the Common Terms

Agreement Third Amendment Agreement, the Common Terms Agreement Fourth Amendment Agreement, the Common Terms Agreement Fifth Amendment Agreement and the Common Terms Agreement Sixth Amendment Agreement.

"**Existing Advances**" means the Tranche A Advance in an amount equal to USD356,308,411.21 and the Tranche B Advance in an amount equal to HKD2,095,794,392.56 outstanding as at the Sixth Amendment Effective Date.

"**Final Repayment Date**" means 26 June 2022 or, if that day is not a Business Day, the immediately preceding Business Day.

"**HIBOR**" means, in relation to any Tranche B Advance:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for HK dollars or the Interest Period of that Revolving Credit Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Revolving Credit Facility Agent at its request quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 am (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Revolving Credit Facility Advance (or, if such Screen Rate or arithmetic mean of rates, as the case may be, is less than zero per annum, zero per annum).

"**Interest Period**" means, in relation to a Revolving Credit Facility Advance, each period determined in accordance with Clause 10 (*Interest Periods*).

"**LIBOR**" means, in relation to any Tranche A Advance:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for US dollars or for the Interest Period for that Revolving Credit Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Revolving Credit Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

at or about 11:00 a.m. (London time) on the Quotation Day for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Revolving Credit Facility Advance (or, if such Screen Rate or arithmetic mean of rates, as the case may be, is less than zero per annum, zero per annum).

"**Majority Revolving Credit Facility Lenders**" means a Revolving Credit Facility Lender or Revolving Credit Facility Lenders whose US dollar equivalent participations in the Revolving Credit Facility Advances then outstanding and undrawn Available Commitments amount in aggregate to more than 50% of the US dollar equivalent of the sum of all Revolving Credit Facility Advances then outstanding and undrawn Available Commitments.

"**Margin**" means in relation to any Revolving Credit Facility Advance hereunder on and from the Sixth Amendment Effective Date 1.750% per annum but, if the Leverage Ratio as at the most recent Quarterly Date thereafter (for the avoidance of doubt, subject to paragraph (e) of the definition of "Specified Equity Contribution Conditions" in clause 1.1 (*Definitions*) of the Common Terms Agreement) is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the Margin) no Default has occurred and is continuing, the Margin will be the percentage per annum specified for that range:

<b>Leverage Ratio</b>	<b>Margin</b>
Less than 1.0	1.500%
Greater than or equal to 1.0 but less than 3.0	1.750%
Greater than or equal to 3.0 but less than 3.5	1.875%
Greater than or equal to 3.5 but less than 4.0	2.000%
Greater than or equal to 4.0 but less than 4.5	2.125%
4.5 or above	2.250%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions or expiry of the applicable periods specified above (or, where such Business Day falls less than five Business Days before the end of the then current Interest Period, from the commencement of the next Interest Period).

"**Reference Banks**" means, in relation to:

(a) LIBOR, the principal London offices of Deutsche Bank AG and BNP Paribas; and

(b)HIBOR, the principal Hong Kong offices of Bank of China Limited, Hong Kong Branch, DBS Bank Ltd., Hong Kong Branch and Industrial and Commercial Bank of China (Asia) Limited,

or such other bank or banks designated from time to time by the Revolving Credit Facility Agent provided that the consent of the Company shall be required if such designation is made prior to an occurrence of an Event of Default which is continuing.

"**Revolving Credit Facility**" means the Tranche A Facility or the Tranche B Facility and "**Revolving Credit Facilities**" means each of them.

"**Revolving Credit Facility Advance**" means, as the context may require, a Tranche A Advance or a Tranche B Advance and "**Revolving Credit Facility Advances**" shall mean each Tranche A Advance and Tranche B Advance or any of them.

"**Revolving Credit Facility Finance Documents**" means:

- (a) this Agreement;
- (b) the Common Terms Agreement;
- (c) any other Senior Finance Document to which a Revolving Credit Facility Lender is a party in its capacity as a Revolving Credit Facility Lender; and
- (d) any other document designated as such by the Revolving Credit Facility Agent and the Company.

"**Revolving Credit Facility Lender**" means a Tranche A Facility Lender or a Tranche B Facility Lender.

"**Revolving Credit Finance Parties**" means the Revolving Credit Facility Agent and the Revolving Credit Facility Lenders.

"**Rollover Advance**", in relation to a Revolving Credit Facility, means one or more Revolving Credit Facility Advances under that Revolving Credit Facility:

- (a) made or to be made on the same day that a maturing Revolving Credit Facility Advance under that Revolving Credit Facility is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the maturing Revolving Credit Facility Advance under that Revolving Credit Facility; and
- (c) made or to be made to the Company for the purpose of refinancing a maturing Revolving Credit Facility Advance under that Revolving Credit Facility.

"**Screen Rate**" means, in relation to:

- (a) LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for US dollars for the relevant period displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters; and
- (b) HIBOR, the Hong Kong interbank offered rate administered by the Hong Kong Association of Banks (or any other person which takes over the administration of that rate) for the relevant period displayed on page HKABHIBOR of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays the rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters.

If the agreed page is replaced or service ceases to be available, the Revolving Credit Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Revolving Credit Facility Lenders.

"**Termination Date**" means the date falling one month prior to the Final Repayment Date.

"**Tranche A Advance**" means an advance made or to be made by the Tranche A Facility Lenders under the Tranche A Facility or the principal amount outstanding for the time being of that advance including a Rollover Advance.

"**Tranche A Facility**" means the US dollar revolving credit facility granted to the Company under Clause 3.1.1 (*Tranche A Facility*).

"**Tranche A Facility Commitment**" means:

- (a) in relation to the Original Tranche A Facility Lender, the amount set opposite its name under the column entitled "Tranche A Commitment" in Schedule 1 (*The Revolving Credit Facility Lenders*) and the amount of any other Tranche A Facility Commitment transferred to it under this Agreement; and

(b) in relation to any other Tranche A Facility Lender, the amount of any Tranche A Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche A Facility Lender**" means any commercial bank, financial institution or other entity which:

(a) is named in Schedule 1 (*The Revolving Credit Facility Lenders*) as a Tranche A Facility Lender (the "**Original Tranche A Facility Lender**"); or

(b) has become party hereto as a Tranche A Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

"**Tranche B Advance**" means an advance made or to be made by the Tranche B Facility Lenders under the Tranche B Facility or the principal amount outstanding for the time being of that advance including a Rollover Advance.

"**Tranche B Facility**" means the HK dollar revolving credit facility granted to the Company under Clause 3.1.2 (*Tranche B Facility*).

"**Tranche B Facility Commitment**" means

(a) in relation to the Original Tranche B Facility Lender, the amount set opposite its name under the column entitled "Tranche B Commitment" in Schedule 1 (*The Revolving Credit Facility Lenders*) and the amount of any other Tranche B Facility Commitment transferred to it under this Agreement; and

(b) in relation to any other Tranche B Facility Lender, the amount of any Tranche B Facility Commitment transferred to it under this Agreement,

to the extent not cancelled pursuant to clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement, reduced or transferred by it in accordance with the Common Terms Agreement.

"**Tranche B Facility Lender**" means any commercial bank, financial institution or other entity which:

(a) is named in Schedule 1 (*The Revolving Credit Facility Lenders*) as a Tranche B Facility Lender (the "**Original Tranche B Facility Lender**"); or

(b) has become party hereto as a Tranche B Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

## 1.2 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 "**Revolving Credit Facility Agent**" or any "**Revolving Credit Facility Lender**" shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and

1.2.3 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 Revolving Credit Facility Lenders for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors and not against any assets or property of any Operative, save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of an individual holding the Executive Director Shares, his or her liability shall be limited to his or her shares in the Company.

## **2.COMMON TERMS AGREEMENT**

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

## **3.THE REVOLVING CREDIT FACILITIES**

### **3.1Grant of the Revolving Credit Facilities**

#### **3.1.1Tranche A Facility**

The Tranche A Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a US dollar revolving credit facility in an aggregate amount of USD427,000,000.

#### **3.1.2Tranche B Facility**

The Tranche B Facility Lenders grant to the Company, upon the terms and subject to the conditions hereof, a HK dollar revolving credit facility in an aggregate amount of HKD2,511,600,000.

## **4.PURPOSE**

4.1.1The Company shall apply all amounts borrowed by it under the Revolving Credit Facilities to pay for the refinancing of existing indebtedness of the Company and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).

4.1.2[Not Used]

4.1.3[Not Used]

4.1.4[Not Used]

## **5.CONDITIONS OF UTILISATION**

### **5.1Conditions precedent**

The provisions of clause 2 (*Conditions Precedent*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

### **5.2Further conditions precedent**

The obligation of each Revolving Credit Facility Lender to participate in each Revolving Credit Facility Advance under this Agreement is subject to the Company having satisfied the following conditions:

- (a)in the case of a Rollover Advance, no Event of Default shall have occurred and is continuing and, in the case of any other Revolving Credit Facility Advance, no Default shall have occurred and is continuing;
- (b)the representations and warranties contained in schedule 4 (*Representations and Warranties*) of the Common Terms Agreement which are repeated by the Company pursuant to clause 17.2 (*Timing*) of the Common Terms Agreement are true and correct in all material respects with reference to the facts and circumstances existing on the Advance Date;
- (c)receipt by the Intercreditor Agent of each of the reports, financial statements and other information if and to the extent due pursuant to paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement on or before the proposed Advance Date; and
- (d)the Company shall have paid or arranged for payment out of the requested Revolving Credit Facility Advance of all fees, expenses and other charges then due and payable by it under the Revolving Credit Facility Finance Documents.

### **5.3Maximum number of Loans**

The Company may not deliver an Advance Request for a Revolving Credit Facility Advance if, as a result of the proposed Revolving Credit Facility Advance, more than ten Revolving Credit Facility Advances would be outstanding.

## 6.AVAILABILITY OF THE REVOLVING CREDIT FACILITIES

### 6.1 Drawdown of Advances

The provisions of clause 3 (*Drawdown of Advances*) and clause 4.2 (*Revolving Credit Facility Availability Period*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

### 6.2 Each Revolving Credit Facility Lender's participation

6.2.1 It is acknowledged and agreed that, as at the Sixth Amendment Effective Date, the Existing Advances have been made, have been applied in accordance with the provisions of clause 4 (*Purpose*) of the Revolving Credit Facility Agreement (as amended, restated, supplemented and/or novated prior to the Sixth Amendment Effective Date) and are outstanding hereunder.

6.2.2 If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Tranche A Facility Lender will participate through its Facility Office in each Tranche A Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche A Commitment to the Available Tranche A Facility immediately prior to the making of that Tranche A Advance.

6.2.3 If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Tranche B Facility Lender will participate through its Facility Office in each Tranche B Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche B Commitment to the Available Tranche B Facility immediately prior to the making of that Tranche B Advance.

## 7. REPAYMENT

(e) The Company shall repay each Revolving Credit Facility Advance on the last day of its Interest Period.

(f) Without prejudice to the Company's obligation under paragraph (a) above, if:

- (i) one or more Revolving Credit Facility Advances are to be made available to the Company:
  - (A) on the same day that a maturing Revolving Credit Facility Advance is due to be repaid by the Company;
  - (B) in the same currency as the maturing Revolving Credit Facility Advance; and
  - (C) in whole or in part for the purpose of refinancing the maturing Revolving Credit Facility Advance; and
- (ii) the proportion borne by each Revolving Credit Facility Lender's participation in the maturing Revolving Credit Facility Advance to the amount of that maturing Revolving Credit Facility Advance is the same as the proportion borne by that Revolving Credit Facility Lender's participation in the new Revolving Credit Facility Advance to the aggregate amount of those new Revolving Credit Facility Advances,

the aggregate amount of the new Revolving Credit Facility Advances shall, unless the Company notifies the Revolving Credit Facility Agent to the contrary in the relevant Advance Request, be treated as if applied in or towards repayment of the maturing Revolving Credit Facility Loan so that:

- (A) if the amount of the maturing Revolving Credit Facility Advance exceeds the aggregate amount of the new Revolving Credit Facility Advances (1) the Company will only be required to make a payment under Clause 14.1 (*Payments*) in an amount in the relevant currency equal to that excess and (2) each Revolving Credit Facility Lender's participation in the new Revolving Credit Facility Advances shall be treated as having been made available and applied by the Company in or towards repayment of that Revolving Credit Facility Lender's participation in the maturing Revolving Credit Facility Advance and that Revolving Credit Facility Advance will not be required to make a payment under Clause 14.1 (*Payments*) in respect of its participation in the new Revolving Credit Facility Advances; and
- (g) if the amount of the maturing Revolving Credit Facility Advance is equal to or less than the aggregate amount of the new Revolving Credit Facility Advances (1) the Company will not be required to make a payment under Clause 14.1 (*Payments*) and (2) each Revolving Credit Facility Lender will be required to make a payment under Clause 14.1 (*Payments*) in respect of its participation in the new Revolving Credit Facility Advances only to the extent that its participation in the new Revolving Credit Facility Advances exceeds that Revolving Credit Facility Lender's participation in the maturing Revolving Credit Facility Loan and the remainder of that Revolving Credit Facility Lender's participation in the new Revolving Credit Facility Advances shall be treated as having been made available and applied by the Company in or towards repayment of that Revolving Credit Facility Lender's participation in the maturing Revolving Credit Facility Advance.

(h) Subject to the other terms of this Agreement and the Common Terms Agreement, any amounts repaid (including with a Rollover

Advance) under Clause 7(a) above may be re-borrowed.

(i) Any amount of any Revolving Credit Facility Advance still outstanding on the Final Repayment Date shall be repaid on the Final Repayment Date.

## 8. CANCELLATION

Any cancellation of Available Commitments shall be made in accordance with this Agreement and the Common Terms Agreement (including clause 8 (*Repayment, Prepayment and Cancellation*) and clause 14 (*Illegality*) of the Common Terms Agreement).

## 9. INTEREST

### 9.1 Calculation of interest

The rate of interest on each Revolving Credit Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

(a) the applicable Margin; and

(b) LIBOR (in the case of a Tranche A Advance) or HIBOR (in the case of a Tranche B Advance).

### 9.2 Payment of interest

The Company shall pay accrued interest on each Revolving Credit Facility Advance on the last day of each Interest Period.

### 9.3 Default Interest

Default interest shall be calculated and paid in accordance with clause 9.4 (*Default Interest*) of the Common Terms Agreement.

### 9.4 Notification of rates of interest

The Revolving Credit Facility Agent shall promptly notify the Company and the Revolving Credit Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

### 9.5 Changes to interest rates

The Revolving Credit Facility Agent shall promptly notify the Company and the Intercreditor Agent of any change to any interest rate occasioned by the operation of clause 10 (*Changes to the calculation of interest*) of the Common Terms Agreement.

## 10. INTEREST PERIODS

The duration of each Interest Period shall be determined in accordance with clause 9.3 (*Interest Periods*) of the Common Terms Agreement.

## 11. NOTIFICATION

Promptly, and in any event, not less than 4 Business Days before the proposed Advance Date for each Revolving Credit Facility Advance, the Revolving Credit Facility Agent shall notify each of the relevant Revolving Credit Facility Lenders of the proposed amount of the relevant Revolving Credit Facility Advance and the aggregate principal amount of the relevant Revolving Credit Facility Advance allocated to such Revolving Credit Facility Lender pursuant to Clause 6.2 (*Each Revolving Credit Facility Lender's participation*) and each Revolving Credit Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Revolving Credit Facility Agent for the account of the Company its said portion of such Revolving Credit Facility Advance.

## 12. COMMITMENT FEE

12.1 The Company shall pay to each Revolving Credit Facility Lender a fee computed at 0.5775% per annum but, if the Leverage Ratio as at the most recent Quarterly Date thereafter is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the rate set out below) no Default has occurred and is continuing, the fee will be computed at the percentage rate per annum specified for that range:

<b>Leverage Ratio</b>	<b>Rate (% per annum)</b>
Less than 1.0	0.5250%
Greater than or equal to 1.0 but less than 3.0	0.5775%
Greater than or equal to 3.0 but less than 3.5	0.6300%
Greater than or equal to 3.5 but less than 4.0	0.6825%
Greater than or equal to 4.0 but less than 4.5	0.7350%
4.5 or above	0.7875%

in each case, on that Revolving Credit Facility Lender's daily Available Commitment from the Sixth Amendment Effective Date to the end of the Revolving Credit Facility Availability Period. Any increase or decrease in such fee shall take effect from the Business Day following the satisfaction of the conditions or expiry of the applicable periods specified above.

12.2 The accrued commitment fee is payable:

12.2.1 in US dollars (or in any other currency mutually agreed between the Company and the relevant Revolving Credit Facility Lender receiving such fee) in respect of accrued commitment fee payable on a Revolving Credit Facility Lender's Available Tranche A Commitment;

12.2.2 in HK dollars (or in any other currency mutually agreed between the Company and the relevant Revolving Credit Facility Lender receiving such fee) in respect of accrued commitment fee payable on a Revolving Credit Facility Lender's Available Tranche B Commitment; and

12.2.3 on the last day of each successive period of three months which ends during the Revolving Credit Facility Availability Period, on the last day of the Revolving Credit Facility Availability Period,

and, if cancelled in full or part, on the cancelled amount of the relevant Revolving Credit Facility Lender's Available Commitment, immediately prior to the time the cancellation is effective.

## 13. CHANGES TO THE PARTIES

### 13.1 Transfers by the Revolving Credit Facility Agent

The Revolving Credit Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Revolving Credit Facility Finance Documents to a replacement Revolving Credit Facility Agent appointed in accordance with the terms of the Common Terms Agreement.

### 13.2 Transfers by the Company

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Revolving Credit Facility Finance Documents.

### 13.3 Transfers by the Revolving Credit Facility Lenders

A Revolving Credit Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Revolving Credit Facility Finance Documents in accordance with clause 21.4 (*Assignment and Transfer by Lenders*), clause 21.5 (*Assignments by Lenders*) and clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement.

### 13.4 Assignment and Transfer Fees

On the date upon which an assignment takes effect pursuant to clause 21.5 (*Assignments by Lenders*) of the Common Terms Agreement or a transfer takes effect pursuant to clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement, the relevant assignee or transferee shall pay to the Intercreditor Agent for its own account a fee in accordance with clause 21.7 (*Assignment and Transfer Fees*) of the Common Terms Agreement.

## 14. PAYMENTS

### 14.1 Payments

14.1.1 All payments under this Agreement shall be made in accordance with clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

14.1.2 Subject to clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company or a Revolving Credit Facility Lender, the Company or, as the case may be, such Revolving Credit Facility Lender, shall make the same available to the Revolving Credit Facility Agent for value on such due date and at such time and in such funds and to such account with such bank as the Revolving Credit Facility Agent shall specify from time to time.

### 14.2 Partial Payments

14.2.1 If the Revolving Credit Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Revolving Credit Facility Lenders under the Revolving Credit Facility Finance Documents, the Revolving Credit Facility Agent shall apply that payment towards the obligations of the Company under the Revolving Credit Facility Finance Documents in the following order:

- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Revolving Credit Facility Lenders under clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;



- (b)**secondly**, in or towards payment *pro rata* of all amounts paid by the Revolving Credit Facility Lenders under Clause 15.3 (*Indemnity to Revolving Credit Facility Agent*) but which have not been reimbursed by the Company;
- (c)**thirdly**, in or towards payment *pro rata* of all costs and expenses incurred by the Revolving Credit Facility Lenders which the Company is obliged to reimburse;
- (d)**fourthly**, in or towards payment *pro rata* of all accrued and unpaid interest (including default interest), fees and commissions due to the Revolving Credit Facility Lenders under the Revolving Credit Facility Finance Documents;
- (e)**fifthly**, in or towards payment *pro rata* of any principal due to the Revolving Credit Facility Lenders under the Revolving Credit Facility Finance Documents but unpaid; and
- (f)**sixthly**, in or towards payment *pro rata* of any other sum due to the Revolving Credit Facility Lenders under the Revolving Credit Facility Finance Documents but unpaid.

14.2.2 The Revolving Credit Facility Agent shall, if so directed by the Majority Revolving Credit Facility Lenders, vary the order set out in sub-clause 14.2.1 above.

14.2.3 Sub-clause 14.2.1 above will override any appropriation made by the Company.

## 15. DECISION MAKING AMONGST REVOLVING CREDIT FACILITY LENDERS

### 15.1 Decisions

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purposes of any decision within the scope of clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement relating to this Agreement shall be the Revolving Credit Facility Agent acting on the instructions of the Majority Revolving Credit Facility Lenders.

### 15.2 Failure to Give Instructions

If the Revolving Credit Facility Agent gives notice to the Revolving Credit Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Revolving Credit Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Revolving Credit Facility Lender which fails to respond by the date and time so specified shall have its portion of the Revolving Credit Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Revolving Credit Facility Agent by the Majority Revolving Credit Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Revolving Credit Facility Advances outstanding, the Available Commitments and portion of Revolving Credit Facility Advances of such Revolving Credit Facility Lender shall be deducted).

### 15.3 Indemnity to Revolving Credit Facility Agent

15.3.1 Each Revolving Credit Facility Lender shall, rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Revolving Credit Facility Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Revolving Credit Facility Lenders (or, if all such amounts have been reduced to zero, such proportion determined immediately prior to such reduction) for the time being, indemnify the Revolving Credit Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Revolving Credit Facility Agent (other than by reason of the negligence or wilful misconduct of the Revolving Credit Facility Agent) in acting as Revolving Credit Facility Agent under any of the Senior Finance Documents (unless the Revolving Credit Facility Agent has been reimbursed by the Company pursuant to a Senior Finance Document).

15.3.2 Provided that the Company is required to reimburse or indemnify the Revolving Credit Facility Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Revolving Credit Facility Lender, indemnify such Revolving Credit Facility Lender in relation to any payment actually made by such Revolving Credit Facility Lender pursuant to Clause 15.3.1 above.

## 16. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

## 17. GOVERNING LAW

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

## 18. JURISDICTION

### 18.1 Jurisdiction of English courts

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a "**Dispute**").

18.1.2 The parties hereto agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 (*Jurisdiction of English courts*) is for the benefit of the Revolving Credit Finance Parties only. As a result, no Revolving Credit Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Revolving Credit Facility Finance Documents, the Revolving Credit Finance Parties may take concurrent proceedings in any number of jurisdictions.

### 18.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Company:

(a) irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

(b) agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.

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

### SCHEDULE 1 THE REVOLVING CREDIT FACILITY LENDERS

Revolving Credit Facility Lender	Tranche A Commitment (USD)	Tranche B Commitment (HKD)
Bank of China Limited, Macau Branch	427,000,000	2,511,600,000
<b>Total</b>	427,000,000	2,511,600,000

### SCHEDULE 2 FORM OF ADVANCE REQUEST FOR A REVOLVING CREDIT FACILITY ADVANCE

To:  as Intercreditor Agent

as Revolving Credit Facility Agent

Date:

Dear Sirs,

**Wynn Resorts (Macau) S.A. - Revolving Credit Facility Agreement dated 31 July 2012 (as amended by the Revolving Credit Facility Amendment Agreement dated 30 September 2015 and the Revolving Credit Facility Second Amendment Agreement dated [●]) (the "Agreement")**

**Advance Request No.**

1. We refer to the Agreement and the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 (as amended from time to time) and made between, among others, Wynn Resorts (Macau) S.A. (the "**Company**"), the financial institutions defined therein as Revolving Credit Facility Lenders, the Revolving Credit Facility Agent, the Intercreditor Agent and the Security

Agent. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.

2. This is an Advance Request given pursuant to Clause 3 (*Drawdown of Advances*) of the Common Terms Agreement.
3. This Advance Request is irrevocable.
4. We hereby give you notice that, upon the terms and subject to the conditions contained in the Common Terms Agreement and the Revolving Credit Facility Agreement, we wish to borrow the following Revolving Credit Facility Advance under the following Revolving Credit Facility on the following terms:  
Proposed Advance Date: [     ]  
Revolving Credit Facility:            [Tranche A/Tranche B] Facility  
Amount: [USD][HKD][     ]  
Interest Period: [1, 2, 3 or 6] months
5. We confirm that:
  - (a) each condition specified in Clause 5.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Advance Request;
  - (b) the Revolving Credit Facility Advance complies with the permitted use of the Revolving Credit Facilities under the Revolving Credit Facility Agreement and clause 5 (*Purpose*) of the Common Terms Agreement; and
  - (c) since the Sixth Amendment Effective Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur.
6. We attach signed but undated receipts for the Revolving Credit Facility Advance requested above and hereby authorise the Revolving Credit Facility Agent to date such receipts on the date such Revolving Credit Facility Advances are made.
7. The proceeds of the above Revolving Credit Facility Advance should be credited to [     ].

Yours faithfully,

\_\_\_\_\_

Name:  
Responsible Officer  
for and on behalf of  
**Wynn Resorts (Macau) S.A.**

Attachments: Receipts for the Revolving Credit Facility Advance

## SUBSIDIARIES OF WYNN RESORTS, LIMITED

Asia Development, LLC  
Chamber Associates, LLC  
Development Associates, LLC  
Las Vegas Jet, LLC  
Las Vegas Jet Hanger, LLC  
Massachusetts Property, LLC (a Massachusetts company)  
    3 Bow Street, LLC (a Massachusetts company)  
    23 Bow Street, LLC (a Massachusetts company)  
    41 Bow Street, LLC (a Massachusetts company)  
    49 Bow Street, LLC (a Massachusetts company)  
    51 Bow Street, LLC (a Massachusetts company)  
    55 Bow Street, LLC (a Massachusetts company)  
    57 Bow Street, LLC (a Massachusetts company)  
    61 Bow Street, LLC (a Massachusetts company)  
    63 Bow Street, LLC (a Massachusetts company)  
    80 Bow Street, LLC (a Massachusetts company)  
    82 Bow Street, LLC (a Massachusetts company)  
    98 Bow Street, LLC (a Massachusetts company)  
    103 Broadway, LLC (a Massachusetts company)  
    127 Broadway, LLC (a Massachusetts company)  
    10 Gardner Street, LLC (a Massachusetts company)  
    8 Lynde Street, LLC (a Massachusetts company)  
    10 Lynde Street, LLC (a Massachusetts company)  
    12 Lynde Street, LLC (a Massachusetts company)  
    18 Lynde Street, LLC (a Massachusetts company)  
    21 Lynde Street, LLC (a Massachusetts company)  
    27 Lynde Street, LLC (a Massachusetts company)  
    28 Lynde Street, LLC (a Massachusetts company)  
    29 Lynde Street, LLC (a Massachusetts company)  
    32 Lynde Street, LLC (a Massachusetts company)  
    12 Mystic Street, LLC (a Massachusetts company)  
    15 Mystic Street, LLC (a Massachusetts company)  
    33 Mystic Street, LLC (a Massachusetts company)  
    35 Mystic Street, LLC (a Massachusetts company)  
    40 Mystic Street, LLC (a Massachusetts company)  
    51 Mystic Street, LLC (a Massachusetts company)  
    14-16 Robin Street, LLC (a Massachusetts company)  
    6 Scott Place, LLC (a Massachusetts company)  
    7 Scott Place, LLC (a Massachusetts company)  
    10 Scott Place, LLC (a Massachusetts company)  
    12 Scott Place, LLC (a Massachusetts company)  
    2 Thompson Street, LLC (a Massachusetts company)  
    5 Thorndike Street, LLC (a Massachusetts company)  
    7 Thorndike Street, LLC (a Massachusetts company)  
    11 Thorndike Street, LLC (a Massachusetts company)  
    21 Thorndike Street, LLC (a Massachusetts company)  
    68 Tremont Street, LLC (a Massachusetts company)  
    East Broadway, LLC (a Massachusetts company)  
    Everett Broadway, LLC (a Massachusetts company)  
Nevada Realty Associates, LLC  
Rambas Marketing Co., LLC  
    Wynn Indonesia Marketing, LLC  
    Wynn International Marketing, Ltd (an Isle of Man limited liability company)  
Toasty, LLC (a Delaware limited liability company)  
Valvino Lamore, LLC

WA Insurance, LLC  
WDD Massachusetts Purchasing, LLC  
WestWynn, LLC  
World Travel G-IV, LLC  
Worldwide Wynn, LLC  
WSI Holdco, LLC  
WSI Investment, LLC  
WSI US, LLC  
Wynn Aircraft, LLC  
Wynn Aircraft II, LLC  
Wynn Aircraft III, LLC  
Wynn Aircraft IV, LLC  
Wynn Aircraft V, LLC  
Wynn Design & Development, LLC  
Wynn Energy, LLC  
Wynn Gallery, LLC  
Wynn Golf, LLC  
Wynn Group Asia, Inc.  
    WM Cayman Holdings Limited I (a Cayman Islands company)  
        Wynn Macau, Limited (a Cayman Islands company and a 72% owned company)  
        WML Corp. Ltd. (a Cayman Islands company)  
        WM Cayman Holdings Limited II (a Cayman Islands company)  
            Wynn Resorts, International, Ltd. (an Isle of Man company)  
            Wynn Resorts (Macau) Holdings, Ltd. (an Isle of Man company)  
            Wynn Resorts (Macau), Ltd. (a Hong Kong Limited company)  
            Wynn Resorts (Macau), S.A. (a Macau SA company)  
            Palo Real Estate Company Ltd. (a Macau SA company)  
        WML Finance I Limited (a Cayman Islands company)  
Wynn Interactive, LLC  
Wynn IOM Holdco I, Ltd. (an Isle of Man company)  
    Wynn IOM Holdco II, Ltd. (an Isle of Man company)  
    SH Hotelaria Limitada (a Macau limited company)  
    SH Hotelaria Hong Kong Limited (a Hong Kong company)  
    Wynn Manpower, Limited (a Macau limited company)  
    Palo Marketing Services Limited (a Macau limited company)  
        Palo Hong Kong Limited (a Hong Kong company)  
    Palo Manpower Hong Kong Limited (a Hong Kong company)  
Wynn Macau Development Company, LLC  
Wynn North Asia, LLC  
Wynn Online Store, LLC  
Wynn Plaza, LLC  
    Wynn/CA Plaza JV, LLC  
        Wynn/CA Plaza Property Owner, LLC  
Wynn Resorts Development, LLC  
    Wynn Resorts Development (Japan) Godo Kaisha (a Japan Company)  
Wynn Resorts Hotel Marketing & Sales (Asia), LLC  
Wynn Resorts Holdings, LLC  
    Wynn America, LLC  
        Everett Property, LLC (a Massachusetts company)  
        Wynn MA, LLC  
    Wynn Las Vegas Holdings, LLC  
    Wynn Las Vegas, LLC  
        Kevyn, LLC  
        WLV Events, LLC  
    World Travel, LLC  
    Wynn Las Vegas Capital Corp.  
    Wynn Show Performers, LLC  
    Wynn Sunrise, LLC  
Wynn Retail, LLC

Wynn/CA JV, LLC

Wynn/CA Property Owner, LLC

Wynn Social Gaming, LLC

Wynn Vacations, LLC

**All subsidiaries are formed in the State of Nevada and wholly owned unless otherwise specifically identified.**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-196113) pertaining to the 2014 Omnibus Incentive Plan of Wynn Resorts, Limited,
- (2) Registration Statement (Form S-8 No. 333-168323) pertaining to the Stock Incentive Plan of Wynn Resorts, Limited,
- (3) Registration Statement (Form S-8 No. 333-100891) pertaining to the 2002 Stock Incentive Plan of Wynn Resorts, Limited, and
- (4) Registration Statement (Form S-3 No. 333-214505) of Wynn Resorts, Limited;

of our reports dated February 28, 2019, with respect to the consolidated financial statements and schedule of Wynn Resorts, Limited and the effectiveness of internal control over financial reporting of Wynn Resorts, Limited, included in this Annual Report (Form 10-K) of Wynn Resorts, Limited for the year ended December 31, 2018.

/s/ Ernst & Young LLP

Las Vegas, Nevada  
February 28, 2019

**Certification of the Chief Executive Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Matt Maddox, certify that:

1. I have reviewed this Annual Report on Form 10-K of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: February 28, 2019

/s/ Matt Maddox

Matt Maddox  
Chief Executive Officer and President  
(Principal Executive Officer)



**Certification of the Chief Financial Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Craig S. Billings, certify that:

1. I have reviewed this Annual Report on Form 10-K of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: February 28, 2019

/s/ Craig S. Billings\_\_\_\_\_

Craig S. Billings  
Chief Financial Officer and Treasurer  
(Principal Financial and Accounting Officer)

**Certification of CEO and CFO Pursuant to  
18 U.S.C. Section 1350, as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of Wynn Resorts, Limited (the "Company") for the year ended December 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Matt Maddox, as Chief Executive Officer of the Company, and Craig S. Billings, 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/ Matt Maddox

Name: Matt Maddox

Title: Chief Executive Officer and President  
(Principal Executive Officer)

Date: February 28, 2019

/s/ Craig S. Billings

Name: Craig S. Billings

Title: Chief Financial Officer and Treasurer  
(Principal Financial and Accounting Officer)

Date: February 28, 2019

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.