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

FORM 10-Q

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

For the quarterly period ended June 30, 2007

OR

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

For the transition period from _____ to _____

Commission File No. 000-50028

WYNN RESORTS, LIMITED

(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction of
incorporation or organization)

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

3131 Las Vegas Boulevard South—Las Vegas, Nevada 89109
(Address of principal executive offices) (Zip Code)

(702) 770-7555
(Registrant's telephone number, including area code)

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

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

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

Large accelerated filer Accelerated filer Non-accelerated filer

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

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

Class	Outstanding at July 31, 2007
Common stock, \$0.01 par value	109,912,140

WYNN RESORTS, LIMITED AND SUBSIDIARIES

INDEX

Part I.	Financial Information	
Item 1.	Financial Statements	
	Condensed Consolidated Balance Sheets (unaudited)—June 30, 2007 and December 31, 2006	3
	Condensed Consolidated Statements of Operations (unaudited)—Three and Six months ended June 30, 2007 and 2006	4
	Condensed Consolidated Statements of Cash Flows (unaudited)—Six months ended June 30, 2007 and 2006	5
	Notes to Condensed Consolidated Financial Statements (unaudited)	6
Item 2.	Management’s Discussion and Analysis of Financial Condition and Results of Operations	29
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	45
Item 4.	Controls and Procedures	47
Part II.	Other Information	
Item 1A.	Risk Factors	48
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	48
Item 4.	Submission of Matters to a Vote of Security Holders	49
Item 6.	Exhibits	50
	Signature	51

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

	June 30, 2007	December 31, 2006
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 838,539	\$ 789,407
Restricted cash and investments	10,288	58,598
Receivables, net	124,969	140,232
Inventories	65,418	64,368
Deferred income taxes	17,955	13,727
Prepaid expenses and other	34,550	30,759
Total current assets	<u>1,091,719</u>	<u>1,097,091</u>
Restricted cash and investments	30,312	178,788
Property and equipment, net	3,456,380	3,157,622
Intangibles, net	62,551	65,135
Deferred financing costs	82,523	74,871
Deposits and other assets	128,756	80,692
Investment in unconsolidated affiliates	5,262	5,981
Total assets	<u>\$ 4,857,503</u>	<u>\$ 4,660,180</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of long-term debt	\$ 3,505	\$ 6,115
Current portion of land concession obligation	5,587	7,433
Accounts and construction payable	155,150	115,612
Income taxes payable	78,670	87,164
Accrued interest	15,611	15,495
Accrued compensation and benefits	65,547	71,537
Gaming taxes payable	52,186	46,403
Other accrued expenses	13,795	13,926
Customer deposits and other liabilities	114,467	131,702
Construction retention	17,298	15,700
Total current liabilities	<u>521,816</u>	<u>511,087</u>
Long-term debt	2,473,889	2,380,537
Other long-term liabilities	18,743	5,214
Long-term land concession obligation	8,915	11,809
Deferred income taxes	133,969	97,064
Construction retention	21,961	8,884
Total liabilities	<u>3,179,293</u>	<u>3,014,595</u>
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Preferred stock, par value \$0.01; authorized 40,000,000 shares; no shares issued and outstanding .	—	—
Common stock, par value \$0.01; authorized 400,000,000 shares; 102,056,781 and 101,887,031 shares issued and 100,745,947 and 101,887,031 outstanding	1,021	1,018
Treasury stock, at cost (1,310,834 shares)	(123,393)	—
Additional paid-in capital	2,036,417	2,022,408
Accumulated other comprehensive loss	(3,998)	(94)
Accumulated deficit	(231,837)	(377,747)
Total stockholders' equity	<u>1,678,210</u>	<u>1,645,585</u>
Total liabilities and stockholders' equity	<u>\$ 4,857,503</u>	<u>\$ 4,660,180</u>

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Operating revenues:				
Casino	\$ 491,825	\$ 113,527	\$ 949,017	\$ 240,041
Rooms	87,797	69,222	173,088	137,399
Food and beverage	92,226	77,686	180,109	152,320
Entertainment, retail and other	62,661	49,389	114,866	98,346
Gross revenues	<u>734,509</u>	<u>309,824</u>	<u>1,417,080</u>	<u>628,106</u>
Less: promotional allowances	(46,968)	(36,454)	(94,222)	(77,511)
Net revenues	<u>687,541</u>	<u>273,370</u>	<u>1,322,858</u>	<u>550,595</u>
Operating costs and expenses:				
Casino	289,668	57,920	554,393	121,156
Rooms	21,365	18,140	42,341	35,125
Food and beverage	54,953	49,423	109,208	94,182
Entertainment, retail and other	41,446	34,112	76,547	66,626
General and administrative	74,294	49,011	152,460	95,976
Provision for doubtful accounts	14,362	3,646	22,103	6,575
Pre-opening costs	889	17,028	2,725	25,974
Depreciation and amortization	51,902	40,542	103,426	82,327
Contract termination fee	—	—	—	5,000
Property charges and other	13,021	2,376	26,290	7,325
Total operating costs and expenses	<u>561,900</u>	<u>272,198</u>	<u>1,089,493</u>	<u>540,266</u>
Equity in income from unconsolidated affiliates	512	511	967	1,086
Operating income	<u>126,153</u>	<u>1,683</u>	<u>234,332</u>	<u>11,415</u>
Other income (expense):				
Interest and other income	10,408	9,617	22,508	18,049
Interest expense, net of capitalized interest	(35,460)	(35,307)	(73,133)	(71,250)
Increase in swap fair value	2,334	4,246	1,859	10,591
Loss from extinguishment of debt	—	—	(157)	—
Other income (expense), net	<u>(22,718)</u>	<u>(21,444)</u>	<u>(48,923)</u>	<u>(42,610)</u>
Income (loss) before income taxes	103,435	(19,761)	185,409	(31,195)
Provision for income taxes	(13,885)	(309)	(37,454)	(309)
Net income (loss)	<u>\$ 89,550</u>	<u>\$ (20,070)</u>	<u>\$ 147,955</u>	<u>\$ (31,504)</u>
Basic and diluted income (loss) per common share:				
Net income (loss):				
Basic	\$ 0.88	\$ (0.20)	\$ 1.46	\$ (0.32)
Diluted	\$ 0.82	\$ (0.20)	\$ 1.36	\$ (0.32)
Weighted average common shares outstanding:				
Basic	101,214	99,830	101,307	99,286
Diluted	112,111	99,830	112,237	99,286

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

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

	Six Months Ended	
	June 30,	
	2007	2006
Cash flows from operating activities:		
Net income (loss)	\$ 147,955	\$ (31,504)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	103,426	82,327
Deferred income taxes	36,641	—
Stock-based compensation	9,341	7,802
Amortization and writeoffs of deferred financing costs, and other	10,183	7,466
Loss on extinguishment of debt	157	—
Provision for doubtful accounts	22,103	6,575
Property charges and other	26,290	7,325
Equity in income of unconsolidated affiliates, net of distributions	719	(123)
Increase in swap fair value	(1,859)	(10,591)
Increase (decrease) in cash from changes in:		
Receivables, net	(2,619)	16,121
Inventories and prepaid expenses and other	(7,338)	(11,547)
Accounts payable and accrued expenses	(7,818)	(32,393)
Net cash provided by operating activities	337,181	41,458
Cash flows from investing activities:		
Capital expenditures, net of construction payables	(379,562)	(225,584)
Restricted cash and investments	196,786	(11,994)
Purchase of intangibles and other assets	(58,753)	(73,527)
Proceeds from sale of equipment	1,632	—
Net cash used in investing activities	(239,897)	(311,105)
Cash flows from financing activities:		
Proceeds from exercise of stock options	4,262	4,788
Proceeds from issuance of long-term debt	220,576	227,279
Principal payments of long-term debt	(128,691)	(13,032)
Purchase of treasury stock	(123,393)	—
Payments on long-term land concession obligation	(4,659)	(4,397)
Payments of deferred financing costs	(14,343)	(328)
Net cash provided by (used in) financing activities	(46,248)	214,310
Effect of exchange rate on cash	(1,904)	—
Cash and cash equivalents:		
Increase (decrease) in cash and cash equivalents	49,132	(55,337)
Balance, beginning of period	789,407	434,289
Balance, end of period	<u>\$ 838,539</u>	<u>\$ 378,952</u>

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

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

1. Organization and Basis of Presentation

Organization

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

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

The Company currently owns and operates two casino hotel resort properties, Wynn Las Vegas, which opened on April 28, 2005 and Wynn Macau, which opened on September 6, 2006. In addition, the Company is constructing “Encore at Wynn Las Vegas” or “Encore” and continues development of the second phase of Wynn Macau, as well as the Diamond Suites hotel tower at Wynn Macau. Encore will be fully integrated with Wynn Las Vegas and is being constructed on 20 acres of land immediately adjacent to Wynn Las Vegas. Encore is expected to open to the public in early 2009. The second phase of Wynn Macau will be fully integrated into the first phase and is being constructed on the five remaining acres of the 16 acres of land for Wynn Macau. Wynn Macau intends to open approximately 20,000 square feet of additional gaming space and one restaurant in the expansion area in the third quarter of 2007. Further expansion areas are expected to open by Chinese New Year, 2008.

Basis of Presentation

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

The accompanying condensed consolidated financial statements have been prepared by the Company pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations, although the Company believes that the disclosures herein are adequate to make the information presented not misleading. In the opinion of management, all adjustments (which include only normal recurring adjustments) necessary for a fair presentation of the results for the interim periods have been made. The results for the three and six months ended June 30, 2007 are not necessarily indicative of results to be expected for the full fiscal year. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto in the Company’s Annual Report on Form 10-K for the year ended December 31, 2006.

2. Summary of Significant Accounting Policies

Accounts receivable and credit risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of casino accounts receivable. The Company issues credit in the form of “markers” to approved

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

casino customers following investigations of creditworthiness. At June 30, 2007 and December 31, 2006, approximately 63% and 59%, respectively, of the Company's markers were due from customers residing outside the United States, primarily in Asia. Business or economic conditions or other significant events in these countries could affect the collectibility of such receivables.

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

Inventories

Inventories consist of retail, 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, average and specific identification methods.

Revenue recognition and promotional allowances

Casino revenues are measured by the aggregate net difference between gaming wins and losses, with liabilities recognized for funds deposited by customers before gaming play occurs and for chips in the customers' possession. Hotel, food and beverage, entertainment and other operating revenues are recognized when services are performed. Advance deposits on rooms and advance ticket sales are recorded as deferred revenues until services are provided to the customer.

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

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

	Three months ended		Six months ended	
	June 30,		June 30,	
	2007	2006	2007	2006
Rooms	\$ 7,808	\$ 5,916	\$14,846	\$12,044
Food & Beverage	16,069	13,385	33,354	29,232
Entertainment, retail and other	1,611	2,126	3,999	4,756
Total	<u>\$25,488</u>	<u>\$21,427</u>	<u>\$52,199</u>	<u>\$46,032</u>

Advertising Costs

The Company expenses advertising costs the first time the advertising takes place. Advertising costs incurred in development periods are included in pre-opening costs. Once a project is completed, advertising costs

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

are included in general and administrative expenses. For the three months ended June 30, 2007 and 2006, advertising costs totaled approximately \$5.7 million and \$6.1 million, respectively. For the six months ended June 30, 2007 and 2006, advertising costs totaled approximately \$13.6 million and \$11.6 million, respectively.

Reclassifications

Certain amounts in the condensed consolidated financial statements for 2006 have been reclassified to be consistent with the current year presentation. These reclassifications had no effect on the previously reported net loss.

Recently Issued Accounting Standards

In June 2006, the Financial Accounting Standards Board (“FASB”) issued Interpretation No. 48 (“FIN 48”) “Accounting for Uncertainty in Income Taxes”. This interpretation clarifies the accounting for uncertainty in income taxes recognized in a company’s financial statements in accordance with FASB Statement No. 109, “Accounting for Income Taxes”. The interpretation provides guidance on classification, interest and penalties, accounting in interim periods, disclosure, and translation. This interpretation is effective for fiscal years beginning after December 15, 2006. The adoption of this statement was effective January 1, 2007. The Company recorded a \$2 million cumulative effect adjustment to accumulated deficit in the first quarter of 2007 as a result of the adoption of FIN 48. See Note 15 for additional information.

In September 2006, the FASB issued Statement of Financial Accounting Standards (“SFAS”) No. 157, “Fair Value Measurements”. This Statement defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements under other accounting pronouncements that require or permit fair value measurements. Accordingly, this Statement does not require any new fair value measurements. This statement is effective for fiscal years beginning after November 15, 2007. The Company has not yet determined the impact this statement will have on its consolidated financial statements after it is adopted on January 1, 2008.

In June 2006, the FASB ratified the consensus reached on EITF Issue No. 06-03, “How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (that is, Gross Versus Net Presentation)”. The EITF reached a consensus that the presentation of taxes on either a gross or net basis is an accounting policy decision that requires disclosure. EITF Issue No. 06-03 is effective for the first interim or annual reporting period beginning after December 15, 2006. The Company has historically and will continue to record taxes collected from customers on a net basis. Accordingly, the adoption of EITF Issue No. 06-03 did not have an effect on the Company’s results of operation or financial position.

3. Earnings Per Share

Earnings per share are calculated in accordance with SFAS No. 128, “Earnings per Share,” which provides for the reporting of “basic,” or undiluted, earnings per share (“EPS”) and “diluted” EPS. Basic EPS is computed by dividing net income by the weighted average number of shares outstanding during the period. Diluted EPS reflects the addition of potentially dilutive securities, which for the Company include: stock options, nonvested stock, and the 6% Convertible Subordinated Debentures due 2015 (the “Debentures”) which were called for redemption in July 2007 (see Note 8).

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Weighted average common shares outstanding (used in calculation of basic earnings per share)	101,214	99,830	101,307	99,286
Potential dilution from the assumed exercise of stock options, non-vested stock, and the Debentures	10,897	—	10,930	—
Weighted average common and common equivalent shares outstanding (used in calculation of diluted earnings per share)	<u>112,111</u>	<u>99,830</u>	<u>112,237</u>	<u>99,286</u>

The calculation of diluted EPS for the three months and six months ended June 30, 2007 also includes an addition to net income of \$2.3 million and \$4.6 million, respectively, to reflect the interest expense, net of related tax effects that would not have been incurred on the Debentures, if converted.

For the three months and six months ended June 30, 2006, the Company incurred a net loss. As a result, basic EPS is equal to diluted EPS for those periods. The calculation of diluted EPS for the six months ended June 30, 2006 excludes the following anti-dilutive securities: 3,329,750 shares issuable upon exercise of stock options, 270,000 shares under nonvested stock grants and 9,768,948 shares issuable upon conversion of the Debentures.

4. Comprehensive Income (loss)

Comprehensive income (loss) for the three months and six months ended June 30, 2007 and June 30, 2006 consisted of the following (amounts in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Net income (loss)	\$89,550	\$(20,070)	\$147,955	\$(31,504)
Currency translation adjustment	(261)	(229)	(3,904)	(229)
Comprehensive income (loss)	<u>\$89,289</u>	<u>\$(20,299)</u>	<u>\$144,051</u>	<u>\$(31,733)</u>

Accumulated other comprehensive loss as of June 30, 2007 and December 31, 2006 consists of cumulative translation adjustments.

5. Supplemental Disclosure of Cash Flow Information

Interest paid for the six months ended June 30, 2007 and 2006 totaled approximately \$82.7 million and \$80.1 million, respectively. Interest capitalized for the six months ended June 30, 2007 and 2006 totaled approximately \$16.1 million and \$14.9 million, respectively.

Stock-based compensation related to employees dedicated to the construction of Encore and Wynn Macau that was capitalized as a part of construction in progress for the six months ended June 30, 2007 and 2006 totaled approximately \$408,000 and \$1 million, respectively.

During the six months ended June 30, 2006, approximately \$25.3 million principal amount of the Debentures were converted into 1,100,602 shares of common stock of Wynn Resorts, Limited. Accordingly,

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

long-term debt was reduced by approximately \$25.3 million, equity was increased by approximately \$24.6 million and deferred financing costs were reduced by approximately \$669,000. There were no conversions during the six months ended June 30, 2007.

During the six months ended June 30, 2007 and 2006, capital expenditures excludes approximately a \$45.4 million increase and a \$1.1 million decrease, respectively, in construction payables and retention.

6. Receivables, net

Receivables, net consist of the following (amounts in thousands):

	June 30, 2007	December 31, 2006
Casino	\$ 147,695	\$ 148,929
Hotel	24,431	17,292
Other	9,015	9,538
	<u>181,141</u>	<u>175,759</u>
Less: allowance for doubtful accounts	(56,172)	(35,527)
	<u>\$ 124,969</u>	<u>\$ 140,232</u>

7. Property and Equipment, net

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

	June 30, 2007	December 31, 2006
Land and improvements	\$ 615,776	\$ 603,290
Buildings and improvements	1,571,566	1,553,447
Airplanes	57,639	57,582
Furniture, fixtures and equipment	810,108	788,375
Leasehold interest in land	66,866	67,187
Construction in progress	677,968	345,377
	<u>3,799,923</u>	<u>3,415,258</u>
Less: accumulated depreciation	(343,543)	(257,636)
	<u>\$ 3,456,380</u>	<u>\$ 3,157,622</u>

As of June 30, 2007 and December 31, 2006, construction in progress includes interest and other costs capitalized in conjunction with Encore and the second phase of Wynn Macau.

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

8. Long-Term Debt

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

	June 30, 2007	December 31, 2006
6 ⁵ / ₈ % First Mortgage Notes, due December 1, 2014	\$ 1,300,000	\$ 1,300,000
\$1 billion Term Loan Facility, due June 21, 2010; interest at LIBOR plus 2.25%	100,000	—
6% Convertible Subordinated Debentures, due July 15, 2015	224,128	224,128
\$900 million Revolving Credit Facility; due August 15, 2011; interest at LIBOR plus 1.625%	—	88,892
\$225 million Term Loan Facility; \$112.5 million due September 30, 2012 with remaining \$112.5 million due August 15, 2013; Interest at LIBOR plus 1.875%	225,000	225,000
\$550 million Macau Senior Term Loan Facility (as amended June 2007); due June 27, 2014; interest at LIBOR or HIBOR plus 1.75%	549,193	496,729
\$44.75 million Note Payable; due March 31, 2010; interest at LIBOR plus 2.375%	—	38,510
\$42 million Note Payable; due April 1, 2017; interest at LIBOR plus 1.25%	41,650	—
\$32.5 million Term Loan; due August 10, 2012; interest at LIBOR plus 1.15%	24,428	—
Note Payable - Aircraft; interest at 5.67%	12,902	13,274
Other	93	119
	<u>2,477,394</u>	<u>2,386,652</u>
Current portion of long-term debt	<u>(3,505)</u>	<u>(6,115)</u>
	<u>\$ 2,473,889</u>	<u>\$ 2,380,537</u>

\$1 Billion Term Loan

On June 21, 2007, the Company entered into a \$1 billion term loan facility (“Term Loan”). Borrowings under the Term Loan are available in the form of a delayed-draw term loan facility available through December 31, 2007, with the option to increase the facility to \$1.25 billion if certain conditions are met. The Term Loan will mature and be payable on June 21, 2010. The Company may use the Term Loan to fund (a) the Company’s equity repurchase program announced on June 7, 2007, (b) up to \$150 million in swing line (overnight) borrowings and (c) up to \$350 million for general corporate purposes.

Loans under the Term Loan will accrue interest, at the election of the Company, at either the London Interbank Offer Rate (“LIBOR”) or a Base Rate, plus a borrowing margin as described below. Interest on LIBOR loans shall be payable at the end of the applicable interest period in the case of interest periods of one, two or three months, and every three months in the case of interest periods of six months or longer. Base Rate loans are expected to bear interest at (a) the greater of (i) the rate most recently announced by Deutsche Bank as its “prime rate,” or (ii) the Federal Funds Rate plus 1/2 of 1% per annum; plus (b) a borrowing margin as described below. Interest on Base Rate loans will be payable quarterly in arrears. The borrowing margin is 2.25% for LIBOR loans and 1% for Base Rate loans, if Wynn Resorts, Limited and Wynn Macau’s combined net liquidity is equal to or greater than \$400 million and 2.50% for LIBOR loans and 1.25% for Base Rate loans, if such net liquidity is less than \$400 million. The Company will pay 112.5 bps per annum of the actual daily amount by which the actual Term Loan commitment exceeds the outstanding amount of the Term Loan.

Redemption of 6% Convertible Subordinated Debentures due July 15, 2015

On June 15, 2007, the Company announced that it had called for redemption on July 20, 2007, all of the outstanding principal amount of its 6% Convertible Subordinated Debentures due 2015 (the “Debentures”). Prior

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

to redemption, in July 2007 all of the holders converted their Debentures into shares of the Company's common stock at a conversion price of \$23 per share (a conversion rate of approximately 43.4782 shares per \$1,000 principal amount of Debentures). Cash was paid in lieu of fractional shares. As a result, in July 2007 \$224.1 million principal amount of the debentures were converted into 9,744,680 shares of the Company's common stock. Accordingly, in July 2007 long-term debt was reduced by \$224.1 million, equity was increased by \$218.9 million, and deferred financing costs were reduced by approximately \$5.2 million.

Wynn Las Vegas Credit Facilities

In April 2007, the Company amended the Wynn Las Vegas \$900 million Revolving Credit Facility and its \$225 million Term Loan Facility (together the "Wynn Las Vegas Credit Facilities," or the "Credit Facilities") to: (a) have the Final Completion as defined, be deemed satisfied for Wynn Las Vegas with the resulting release of (i) all amounts in excess of \$30 million, which amount must remain for the completion of Encore, from the Completion Guaranty Deposit Account, (\$24.6 million), and (ii) the balance of funds in the Project Liquidity Reserve Account (\$32.8 million), (b) increase the permitted expenditures for Encore from \$300 million to \$500 million prior to the execution of a guaranteed maximum price construction contract, and (c) permit the issuance of up to \$500 million of unsecured debt as and when permitted under the indenture governing the 6 5/8% First Mortgage Notes due December 1, 2014 (the "First Mortgage Notes").

Wynn Macau Credit Facilities

On June 27, 2007, Wynn Macau amended its credit facilities dated September 14, 2005 and entered into related amendments and agreements with a syndicate of lenders. The amended agreements took effect on June 29, 2007 and expand availability under Wynn Macau's existing senior bank facility from US \$764 million to US \$1.550 billion, including a US \$550 million equivalent in fully-funded senior term loan facilities, and a US \$1 billion senior revolving credit facility. Wynn Macau also has the ability to upsize the total facilities by an additional US \$50 million pursuant to the terms and provisions of the agreements. All of the senior credit facilities described above are collectively referred to herein as the "senior secured credit facilities".

The term loan facilities mature in June 2014, and the revolving credit facility matures in June 2012. The principal amount of the term loans is required to be repaid in quarterly installments, commencing in September 2011. Borrowings under the senior secured credit facilities will bear interest at LIBOR or the Hong Kong Interbank Offer Rate ("HIBOR") plus a margin of 1.75%.

As part of the amendment to the Macau senior secured credit facilities, Wynn Resorts, Limited's remaining support obligations to Wynn Macau and the US \$30 million in contingent equity previously provided by the Company has been released.

\$44.75 Million Note Payable

On March 30, 2007, World Travel, LLC, a subsidiary of Wynn Las Vegas, refinanced the \$44.75 million note payable. The new loan has a principal balance of \$42 million and is due April 1, 2017. The loan is guaranteed by Wynn Las Vegas, LLC and secured by a first priority security interest in one of the Company's two aircraft. Principal and interest are due quarterly with a balloon payment of \$28 million due at maturity. Interest is calculated at 90-day LIBOR plus 125 basis points. In connection with this transaction, the Company incurred a loss from extinguishment of debt of \$157,000 related to the write-off of unamortized debt issue costs associated with the original loan.

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

\$32.5 Million Term Loan for Aircraft

On May 10, 2007, World Travel G-IV, a subsidiary of Wynn Resorts, entered into a term loan credit facility to finance the purchase of an aircraft. The Company may borrow up to \$32.5 million under this term loan facility of which approximately \$25 million has been drawn through June 30, 2007. The loan bears interest at LIBOR plus 1.15% and will mature on August 10, 2012. Principle and interest payments will be made quarterly beginning July 1, 2007. Principle payments will be approximately \$542,000 with a balloon payment of \$21.1 million due at maturity.

Debt Covenant Compliance

As of June 30, 2007, the Company was in compliance with all covenants governing the Company's debt facilities.

9. Related Party Transactions

Amounts Due to Officers, net

The Company periodically provides services to Stephen A. Wynn, Chairman of the Board of Directors and Chief Executive Officer ("Mr. Wynn"), and certain other officers of the Company, including the personal use of corporate aircraft and household employees, construction work and other personal services. Mr. Wynn and other officers have deposits with the Company to prepay any such items, which are replenished on an ongoing basis as needed. As of June 30, 2007 and December 31, 2006, Mr. Wynn and the other officers had a credit balance with the Company of approximately \$350,000 and \$315,000, respectively.

Villa Suite Lease

Effective July 1, 2005, Mr. Wynn and his wife, Elaine P. Wynn ("Mrs. Wynn"), who is also a director of Wynn Resorts, lease from year to year a villa suite in the Wynn Las Vegas resort as their personal residence. Rent is determined by the Audit Committee of the Board of Directors of Wynn Resorts (the "Audit Committee"), and is based on the fair market value of the use of the suite accommodations. Based on third-party appraisals, the Audit Committee determined the rent for each year in the three-year period commencing July 1, 2005 and ending June 30, 2008 to be \$580,000. Substantially all services for, and maintenance of, the suite are included in the rental.

The Wynn Collection

Through May 6, 2004, the Company operated an art gallery at the former Desert Inn displaying The Wynn Collection, a collection of fine art owned by Mr. and Mrs. Wynn. The art gallery in the Desert Inn was closed on May 6, 2004, and a new art gallery featuring The Wynn Collection was displayed from the opening of Wynn Las Vegas through February 2006. The Company leased the artwork from Mr. and Mrs. Wynn for an annual fee of one dollar (\$1), and the Company was entitled to retain all revenues from the public display of the artwork and the related merchandising revenues. The Company was responsible for all expenses incurred in exhibiting and safeguarding the artwork, including the cost of insurance (including terrorism insurance) and taxes relating to the rental of the art. In February 2006, the Company closed the art gallery and began converting the gallery location into additional retail stores. The Company continues to lease works of art from Mr. and Mrs. Wynn for an annual fee of one dollar (\$1) and continues to display certain pieces throughout Wynn Las Vegas. All expenses in exhibiting and safeguarding the artwork displayed at Wynn Las Vegas are the responsibility of the Company.

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

The “Wynn” Surname Rights Agreement

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

10. Property Charges and Other

Property charges and other for the three months ended June 30, 2007 and 2006 were \$13 million and \$2.4 million, respectively. Property charges and other for the six months ended June 30, 2007 and 2006 were \$26.3 million and \$7.3 million, respectively. Property charges generally include costs related to the retirement of assets for remodels and asset abandonments. Property charges and other for the six months ended June 30, 2007 includes a \$10.2 million charge at Wynn Macau for the abandonment of costs related to portions of the main kitchen, warehouse, and restaurants to enable the main casino to be connected with the expansion and a \$10 million charge related to the abandonment of a parking garage at Wynn Macau. In January 2007, the Company decided to abandon this parking garage to make room for the Wynn Diamond Suites expansion. The remaining property charges were related to the renovations to portions of the Le Rêve Theatre at Wynn Las Vegas and the remodeling of certain areas at Wynn Macau.

11. Interest Rate Swaps

The Company has entered into floating-for-fixed interest rate swap arrangements relating to two of its debt facilities. The Company accounts for its interest rate swaps in accordance with SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities”, and its related interpretations. These interest rate swaps essentially fix the interest rate at the percentages noted below, however, changes in the fair value of the interest rate swaps for each reporting period have been recorded in the increase (or decrease) in swap fair value as a component of other income (expense), because the interest rate swaps do not qualify for hedge accounting.

The following table represents the historical asset (liability) fair values (reflected in deposits and other assets or in other long-term liabilities as appropriate) as of June 30, 2007 and December 31, 2006. The fair value approximates the amount the Company would receive if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability of fluctuation between periods.

<u>Asset / (Liability) Fair Value at: (amounts in thousands)</u>	<u>Wynn Las Vegas Interest Rate Swap</u>	<u>Wynn Macau Interest Rate Swaps</u>	<u>All Interest Rate Swaps</u>
June 30, 2007	\$ 4,201	\$ 980	\$ 5,181
December 31, 2006	\$ 4,789	\$ (1,467)	\$ 3,322

Wynn Las Vegas Swap

The Company currently has one \$200 million notional amount interest rate swap to essentially fix the interest rate on \$200 million of the \$225 million of Term Loan borrowings. Pursuant to the terms of this interest

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

rate swap, the Company pays a fixed rate of 3.793% on the \$200 million notional amount and receives payments based on LIBOR. This swap fixes the interest rate at approximately 5.7% on \$200 million of the outstanding \$225 million term loan. This swap terminates in December 2008.

Wynn Macau Swaps

The Company entered into two interest rate swaps to hedge a portion of the underlying interest rate risk on future borrowings under Wynn Macau S.A.'s senior term loan facility. Under the first swap agreement, the Company pays a fixed interest rate of 4.84% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately \$198.2 million, in exchange for receipts on the same amounts at a variable interest rate based on the applicable LIBOR at the time of payment. Under the second swap agreement, the Company pays a fixed interest rate of 4.77% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately HK\$1.1 billion (approximately US\$140.1 million), in exchange for receipts on the same amounts at a variable interest rate based on the applicable HIBOR at the time of payment. Both swap agreements terminate on November 28, 2008.

These interest rate swaps are expected to be highly effective in fixing the interest rate on approximately 100% of the US dollar and approximately 35% of the Hong Kong dollar borrowings under the senior bank facility at approximately 6.59% and 6.52%, respectively.

12. Share-Based Compensation

The Company adopted SFAS No. 123(R), "Share Based Payment" effective January 1, 2006. The total compensation cost relating both to stock options and nonvested stock is allocated as follows (amounts in thousands):

	<u>Three Months Ended</u> <u>June 30,</u>		<u>Six Months Ended</u> <u>June 30,</u>	
	<u>2007</u>	<u>2006</u>	<u>2007</u>	<u>2006</u>
Casino	\$ 1,253	\$ 653	\$2,522	\$1,304
Rooms	188	158	358	299
Food & beverage	276	268	562	539
Entertainment, retail and other	79	78	158	138
General and administrative	3,085	2,286	5,741	4,594
Pre-opening	—	440	—	928
Total stock-based compensation expense	<u>4,881</u>	<u>3,883</u>	<u>9,341</u>	<u>7,802</u>
Total stock-based compensation capitalized	<u>196</u>	<u>501</u>	<u>408</u>	<u>1,040</u>
Total stock-based compensation costs	<u>\$ 5,077</u>	<u>\$ 4,384</u>	<u>\$9,749</u>	<u>\$8,842</u>

13. Equity Repurchase Program

On June 7, 2007, the Board of Directors of Wynn Resorts authorized an equity repurchase program of up to \$1.2 billion which may include purchases of both its common stock and its Debentures. The repurchase program may include repurchases from time to time through open market purchases or negotiated transactions, depending upon market conditions. As of June 30, 2007, the Company had repurchased 1,310,834 shares of the Company's common stock through open market purchases for a net cost of \$123.4 million, at an average cost of \$94.13 per share.

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

14. Commitments and Contingencies

Encore

Encore Construction and Development. Encore's current design includes a 2,034 all-suite hotel tower fully integrated with Wynn Las Vegas, as well as an approximately 72,000 square foot casino, additional convention and meeting space, as well as restaurants, a nightclub, swimming pools, a spa and salon and retail outlets. The Company commenced construction of Encore on April 28, 2006 and expects to open Encore to the public by early 2009.

The project budget for Encore is currently estimated at approximately \$2.2 billion, consisting of approximately \$2.1 billion for Encore and approximately \$100 million for an employee parking garage on the Koval property, an associated pedestrian bridge and costs incurred in connection with the theatre remodeling and production of "Monty Python's Spamalot" at Wynn Las Vegas. The project is being funded from the Company's existing Credit Facilities and operating cash flow from Wynn Las Vegas. To the extent additional funds are required, the Company will provide these amounts with additional debt and equity contributions by Wynn Resorts or additional indebtedness to be incurred by Wynn Las Vegas.

On February 27, 2007, the Company entered into a Design Build Architectural, Engineering and Construction Services Agreement (the "Contract") with Tutor-Saliba Corporation ("Tutor") for the design and construction of Encore. The Contract sets forth all of the terms and conditions pursuant to which Tutor will design and construct Encore. In June 2007, the Company and Tutor executed the first amendment to the Contract which set the guaranteed maximum price for work under the Contract at \$1.3 billion. In connection with the execution and delivery of the Contract, Tutor and the Ronald N. Tutor Separate Trust (the "Trust") have entered into and consented to a Net Worth Agreement pursuant to which (x) the Trust agreed that it will retain its current majority holdings of Tutor and (y) the Trust and Tutor agreed that during the term of the Contract, Tutor will maintain (i) net worth of at least \$100 million, and (ii) liquid assets of at least \$50 million. Through June 30, 2007, the Company incurred approximately \$567 million of project costs related to the development and construction of Encore and related capital improvements.

Completion Guarantee and Liquidity Reserve. As part of the Wynn Las Vegas financing, the Company contributed \$50 million of the net proceeds of the initial public offering of Wynn Resorts' common stock to Wynn Completion Guarantor, LLC, a special purpose subsidiary of Wynn Las Vegas, LLC formed in October 2002 and deposited those funds into a completion guarantee deposit account to secure completion of Wynn Las Vegas. As referenced in Note 8, in April 2007, all amounts in excess of \$30 million were released as a result of the April 2007 amendment to the Credit Facilities. The remaining \$30 million will be retained as Encore's completion guarantee.

The Company also deposited \$30 million from the net proceeds of the initial public offering of the Company's common stock into a liquidity reserve account to secure the completion and opening of Wynn Las Vegas. All funds in this account were released as a result of the April 2007 amendment to the Credit Facilities.

These released funds are expected to be applied to construction costs to be incurred in connection with Encore.

Wynn Macau

Construction and Development. The Company began construction on Wynn Macau in June 2004, under a guaranteed maximum price construction contract ("the Construction Contract") between Wynn Macau, S.A. and

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

Leighton Contractors (Asia) Limited, China State Construction Engineering (Hong Kong) Limited and China Construction Engineering (Macau) Company Limited, acting together as general contractor. In September 2005, the Construction Contract was amended and restated to include the second phase of Wynn Macau. Wynn Macau opened to the public on September 6, 2006. The Company intends to open approximately 20,000 square feet of additional gaming space and one restaurant in the second phase in the third quarter of 2007. Further expansion areas are expected to open by Chinese New Year, 2008.

In addition, the Company continues to develop the plans for a further expansion of Wynn Macau, the Wynn Diamond Suites, which was first announced in November 2006. This further expansion will add a second fully-integrated resort hotel named “Wynn Diamond Suites” to Wynn Macau, with approximately 400 luxury suites and villas, along with restaurants, additional retail space and additional VIP gaming space. In July 2007, Wynn Resorts (Macau), S.A. issued a notice to proceed to the general contractor with respect to approximately \$347.8 million of construction costs relating to the construction of Wynn Diamond Suites. While the complete project budget is still being finalized, the Company expects total costs to be in the range of \$550 to \$600 million. The Company expects Wynn Diamond Suites to open to the public in the first half of 2010.

Under the amended and restated Construction Contract, the general contractor is responsible for both the construction and design of the first and second phases of Wynn Macau (other than certain limited portions to be designed by an affiliate of Wynn Macau, S.A.) based on an existing scope of work and design specifications provided by Wynn Macau, S.A. The performance of the contractors is backed by a full completion guarantee given jointly and severally by Leighton Holdings Limited and China Overseas Holdings Limited, the parent companies of the general contractor.

Through June 30, 2007, the Company had incurred approximately \$1 billion of the approximate total \$1.2 billion of budgeted project costs for Wynn Macau (excluding Wynn Diamond Suites).

Land Concession Contract. In June 2004, Wynn Macau, S.A. entered into a land concession contract for the Wynn Macau project site. Under the land concession contract, Wynn Macau, S.A. leases a parcel of approximately 16 acres from the Macau government for an initial term of 25 years, with a right to renew for additional periods. Wynn Macau, S.A. has made six payments to the Macau government under the land concession contract and is required to make five additional semi-annual payments (including interest) for total payments of approximately \$42.7 million. Wynn Macau, S.A. also paid approximately \$17.9 million to an unrelated third party for its relinquishment of rights to a portion of the land. During the term of the land concession contract, Wynn Macau, S.A. is also required to make annual lease payments of up to \$400,000.

Cotai Development

The Company has submitted an application with the government of Macau for a concession of land in Cotai for future development. The Company recently reconfigured its site plans for 52 acres and is awaiting final approval.

Litigation

The Company does not have any material litigation as of June 30, 2007.

15. Income Taxes

The Company is subject to income taxes in the United States and other foreign jurisdictions where the Company operates. The Company accounts for income taxes in accordance with SFAS No. 109, “Accounting for Income Taxes” (“SFAS 109”). SFAS 109 requires the recognition of deferred tax assets, net of applicable reserves, and liabilities for the estimated future tax consequences attributable to differences between financial

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

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 is recognized in the results of operations in the period that includes the enactment date.

On January 1, 2007, the Company adopted the provisions of FIN 48. As a result of the implementation of FIN 48, the Company has recognized a total liability for unrecognized tax benefits of approximately \$45.4 million, \$2 million of which was accounted for as an increase to the January 1, 2007 balance of accumulated deficit as a cumulative effect adjustment. Approximately \$2 million of such unrecognized tax benefit would, if recognized, impact the effective tax rate.

For the six months ended June 30, 2007, the total liability increased by approximately \$1.7 million. If incurred, the Company would recognize penalties and interest related to unrecognized tax benefits in the provision for income taxes. During the three and six months ended June 30, 2007 and the year ended December 31, 2006, the Company recognized no amounts for interest or penalties.

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. As of June 30, 2007, the Company has filed domestic income tax returns for the years 2002 to 2005 and foreign income tax returns for 2002 to 2006. The Company's 2002 to 2005 domestic income tax returns remain subject to examination by the IRS and the Company's 2002 to 2006 Macau income tax returns remain subject to examination by the Macau Finance Bureau.

There was no domestic tax provision/benefit recorded for the three and six months ended June 30, 2006 because of the Company's domestic net operating loss carryforwards. There is no current domestic provision for the three and six months ended June 30, 2007, because of the Company's domestic net operating loss carryforwards. The Company has recorded a provision for income taxes as follows (amounts in thousands):

	<u>Three Months Ended June 30, 2007</u>	<u>Six Months Ended June 30, 2007</u>
Current - Foreign	\$ 813	\$ 813
Deferred - Federal	12,459	35,128
Deferred - Foreign	613	1,513
Provision for federal income taxes	<u>\$ 13,885</u>	<u>\$ 37,454</u>

The Company's effective tax rate for the three and six months ended June 30, 2007 of 13% and 20%, respectively, is lower than the U.S. Federal rate of 35% primarily due to the portion of Macau earnings that the Company considers permanently invested abroad, the lower foreign income tax rates applicable to its foreign income, and the tax holiday applicable to the earnings of Wynn Macau S.A. as described below.

Effective September 6, 2006, Wynn Macau, S.A. received a 5-year exemption from Macau's 12% Complementary Tax on casino gaming profits. Accordingly, the Company was exempted from the payment of approximately \$12.5 million in such taxes for the six months ended June 30, 2007. 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 RESORTS, LIMITED AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

16. Segment Information

The Company monitors its operations and evaluates earnings by reviewing the assets and operations of Wynn Las Vegas and Wynn Macau. Wynn Las Vegas opened on April 28, 2005. Wynn Macau's first phase opened on September 6, 2006. The Company's total assets by segment are as follows (amounts in thousands):

	June 30, 2007	December 31, 2006
Total assets		
Wynn Las Vegas (including Encore)	\$ 3,053,571	\$ 3,037,509
Wynn Macau	1,649,364	1,500,088
Corporate and other	154,568	122,583
Total consolidated assets	<u>\$ 4,857,503</u>	<u>\$ 4,660,180</u>

The Company's segmented information on its results of operations is as follows (amounts in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Net revenues (1)				
Wynn Las Vegas	\$ 335,053	\$ 273,370	\$ 665,788	\$ 550,595
Wynn Macau	352,488	—	657,070	—
Total	<u>\$ 687,541</u>	<u>\$ 273,370</u>	<u>\$ 1,322,858</u>	<u>\$ 550,595</u>
Adjusted Property EBITDA (1, 2)				
Wynn Las Vegas	\$ 115,300	\$ 73,162	\$ 226,527	\$ 154,285
Wynn Macau	92,657	—	171,667	—
Total	<u>207,957</u>	<u>73,162</u>	<u>398,194</u>	<u>154,285</u>
Other operating costs and expenses				
Pre-opening costs	889	17,028	2,725	25,974
Depreciation and amortization	51,902	40,542	103,426	82,327
Property charges and other	13,021	2,376	26,290	7,325
Contract termination fee	—	—	—	5,000
Corporate expenses and other	15,992	11,533	31,421	22,244
Total	<u>81,804</u>	<u>71,479</u>	<u>163,862</u>	<u>142,870</u>
Operating income	<u>126,153</u>	<u>1,683</u>	<u>234,332</u>	<u>11,415</u>
Non-operating costs and Expenses				
Interest and other income	10,408	9,617	22,508	18,049
Interest expense, net	(35,460)	(35,307)	(73,133)	(71,250)
Increase in swap fair value	2,334	4,246	1,859	10,591
Loss from extinguishment of debt	—	—	(157)	—
Total	<u>(22,718)</u>	<u>(21,444)</u>	<u>(48,923)</u>	<u>(42,610)</u>
Income (loss) before provision for income taxes	<u>103,435</u>	<u>(19,761)</u>	<u>185,409</u>	<u>(31,195)</u>
Provision for income taxes	(13,885)	(309)	(37,454)	(309)
Net income (loss)	<u>\$ 89,550</u>	<u>\$ (20,070)</u>	<u>\$ 147,955</u>	<u>\$ (31,504)</u>

(1) Prior to its opening on September 6, 2006, Wynn Macau was in the development stage. Therefore, Wynn Macau has no revenues or Adjusted EBITDA for the three and six months ended June 30, 2006.

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

- (2) “Adjusted Property EBITDA” is earnings before interest, taxes, depreciation, amortization, pre-opening costs, property charges and other, corporate expenses, stock-based compensation, contract termination fee, 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. The Company also presents Adjusted Property EBITDA because it is used by some investors as a way to measure a company’s ability to incur and service debt, make capital expenditures and meet working capital requirements. Gaming companies have historically reported EBITDA as a supplement to financial measures in accordance with U.S. generally accepted accounting principles (“GAAP”). In order to view the operations of their casinos on a more stand-alone basis, gaming companies, including Wynn Resorts, Limited, have historically excluded from their EBITDA calculations pre-opening expenses, property charges and corporate expenses, which 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 compensates for these limitations by using Adjusted Property EBITDA as only one of several comparative tools, together with GAAP measurements, to assist in the evaluation of operating performance. Such GAAP measurements include operating income (loss), net income (loss), cash flows from operations and cash flow data. The Company has significant uses of cash flows, including capital expenditures, interest payments, debt principal repayments, taxes and other non-recurring charges, which are not reflected in Adjusted Property EBITDA. Also, Wynn Resorts’ calculation of Adjusted Property EBITDA may be different from the calculation methods used by other companies and, therefore, comparability may be limited.

17. Consolidating Financial Information of Guarantors and Issuers

The following condensed consolidating financial statement information is related to Wynn Resorts (the “Parent”), which is the issuer of the Debentures, Wynn Resorts Funding, LLC, a subsidiary of the Parent that guarantees the Debentures (the “Convertible Debentures Guarantor”), and non-guarantor subsidiaries as of June 30, 2007 and December 31, 2006, and for the three and six months ended June 30, 2007 and 2006.

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

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONSOLIDATING BALANCE SHEET INFORMATION
AS OF JUNE 30, 2007
(amounts in thousands)
(unaudited)

	Parent	Convertible Debentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
ASSETS					
Current assets:					
Cash and cash equivalents	\$ 46,355	\$ —	\$ 792,184	\$ —	\$ 838,539
Restricted cash and investments	—	—	10,288	—	10,288
Receivables, net	261	6	124,702	—	124,969
Inventories	—	—	65,418	—	65,418
Deferred income taxes	17,940	—	15	—	17,955
Prepaid expenses and other	488	—	34,062	—	34,550
Total current assets	<u>65,044</u>	<u>6</u>	<u>1,026,669</u>	<u>—</u>	<u>1,091,719</u>
Restricted cash and investments	—	—	30,312	—	30,312
Property and equipment, net	764	—	3,455,616	—	3,456,380
Intangibles, net	—	—	62,551	—	62,551
Deferred financing costs	6,644	—	75,879	—	82,523
Deposits and other assets	31,279	—	97,477	—	128,756
Investment in unconsolidated affiliates	2,195,838	—	5,262	(2,195,838)	5,262
Intercompany balances	(138,962)	45,168	93,794	—	—
Total assets	<u>\$2,160,607</u>	<u>\$ 45,174</u>	<u>\$ 4,847,560</u>	<u>\$(2,195,838)</u>	<u>\$4,857,503</u>
LIABILITIES AND STOCKHOLDERS' EQUITY					
Current liabilities:					
Current portion of long-term debt	\$ —	\$ —	\$ 3,505	\$ —	\$ 3,505
Current portion of land concession obligation	—	—	5,587	—	5,587
Accounts and construction payable	1,378	—	153,772	—	155,150
Income taxes payable	—	—	78,670	—	78,670
Accrued interest	6,307	—	9,304	—	15,611
Accrued compensation and benefits	10,246	—	55,301	—	65,547
Gaming taxes payable	—	—	52,186	—	52,186
Other accrued expenses	1,145	—	12,650	—	13,795
Customer deposits and other liabilities	—	—	114,467	—	114,467
Construction retention	—	—	17,298	—	17,298
Total current liabilities	<u>19,076</u>	<u>—</u>	<u>502,740</u>	<u>—</u>	<u>521,816</u>
Long-term debt	324,128	—	2,149,761	—	2,473,889
Other long-term liabilities	3,194	—	15,549	—	18,743
Long-term land concession obligation	—	—	8,915	—	8,915
Deferred income taxes	135,999	—	(2,030)	—	133,969
Construction retention	—	—	21,961	—	21,961
Total liabilities	<u>482,397</u>	<u>—</u>	<u>2,696,896</u>	<u>—</u>	<u>3,179,293</u>
Commitments and contingencies (Note 14)					
Stockholders' equity:					
Preferred stock	—	—	—	—	—
Common stock	1,021	—	—	—	1,021
Treasury stock	(123,393)	—	—	—	(123,393)
Additional paid-in capital	2,036,417	44,028	1,638,869	(1,682,897)	2,036,417
Accumulated other comprehensive loss	(3,998)	—	(3,998)	3,998	(3,998)
Accumulated earnings (deficit)	(231,837)	1,146	515,793	(516,939)	(231,837)
Total stockholders' equity	<u>1,678,210</u>	<u>45,174</u>	<u>2,150,664</u>	<u>(2,195,838)</u>	<u>1,678,210</u>
Total liabilities and stockholders' equity	<u>\$2,160,607</u>	<u>\$ 45,174</u>	<u>\$ 4,847,560</u>	<u>\$(2,195,838)</u>	<u>\$4,857,503</u>

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONSOLIDATING BALANCE SHEET INFORMATION
AS OF DECEMBER 31, 2006
(amounts in thousands)
(unaudited)

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
ASSETS					
Current assets:					
Cash and cash equivalents	\$ 54,742	\$ —	\$ 734,665	\$ —	\$ 789,407
Restricted cash and investments	—	905	57,693	—	58,598
Receivables, net	—	—	140,232	—	140,232
Inventories	—	—	64,368	—	64,368
Deferred income taxes	13,727	—	—	—	13,727
Prepaid expenses and other	844	—	29,915	—	30,759
Total current assets	69,313	905	1,026,873	—	1,097,091
Restricted cash and investments	161	—	178,627	—	178,788
Property and equipment, net	791	—	3,156,831	—	3,157,622
Intangibles, net	—	—	65,135	—	65,135
Deferred financing costs	5,577	—	69,294	—	74,871
Deposits and other assets	13,913	—	66,779	—	80,692
Investment in unconsolidated affiliates	2,021,156	—	5,981	(2,021,156)	5,981
Intercompany balances	(120,342)	44,232	76,110	—	—
Total assets	<u>\$ 1,990,569</u>	<u>\$ 45,137</u>	<u>\$ 4,645,630</u>	<u>\$ (2,021,156)</u>	<u>\$ 4,660,180</u>
LIABILITIES AND STOCKHOLDERS' EQUITY					
Current liabilities:					
Current portion of long-term debt	\$ —	\$ —	\$ 6,115	\$ —	\$ 6,115
Current portion of land concession obligation	—	—	7,433	—	7,433
Accounts and construction payable	—	—	115,612	—	115,612
Income taxes payable	—	—	87,164	—	87,164
Accrued interest	6,149	—	9,346	—	15,495
Accrued compensation and benefits	14,553	—	56,984	—	71,537
Gaming taxes payable	—	—	46,403	—	46,403
Other accrued expenses	811	—	13,115	—	13,926
Customer deposits and other liabilities	—	—	131,702	—	131,702
Construction retention	—	—	15,700	—	15,700
Total current liabilities	21,513	—	489,574	—	511,087
Long-term debt	224,128	—	2,156,409	—	2,380,537
Other long-term liabilities	2,685	—	2,529	—	5,214
Long-term land concession obligation	—	—	11,809	—	11,809
Deferred income taxes	96,658	—	406	—	97,064
Construction retention	—	—	8,884	—	8,884
Total liabilities	344,984	—	2,669,611	—	3,014,595
Commitments and contingencies (Note 14)					
Stockholders' equity:					
Preferred stock	—	—	—	—	—
Common stock	1,018	—	—	—	1,018
Additional paid-in capital	2,022,408	44,028	1,632,998	(1,677,026)	2,022,408
Accumulated other comprehensive loss	(94)	—	(94)	94	(94)
Accumulated earnings (deficit)	(377,747)	1,109	343,115	(344,224)	(377,747)
Total stockholders' equity	1,645,585	45,137	1,976,019	(2,021,156)	1,645,585
Total liabilities and stockholders' equity	<u>\$ 1,990,569</u>	<u>\$ 45,137</u>	<u>\$ 4,645,630</u>	<u>\$ (2,021,156)</u>	<u>\$ 4,660,180</u>

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
THREE MONTHS ENDED JUNE 30, 2007
(amounts in thousands)
(unaudited)

	Parent	Convertible Debentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
Operating revenues:					
Casino	\$ —	\$ —	\$ 491,825	\$ —	\$491,825
Rooms	—	—	87,797	—	87,797
Food and beverage	—	—	92,226	—	92,226
Entertainment, retail and other	9,519	—	62,661	(9,519)	62,661
Gross revenues	9,519	—	734,509	(9,519)	734,509
Less: promotional allowances	—	—	(46,968)	—	(46,968)
Net revenues	9,519	—	687,541	(9,519)	687,541
Operating costs and expenses:					
Casino	—	—	289,668	—	289,668
Rooms	—	—	21,365	—	21,365
Food and beverage	—	—	54,953	—	54,953
Entertainment, retail and other	—	—	41,446	—	41,446
General and administrative	(31)	—	83,844	(9,519)	74,294
Provision for doubtful accounts	(11)	—	14,373	—	14,362
Pre-opening costs	—	—	889	—	889
Depreciation and amortization	32	—	51,870	—	51,902
Property charges and other	—	—	13,021	—	13,021
Total operating costs and expenses	(10)	—	571,429	(9,519)	561,900
Equity in income from unconsolidated affiliates	97,301	—	512	(97,301)	512
Operating income	106,830	—	116,624	(97,301)	126,153
Other income (expense):					
Interest income	430	2	11,482	(1,506)	10,408
Interest expense, net of capitalized interest	(5,251)	—	(31,715)	1,506	(35,460)
Increase in swap fair value	—	—	2,334	—	2,334
Other income (expense), net	(4,821)	2	(17,899)	—	(22,718)
Income before income taxes	102,009	2	98,725	(97,301)	103,435
Provision for income taxes	(12,459)	—	(1,426)	—	(13,885)
Net income	<u>\$ 89,550</u>	<u>\$ 2</u>	<u>\$ 97,299</u>	<u>\$ (97,301)</u>	<u>\$ 89,550</u>

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
THREE MONTHS ENDED JUNE 30, 2006
(amounts in thousands)
(unaudited)

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
Operating revenues:					
Casino	\$ —	\$ —	\$ 113,527	\$ —	\$ 113,527
Rooms	—	—	69,222	—	69,222
Food and beverage	—	—	77,686	—	77,686
Entertainment, retail and other	5,626	—	49,389	(5,626)	49,389
Gross revenues	5,626	—	309,824	(5,626)	309,824
Less: promotional allowances	—	—	(36,454)	—	(36,454)
Net revenues	5,626	—	273,370	(5,626)	273,370
Operating costs and expenses:					
Casino	—	—	57,920	—	57,920
Rooms	—	—	18,140	—	18,140
Food and beverage	—	—	49,423	—	49,423
Entertainment, retail and other	—	—	34,112	—	34,112
General and administrative	5,557	4	49,076	(5,626)	49,011
Provision for doubtful accounts	(6)	—	3,652	—	3,646
Pre-opening costs	—	—	17,028	—	17,028
Depreciation and amortization	19	—	40,523	—	40,542
Property charges and other	—	—	2,376	—	2,376
Total operating costs and expenses	5,570	4	272,250	(5,626)	272,198
Equity in income (loss) from unconsolidated affiliates	(24,274)	—	511	24,274	511
Operating income (loss)	(24,218)	(4)	1,631	24,274	1,683
Other income (expense):					
Interest income	9,354	16	7,327	(7,080)	9,617
Interest expense, net of capitalized interest	(5,206)	—	(37,181)	7,080	(35,307)
Increase in swap fair value	—	—	4,246	—	4,246
Other income (expense), net	4,148	16	(25,608)	—	(21,444)
Income (loss) before income taxes	(20,070)	12	(23,977)	24,274	(19,761)
Provision for income taxes	—	—	(309)	—	(309)
Net Income (loss)	\$ (20,070)	\$ 12	\$ (24,286)	\$ 24,274	\$ (20,070)

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
SIX MONTHS ENDED JUNE 30, 2007
(amounts in thousands)
(unaudited)

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
Operating revenues:					
Casino	\$ —	\$ —	\$ 949,017	\$ —	\$ 949,017
Rooms	—	—	173,088	—	173,088
Food and beverage	—	—	180,109	—	180,109
Entertainment, retail and other	18,316	—	114,866	(18,316)	114,866
Gross revenues	18,316	—	1,417,080	(18,316)	1,417,080
Less: promotional allowances	—	—	(94,222)	—	(94,222)
Net revenues	18,316	—	1,322,858	(18,316)	1,322,858
Operating costs and expenses:					
Casino	—	—	554,393	—	554,393
Rooms	—	—	42,341	—	42,341
Food and beverage	—	—	109,208	—	109,208
Entertainment, retail and other	—	—	76,547	—	76,547
General and administrative	(28)	—	170,804	(18,316)	152,460
Provision for doubtful accounts	(28)	—	22,131	—	22,103
Pre-opening costs	—	—	2,725	—	2,725
Depreciation and amortization	60	—	103,366	—	103,426
Property charges and other	500	—	25,790	—	26,290
Total operating costs and expenses	504	—	1,107,305	(18,316)	1,089,493
Equity in income from unconsolidated affiliates	174,251	—	967	(174,251)	967
Operating income	192,063	—	216,520	(174,251)	234,332
Other income (expense):					
Interest income	1,351	37	24,132	(3,012)	22,508
Interest expense, net of capitalized interest	(10,331)	—	(65,814)	3,012	(73,133)
Increase in swap fair value	—	—	1,859	—	1,859
Loss from extinguishment of debt	—	—	(157)	—	(157)
Other income (expense), net	(8,980)	37	(39,980)	—	(48,923)
Income before income taxes	183,083	37	176,540	(174,251)	185,409
Provision for income taxes	(35,128)	—	(2,326)	—	(37,454)
Net income	<u>\$ 147,955</u>	<u>\$ 37</u>	<u>\$ 174,214</u>	<u>\$(174,251)</u>	<u>\$ 147,955</u>

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
SIX MONTHS ENDED JUNE 30, 2006
(amounts in thousands)
(unaudited)

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
Operating revenues:					
Casino	\$ —	\$ —	\$ 240,041	\$ —	\$240,041
Rooms	—	—	137,399	—	137,399
Food and beverage	—	—	152,320	—	152,320
Entertainment, retail and other	11,286	—	98,346	(11,286)	98,346
Gross revenues	11,286	—	628,106	(11,286)	628,106
Less: promotional allowances	—	—	(77,511)	—	(77,511)
Net revenues	11,286	—	550,595	(11,286)	550,595
Operating costs and expenses:					
Casino	—	—	121,156	—	121,156
Rooms	—	—	35,125	—	35,125
Food and beverage	—	—	94,182	—	94,182
Entertainment, retail and other	—	—	66,626	—	66,626
General and administrative	11,035	4	96,223	(11,286)	95,976
Provision for doubtful accounts	(23)	—	6,598	—	6,575
Pre-opening costs	—	—	25,974	—	25,974
Depreciation and amortization	39	—	82,288	—	82,327
Contract termination fee	—	—	5,000	—	5,000
Property charges and other	—	—	7,325	—	7,325
Total operating costs and expenses	11,051	4	540,497	(11,286)	540,266
Equity in income (loss) from unconsolidated affiliates	(38,591)	—	1,086	38,591	1,086
Operating income (loss)	(38,356)	(4)	11,184	38,591	11,415
Other income (expense):					
Interest income	17,308	90	13,874	(13,223)	18,049
Interest expense, net of capitalized interest	(10,456)	—	(74,017)	13,223	(71,250)
Increase in swap fair value	—	—	10,591	—	10,591
Other income (expense), net	6,852	90	(49,552)	—	(42,610)
Income (loss) before income taxes	(31,504)	86	(38,368)	38,591	(31,195)
Provision for income taxes	—	—	(309)	—	(309)
Net income (loss)	<u>\$ (31,504)</u>	<u>\$ 86</u>	<u>\$ (38,677)</u>	<u>\$ 38,591</u>	<u>\$ (31,504)</u>

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION
SIX MONTHS ENDED JUNE 30, 2007
(amounts in thousands)
(unaudited)

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
Cash flows from operating activities:					
Net income (loss)	\$ 147,955	\$ 37	\$ 174,214	\$(174,251)	\$ 147,955
Adjustments to reconcile net income (loss) to net cash provided by operating activities:					
Depreciation and amortization	60	—	103,366	—	103,426
Deferred income taxes	35,128	—	1,513	—	36,641
Stock-based compensation	3,879	—	5,462	—	9,341
Amortization and writeoff of deferred financing costs and other	340	—	9,843	—	10,183
Loss on extinguishment of debt	—	—	157	—	157
Provision for doubtful accounts	(28)	—	22,131	—	22,103
Property charges and other	—	—	26,290	—	26,290
Equity in (income) loss from unconsolidated affiliates, net of distributions	(174,251)	—	719	174,251	719
Increase in swap fair value	—	—	(1,859)	—	(1,859)
Increase (decrease) in cash from changes in:					
Receivables, net	(233)	(6)	(2,380)	—	(2,619)
Inventories and prepaid expenses and other	356	—	(7,694)	—	(7,338)
Accounts payable and accrued expenses	(2,437)	—	(5,381)	—	(7,818)
Due to affiliates	(281)	—	281	—	—
Net cash provided by operating activities	<u>10,488</u>	<u>31</u>	<u>326,662</u>	<u>—</u>	<u>337,181</u>
Cash flows from investing activities:					
Capital expenditures, net of construction payables	(33)	—	(379,529)	—	(379,562)
Restricted cash and investments	161	905	195,720	—	196,786
Purchase of intangibles and other assets	(17,366)	—	(41,387)	—	(58,753)
Proceeds from sale of equipment	—	—	1,632	—	1,632
Intercompany balances	18,901	(936)	(17,965)	—	—
Net cash provided by (used in) investing activities	<u>1,663</u>	<u>(31)</u>	<u>(241,529)</u>	<u>—</u>	<u>(239,897)</u>
Cash flows from financing activities:					
Proceeds from exercise of stock options	4,262	—	—	—	4,262
Proceeds from issuance of long-term debt	100,000	—	120,576	—	220,576
Principal payments on long-term debt	—	—	(128,691)	—	(128,691)
Purchase of treasury stock	(123,393)	—	—	—	(123,393)
Payments on long-term land concession obligation	—	—	(4,659)	—	(4,659)
Payments of deferred financing costs	(1,407)	—	(12,936)	—	(14,343)
Net cash used in financing activities	<u>(20,538)</u>	<u>—</u>	<u>(25,710)</u>	<u>—</u>	<u>(46,248)</u>
Effect of exchange rate on cash	—	—	(1,904)	—	(1,904)
Cash and cash equivalents:					
Increase (decrease) in cash and cash equivalents	(8,387)	—	57,519	—	49,132
Balance, beginning of period	54,742	—	734,665	—	789,407
Balance, end of period	<u>\$ 46,355</u>	<u>\$ —</u>	<u>\$ 792,184</u>	<u>\$ —</u>	<u>\$ 838,539</u>

WYNN RESORTS, LIMITED AND SUBSIDIARIES
CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION
SIX MONTHS ENDED JUNE 30, 2006
(amounts in thousands)
(unaudited)

	Parent	Convertible Debtentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
Cash flows from operating activities:					
Net income (loss)	\$ (31,504)	\$ 86	\$ (38,677)	\$ 38,591	\$ (31,504)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:					
Depreciation and amortization	39	—	82,288	—	82,327
Stock-based compensation	3,423	—	4,379	—	7,802
Amortization and writeoff of deferred financing costs and other	651	—	6,815	—	7,466
Provision for doubtful accounts	(23)	—	6,598	—	6,575
Property charges and other	—	—	7,325	—	7,325
Equity in (income) loss from unconsolidated affiliates, net of distributions	38,591	—	(123)	(38,591)	(123)
Increase in swap fair value	—	—	(10,591)	—	(10,591)
Increase (decrease) in cash from changes in:					
Receivables, net	47	—	16,074	—	16,121
Inventories and prepaid expenses and other	190	—	(11,737)	—	(11,547)
Accounts payable and accrued expenses	(5,771)	—	(26,622)	—	(32,393)
Due to (from) affiliates	(11,286)	—	11,286	—	—
Net cash provided by (used in) operating activities	<u>(5,643)</u>	<u>86</u>	<u>47,015</u>	<u>—</u>	<u>41,458</u>
Cash flows from investing activities:					
Capital expenditures, net of construction payables	(97)	—	(225,487)	—	(225,584)
Restricted cash and investments	(218)	7,410	(19,186)	—	(11,994)
Purchase of intangibles and other assets	(3,660)	—	(69,867)	—	(73,527)
Due to (from) affiliates	8,915	(7,496)	(1,419)	—	—
Net cash provided by (used in) investing activities	<u>4,940</u>	<u>(86)</u>	<u>(315,959)</u>	<u>—</u>	<u>(311,105)</u>
Cash flows from financing activities:					
Proceeds from the exercise of stock options	4,788	—	—	—	4,788
Proceeds from issuance of long-term debt	—	—	227,279	—	227,279
Principal payments on long-term debt	—	—	(13,032)	—	(13,032)
Payments on long-term land concession obligation	—	—	(4,397)	—	(4,397)
Deferred financing costs	—	—	(328)	—	(328)
Net cash provided by financing activities	<u>4,788</u>	<u>—</u>	<u>209,522</u>	<u>—</u>	<u>214,310</u>
Cash and cash equivalents:					
Increase (decrease) in cash and cash equivalents	4,085	—	(59,422)	—	(55,337)
Balance, beginning of period	308,013	—	126,276	—	434,289
Balance, end of period	<u>\$312,098</u>	<u>\$ —</u>	<u>\$ 66,854</u>	<u>\$ —</u>	<u>\$ 378,952</u>

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

The following discussion should be read in conjunction with, and is qualified in its entirety by, the condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q. Unless the context otherwise requires, all references herein to the “Company,” “we,” “us” or “our,” or similar terms, refer to Wynn Resorts, Limited, a Nevada corporation and its consolidated subsidiaries.

Forward-Looking Statements

The Private Securities Litigation Reform Act of 1995 provides a “safe harbor” for forward-looking statements. Certain information included in this Quarterly Report on Form 10-Q contains statements that are forward-looking, including, but not limited to, statements relating to our business strategy and development activities as well as other capital spending, financing sources, the effects of regulation (including gaming and tax regulations), expectations concerning future operations, margins, profitability and competition. Any statements contained in this report that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the generality of the foregoing, in some cases you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “would,” “could,” “believe,” “expect,” “anticipate,” “estimate,” “intend,” “plan,” “continue” or the negative of these terms or other comparable terminology. Such forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by us. These risks and uncertainties include, but are not limited to:

- conditions precedent to funding under the agreements governing the disbursement of the proceeds of certain of our debt and equity offerings and borrowings under our Credit Facilities;
- competition in the casino/hotel and resort industries;
- completion of the second phase of our Wynn Macau casino resort on time and within budget;
- completion of Encore on time and within budget;
- our intention to fund a substantial portion of the development and construction costs of Encore with anticipated cash flows generated at Wynn Las Vegas;
- doing business in foreign locations such as Macau (including the risks associated with Macau’s developing gaming regulatory framework);
- new development and construction activities of competitors;
- our limited operating history;
- our dependence on Stephen A. Wynn and existing management;
- our dependence on a limited number of properties for all of our cash flow;
- leverage and debt service (including sensitivity to fluctuations in interest rates);
- levels of travel, leisure and casino spending;
- general domestic or international economic conditions;
- pending or future legal proceedings;
- changes in federal or state tax laws or the administration of such laws;
- changes in gaming laws or regulations (including the legalization of gaming in certain jurisdictions);
- applications for licenses and approvals under applicable jurisdictional laws and regulations (including gaming laws and regulations);
- the impact that an outbreak of an infectious disease, such as avian flu, or the impact of a natural disaster, such as the tsunami which struck southeast Asia in December 2004, may have on the travel and leisure industry; and

[Table of Contents](#)

- the consequences of the war in Iraq and other military conflicts in the Middle East and any future security alerts and/or terrorist attacks.

Further information on potential factors that could affect our financial condition, results of operations and business are included in 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 currently available to us. We undertake no obligation to publicly release any revisions to such forward-looking statements to reflect events or circumstances after the date of this report.

Overview

We are a developer, owner and operator of destination casino resorts. We currently own and operate Wynn Las Vegas, a destination casino resort in Las Vegas, Nevada, which opened on April 28, 2005, and Wynn Macau, a destination casino resort in the Macau Special Administrative Region of the People's Republic of China ("Macau"), which opened on September 6, 2006. In addition, on April 28, 2006, we commenced construction of Encore at Wynn Las Vegas ("Encore"), a hotel casino resort which, when completed, will be fully integrated with Wynn Las Vegas. We are also currently expanding Wynn Macau and in November 2006, announced "Wynn Diamond Suites" an additional hotel tower for Wynn Macau. Until the opening of Wynn Las Vegas in 2005, we were solely a development stage company.

Our Resorts

The following table sets forth information about our operating properties as of July 2007:

	<u>Hotel Rooms & Suites</u>	<u>Approximate Casino Square Footage</u>	<u>Number of Table Games</u>	<u>Number of Slots</u>
Wynn Las Vegas	2,716	111,000	146	1,975
Wynn Macau	600	110,000	248	443

Wynn Las Vegas

We believe Wynn Las Vegas is the preeminent destination casino resort on the Strip in Las Vegas. Wynn Las Vegas features:

- An approximately 111,000 square foot casino offering 24-hour gaming and a full range of games, including private baccarat salons, a poker room, and a race and sports book;
- Luxury hotel accommodations in 2,716 spacious hotel rooms, suites and villas (In 2006, the Tower Suites at Wynn Las Vegas became the only casino resort in the world to receive both the Mobil Five Star and AAA Five Diamond distinctions);
- 22 food and beverage outlets featuring signature chefs, including the AAA Five Diamond and Mobil Five Star award-winning restaurant, Alex;
- A Ferrari and Maserati automobile dealership;
- Approximately 74,000 square feet of high-end, brand-name retail shopping, including stores and boutiques featuring Brioni, Chanel, Dior, Graff, Jean-Paul Gaultier, Louis Vuitton and Manolo Blahnik;
- Recreation and leisure facilities, including an 18-hole golf course, five swimming pools, private cabanas and full service spa and salon; and
- Two showrooms, a nightclub and lounge entertainment.

[Table of Contents](#)

In March 2007, we remodeled the Le Rêve Theatre to enhance the customer experience. The theatre went from 2,087 to 1,606 seats providing additional room for guests and a more intimate experience. The remodel effort lasted approximately 30 days from March 6, 2007 through April 4, 2007, during which time there were no performances of Le Rêve. Also, in March 2007, we commenced performances of “Monty Python’s Spamalot” in our Grail Theatre.

The resort, which is located at the intersection of the Las Vegas Strip and Sands Avenue, occupies approximately 217 acres of land fronting the Las Vegas Strip and approximately 18 additional acres across Sands Avenue, a portion of which is utilized for employee parking.

Encore at Wynn Las Vegas

We are constructing Encore on approximately 20 acres on the Las Vegas Strip, immediately adjacent to Wynn Las Vegas. Encore’s current plans include a 2,034 all-suite hotel tower fully integrated with Wynn Las Vegas, an approximately 72,000 square foot casino, additional convention and meeting space, as well as restaurants, a nightclub, swimming pools, a spa and salon and retail outlets. We continue to refine the final design of Encore. Encore is expected to open in early 2009. Our project budget is currently estimated at approximately \$2.2 billion, consisting of approximately \$2.1 billion for Encore and approximately \$100 million for an employee parking garage on our Koval property, an associated pedestrian bridge and costs incurred in connection with the theatre remodeling and production of “Monty Python’s Spamalot” at Wynn Las Vegas, which opened March 2007.

Wynn Macau

We opened Wynn Macau on September 6, 2006. Wynn Macau is located on 11 acres of a total site area of 16 acres of land and features:

- An approximately 110,000 square foot casino offering 24-hour gaming and a full range of games, including private gaming salons;
- Luxury hotel accommodations in 600 rooms and suites;
- Casual and fine dining in four restaurants;
- Approximately 26,000 square feet of high-end, brand-name retail shopping, including stores and boutiques featuring Bulgari, Chanel, Dior, Fendi, Giorgio Armani, Louis Vuitton, Piaget, Prada, Tiffany, and others;
- Recreation and leisure facilities, including a health club, pool and spa; and
- Lounges and meeting facilities.

Construction and development continues on the second phase. This phase includes additional gaming space, a dramatic front feature attraction, a theater showroom and additional food, beverage and retail amenities. We intend to open approximately 20,000 square feet of additional gaming space and one restaurant at Wynn Macau in this second phase in the third quarter of 2007. The remaining portion of the expansion is expected to open by Chinese New Year, 2008. After the completion of the expansion, Wynn Macau is expected to have a total of approximately 380 table games and 1,200 slot machines.

In July 2007, Wynn Macau S.A. issued a notice to proceed to the general contractor with respect to approximately \$347.8 million of construction costs relating to the construction of Wynn Diamond Suites. While the complete project budget is still being finalized, we expect the costs to be in the range of \$550 to \$600 million. We expect Wynn Diamond Suites to open to the public in the first half of 2010. First announced in November 2006, Wynn Diamond Suites will be fully integrated into Wynn Macau and is expected to have 400 luxury suites and villas.

[Table of Contents](#)

We operate Wynn Macau under a 20-year casino concession agreement granted by the Macau government in June 2002.

Cotai Development

We have submitted an application to the Macau government for a concession of land in Cotai. We recently reconfigured our site plan for 52 acres and are awaiting final approval.

Results of Operations

On September 6, 2006, we opened Wynn Macau and began generating operating cash flows from that project. Between April 28, 2005 and September 6, 2006, we relied solely upon the operations of Wynn Las Vegas for our operating cash flow. Prior to the opening of Wynn Las Vegas on April 28, 2005, we were solely a development stage company.

The reliance for our operating cash flow from only two properties exposes us to certain risks that our competitors, whose operations are more diversified, may be better able to control. In addition to the concentration of operations in two properties, many of our customers are high-end gaming customers who wager on credit, thus exposing us to increased credit risk. High-end gaming also increases the potential for variability in our results.

The three and six months ended June 30, 2007 include the operations of both Wynn Las Vegas and Wynn Macau. In contrast, the three and six months ended June 30, 2006 include a full period for Wynn Las Vegas and no operations for Wynn Macau. The table below presents our net revenues for the three and six months ended June 30, 2007 and 2006 (amounts in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Net revenues				
Wynn Las Vegas	\$ 335,053	\$ 273,370	\$ 665,788	\$ 550,595
Wynn Macau	352,488	—	657,070	—
Total net revenues	<u>\$ 687,541</u>	<u>\$ 273,370</u>	<u>\$ 1,322,858</u>	<u>\$ 550,595</u>

Casinos generally record win as a percentage of either drop or turnover. In our casino operations at Wynn Las Vegas, table games win is recorded as a percentage of drop. However, in our casino operations at Wynn Macau, we separate table play into two distinct segments. Our Macau VIP casino segment records table games win as a percentage of turnover, whereas our general casino records win as a percentage of drop.

Certain key operating statistics specific to the gaming industry are included in our discussions of the Company's operational performance for the periods in which a Statement of Operations is presented. Below are definitions of the statistics discussed:

- Table games win is the amount of drop or turnover that is retained and recorded as casino revenue.
- Drop is the amount of cash or net markers issued that are deposited in a gaming table's drop box.
- Turnover is the sum of all losing wagers within our Wynn Macau VIP program.
- Slot win is the amount of handle (representing the total amount wagered) that is retained by Wynn Las Vegas or Wynn Macau and is recorded as casino revenue.
- Average Daily Rate ("ADR") is calculated by dividing total room revenue (less service charges, if any) by total rooms occupied.

[Table of Contents](#)

- Revenue per Available Room (“REVPAR”) is calculated by dividing total room revenue (less service charges, if any) by total rooms available.

Financial results for the three months ended June 30, 2007 compared to the three months ended June 30, 2006.

Revenues

Net revenues for the three months ended June 30, 2007 are comprised of \$491.8 million in casino revenues (71.5% of total net revenues) and \$195.7 million of net non-casino revenues (28.5% of total net revenues). Net revenues for the second quarter of 2006 were comprised of \$113.5 million in casino revenues (41.5% of total net revenues) and \$159.9 million of net non-casino revenues (58.5% of total net revenues). The quality of our resorts’ non-casino amenities, combined with providing guests an unparalleled total resort experience, has driven a premium in the two properties’ ADR as well as increased the length of casino play.

Casino revenues are comprised of the net win from our table games and slot machine operations. Casino revenues for the three months ended June 30, 2007 of approximately \$491.8 million represents approximately a \$378.3 million (or 333.2%) increase from casino revenues of \$113.5 million for the three months ended June 30, 2006. The three months ended June 30, 2007 includes a full quarter of Wynn Macau’s operations; the primary driver of this increase. At Wynn Las Vegas, we experienced a 21% increase in drop for the three months ended June 30, 2007 and the average table games win percentage (before discounts) of 24.2% was slightly above the expected range of 21% to 24%. Table games win percentage was 19.8% for the three months ended June 30, 2006. Slot handle at Wynn Las Vegas increased 7.6% during the three months ended June 30, 2007 as compared to 2006, and the slot win percentage was within the expected range of 4.5% to 5.5%. Wynn Macau’s win percentage for the VIP casino segment of 3.3% was above the expected range of 2.7% to 3%. The average table games win percentage at the general casino at Wynn Macau of 18.4% was within the expected range of 17% to 19%.

For the three months ended June 30, 2007, room revenues were approximately \$87.8 million, which represents a \$18.6 million (or 26.8%) increase over the \$69.2 million generated in the three months ended June 30, 2006. Wynn Macau generated \$13.3 million of this increase in room revenue during the three months ended June 30, 2007.

See the table below for key operating measures related to room revenue.

	Three Months Ended June 30,	
	2007	2006
Average Daily Rate		
Wynn Las Vegas	\$ 311	\$ 293
Wynn Macau	258	N/A
Occupancy		
Wynn Las Vegas	97.0%	95.7%
Wynn Macau	86.2%	N/A
REVPAR		
Wynn Las Vegas	\$ 301	\$ 280
Wynn Macau	222	N/A

Other non-casino revenues for the three months ended June 30, 2007, included food and beverage revenues of approximately \$92.2 million, retail revenues of approximately \$29.3 million, entertainment revenues of approximately \$18.7 million, and other revenues from outlets such as the spa and salon, of approximately \$14.7 million. Other non-gaming revenues for the three months ended June 30, 2006 included food and beverage revenues of approximately \$77.7 million, retail revenues of approximately \$19.3 million, entertainment revenues of approximately \$17.1 million, and other revenues from outlets, including the spa and salon, of approximately \$13 million. The additional revenue earned at Wynn Macau during 2007 was the primary contributor to the increase in the food and beverage, retail and other revenues.

[Table of Contents](#)

Departmental, Administrative and Other Expenses

During the three months ended June 30, 2007, departmental expenses included casino expenses of \$289.7 million, rooms expenses of \$21.4 million, food and beverage expenses of \$55 million, and entertainment, retail and other expenses of \$41.4 million. Also included are general and administrative expenses of approximately \$74.3 million and approximately \$14.4 million charged as a provision for doubtful accounts receivable. During the three months ended June 30, 2006, departmental expenses included casino expenses of \$57.9 million, room expenses of \$18.1 million, food and beverage expenses of \$49.4 million, and entertainment, retail and other expenses of \$34.1 million. Also included are general and administrative expenses of approximately \$49 million and approximately \$3.6 million charged as a provision for doubtful accounts receivable. The increase in expenses is due primarily to the inclusion of the operations of Wynn Macau, including the 39 percent gross win tax on casino revenue, and increases in Wynn Las Vegas expenses commensurate with the increase in revenues.

Pre-opening costs

Pre-opening costs for the three months ended June 30, 2007 of \$889,000 decreased by \$16.1 million when compared to the three months ended June 30, 2006, primarily due to the opening of Wynn Macau. Pre-opening costs incurred during the three months ended June 30, 2007 relate to Encore and the second phase of Wynn Macau. As Encore and the second phase of Wynn Macau progress, pre-opening costs related to these projects will increase as opening approaches.

Depreciation and amortization

Depreciation and amortization for the three months ended June 30, 2007 of \$51.9 million increased by \$11.4 million when compared to the three months ended June 30, 2006, primarily due to depreciation expense associated with Wynn Macau.

During the construction of Wynn Las Vegas and Wynn Macau, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations were capitalized. Once these properties opened, their assets were placed into service and we began recognizing the associated depreciation expense. The depreciation expenses will continue throughout the estimated useful lives of these assets. In addition, we continually evaluate the useful life of our property and equipment, intangibles and other assets. When circumstances require a revision to those estimates of useful life, we adjust them accordingly.

The maximum useful life of assets at Wynn Macau is the remaining life of the gaming concession or land concession, which currently expire in June 2022 and 2029, respectively. Consequently, depreciation related to Wynn Macau is charged on an accelerated basis when compared to Wynn Las Vegas.

Property charges and other

Property charges and other for the three months ended June 30, 2007 of \$13 million increased by approximately \$10.6 million when compared to the three months ended June 30, 2006. This increase is primarily due a \$10.2 million charge at Wynn Macau for the abandonment of costs related to portions of the main kitchen, warehouse, and certain restaurants to enable the main casino to be connected with the expansion.

In response to our evaluation of our properties and the reactions of our guests, we continue to make enhancements to both Wynn Las Vegas and Wynn Macau. Costs of \$2.8 million relating to assets retired as a result of these enhancement and remodel efforts for the three months ended June 30, 2007 were expensed as property charges.

Other non-operating costs and expenses

Interest and other income increased by approximately \$791,000 to \$10.4 million for the three months ended June 30, 2007 compared to the three months ended June 30, 2006. This increase is due to interest earned on the

[Table of Contents](#)

remaining proceeds from the subconcession sale last September and higher interest rates earned on cash balances compared to 2006.

Interest expense, net of capitalized interest of \$9.2 million was \$35.5 million for the three months ended June 30, 2007 compared to \$35.3 million, net of capitalized interest of \$8.2 million, for the three months ended June 30, 2006. This increase is primarily due to our increased debt outstanding year over year.

Our interest rate swaps are accounted for in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", as amended. The fair value of our interest rate swaps are recorded as either assets or liabilities. Changes in the fair value of our interest rate swaps are recorded as an increase (or decrease) in swap fair value in each period. We recorded a gain of approximately \$2.3 million for the three months ended June 30, 2007 resulting from the increase in the fair value of our interest rate swaps from March 31, 2007 to June 30, 2007. During the three months ended June 30, 2006 we recorded a gain of \$4.2 million resulting from the increase in the fair value of interest rate swaps between March 31, 2006 and June 30, 2006. For further information on our interest rate swaps, see Item 3 – "Quantitative and Qualitative Disclosures about Market Risk".

Income Taxes

Our effective tax rate of 13% is lower than the U.S. Federal rate of 35% primarily due to the portion of Macau earnings that we consider permanently invested abroad, the lower foreign income tax rates applicable to our foreign income, and the tax holiday applicable to the earnings of Wynn Macau S.A., as described below. All of these factors resulted in the Company adjusting its expected annual worldwide effective tax rate to 20% from 29%.

Effective September 6, 2006, Wynn Macau, S.A. received a 5-year exemption from Macau's 12% Complementary Tax on casino gaming profits. Accordingly, we were exempted from the payment of approximately \$7.5 million in such taxes. Our 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.

Financial results for the six months ended June 30, 2007 compared to the six months ended June 30, 2006.

Revenues

Net revenues for the six months ended June 30, 2007 are comprised of \$949 million in casino revenues (71.7% of total net revenues) and \$373.8 million of net non-casino revenues (28.3% of total net revenues). Net revenues for the first half of 2006 were comprised of \$240 million in casino revenues (43.6% of total net revenues) and \$310.6 million of net non-casino revenues (56.4% of total net revenues). The quality of our resorts' non-casino amenities, combined with providing guests an unparalleled total resort experience, has driven a premium in our properties' ADR as well as increased the length of casino play.

Casino revenues for the six months ended June 30, 2007 of approximately \$949 million represents approximately a \$709 million (or 295.4%) increase from casino revenues of \$240 million for the six months ended June 30, 2006. The six months ended June 30, 2007 includes a full six months of Wynn Macau's operations; a significant driver of this increase. At Wynn Las Vegas, we experienced a 16.3% increase in drop for the six months ended June 30, 2007 and the average table games win percentage (before discounts) of 25.9% was above the expected range of 21% to 24%. Table games win percentage was 19.8% for the six months ended June 30, 2006. Slot handle at Wynn Las Vegas increased 4.5% during the six months ended June 30, 2007 as compared to 2006, and the slot win percentage was within the expected range of 4.5% to 5.5%. Wynn Macau's win percentage for the VIP casino segment of 3.3% was above the expected range of 2.7% to 3%. The average table games win percentage at the general casino at Wynn Macau of 18.3% was within the expected range of 17% to 19%.

[Table of Contents](#)

For the six months ended June 30, 2007, room revenues were approximately \$173.1 million, which represents a \$35.7 million (or 26%) increase over the \$137.4 million generated in the six months ended June 30, 2006. Wynn Macau generated \$25.7 million of this increase in room revenue during the six months ended June 30, 2007. See the table below for key operating measures related to room revenue.

	Six Months Ended June 30,	
	2007	2006
Average Daily Rate		
Wynn Las Vegas	\$ 310	\$ 293
Wynn Macau	\$ 252	N/A
Occupancy		
Wynn Las Vegas	96.6%	95.7%
Wynn Macau	85.5%	N/A
REVPAR		
Wynn Las Vegas	\$ 300	\$ 280
Wynn Macau	\$ 215	N/A

Other non-casino revenues for the six months ended June 30, 2007 included food and beverage revenues of approximately \$180.1 million, retail revenues of approximately \$56.5 million, entertainment revenues of approximately \$29.6 million, and other revenues from outlets such as the spa and salon, of approximately \$28.8 million. Other non-gaming revenues for the six months ended June 30, 2006 included food and beverage revenues of approximately \$152.3 million, retail revenues of approximately \$36.5 million, entertainment revenues of approximately \$37.5 million, and other revenues from outlets, including the spa and salon, of approximately \$24.3 million. The additional revenue earned at Wynn Macau during 2007 was the primary contributor to the increase in the food and beverage, retail and other revenues. The \$7.9 million decrease in entertainment revenues is primarily due to the closure of Avenue Q in May 2006 and approximately 30 fewer Le Rêve shows in March 2007 compared to March 2006 as a result of the closure of the Le Rêve theatre for modifications at Wynn Las Vegas. These decreases were offset by revenues from Monty Python's Spamalot which opened in March 2007.

Departmental, Administrative and Other Expenses

During the six months ended June 30, 2007, departmental expenses included casino expenses of \$554.4 million, rooms expenses of \$42.3 million, food and beverage expenses of \$109.2 million, and entertainment, retail and other expenses of \$76.5 million. Also included are general and administrative expenses of approximately \$152.5 million and approximately \$22.1 million charged as a provision for doubtful accounts receivable. During the six months ended June 30, 2006, departmental expenses included casino expenses of \$121.2 million, room expenses of \$35.1 million, food and beverage expenses of \$94.2 million, and entertainment, retail and other expenses of \$66.6 million. Also included are general and administrative expenses of approximately \$96 million and approximately \$6.6 million charged as a provision for doubtful accounts receivable. The increase in expenses is due primarily to the inclusion of the operations of Wynn Macau, including the 39 percent gross win tax on casino revenue, and increases in Wynn Las Vegas expenses commensurate with the increase in revenues.

Pre-opening costs

Pre-opening costs for the six months ended June 30, 2007 of \$2.7 million decreased by \$23.3 million when compared to the six months ended June 30, 2006, primarily due to the opening of Wynn Macau. Pre-opening costs incurred during the six months ended June 30, 2007 related to advertising costs associated with the opening of "Monty Python's Spamalot" at Wynn Las Vegas as well as costs related to Encore and the second phase of Wynn Macau. We expect that pre-opening costs will continue as construction and development of the second phase of Wynn Macau and Encore progress.

[Table of Contents](#)

Depreciation and amortization

Depreciation and amortization for the six months ended June 30, 2007 of \$103.4 million increased by \$21.1 million when compared to the six months ended June 30, 2006, primarily due to depreciation expense associated with Wynn Macau.

During the construction of Wynn Las Vegas and Wynn Macau, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations were capitalized. Once these properties opened, their assets were placed into service and we began recognizing the associated depreciation expense. The depreciation expenses will continue throughout the estimated useful lives of these assets. In addition, we continually evaluate the useful life of our property and equipment, intangibles and other assets. When circumstances require a revision to those estimates of useful life, we adjust them accordingly.

The maximum useful life of assets at Wynn Macau is the remaining life of the gaming concession or land concession, which currently expire in June 2022 and 2029, respectively. Consequently, depreciation related to Wynn Macau is charged on an accelerated basis when compared to Wynn Las Vegas.

Contract termination fee

In February 2006, we agreed with the producers of Avenue Q to end Avenue Q's exclusive Las Vegas run at Wynn Las Vegas' Broadway Theatre at the end of May 2006. To terminate the contract, we paid a termination fee of \$5 million. This fee was recorded in the first quarter of 2006 in accordance with the liability recognition provisions of SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities*.

Property charges and other

Property charges and other for the six months ended June 30, 2007 of \$26.3 million increased by approximately \$19 million when compared to the six months ended June 30, 2006. This increase is primarily due to the abandonment charges taken at Wynn Macau. In January 2007, we decided to abandon the parking garage to make way for the Wynn Diamond Suites project. We recorded a charge of \$10 million during the first quarter of 2007 related to the Macau garage abandonment. In the second quarter of 2007, we recorded a \$10.2 million charge at Wynn Macau for the abandonment of costs related to portions of the main kitchen, warehouse, and certain restaurants to enable the main casino to be connected with the second phase expansion.

In response to our evaluation of our properties and the reactions of our guests, we continue to make enhancements to both Wynn Las Vegas and Wynn Macau. Costs of \$6.1 million relating to assets retired as a result of these enhancement and remodel efforts for the six months ended June 30, 2007 were expensed as property charges. In the first quarter of 2007, we remodeled portions of the Le Rêve Theatre to enhance the customer experience. In the first quarter of 2007, we also remodeled the food court at Wynn Macau.

Other non-operating costs and expenses

Interest and other income increased by \$4.5 million to \$22.5 million for the six months ended June 30, 2007 compared to the six months ended June 30, 2006. This increase is due to interest earned on the remaining proceeds from the subconcession sale last September and higher interest rates earned on cash balances compared to 2006.

Interest expense, net of capitalized interest of \$16.1 million, for the six months ended June 30, 2007 was \$73.1 million compared to \$71.3 million, net of capitalized interest of \$14.9 million, for the six months ended June 30, 2006. This increase is primarily due to our increased debt outstanding year over year.

Our interest rate swaps are accounted for in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", as amended. The fair value of our interest rate swaps are recorded as either

[Table of Contents](#)

assets or liabilities. Changes in the fair value of our interest rate swaps are recorded as an increase (or decrease) in swap fair value in each period. We recorded a gain of approximately \$1.9 million for the six months ended June 30, 2007 resulting from the increase in the fair value of our interest rate swaps from December 31, 2006 to June 30, 2007. During the six months ended June 30, 2006 we recorded a gain of \$10.6 million resulting from the increase in the fair value of interest rate swaps between December 31, 2005 and June 30, 2006. For further information on our interest rate swaps, see Item 3—"Quantitative and Qualitative Disclosures about Market Risk".

Income Taxes

Our effective tax rate of 20% is lower than the U.S. Federal rate of 35% primarily due to the portion of Macau earnings that we consider permanently invested abroad, the lower tax rates applicable to our foreign income, and the tax holiday applicable to the earnings of Wynn Macau S.A. as described below.

Effective September 6, 2006, Wynn Macau, S.A. received a 5-year exemption from Macau's 12% Complementary Tax on casino gaming profits. Accordingly, we were exempted from the payment of approximately \$12.5 million in such taxes. Our 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.

Liquidity and Capital Resources

Cash Flow from Operations

Our operating cash flows are primarily affected by our operating income generated by Wynn Las Vegas and Wynn Macau, interest paid, and non-cash charges included in operating income. Net cash provided from operations for the six months ended June 30, 2007 was \$337.2 million compared to \$41.5 million provided by operations for the six months ended June 30, 2006. This increase is due to the operations of Wynn Macau and improved results of Wynn Las Vegas, especially in the casino department.

Capital Resources

We require a certain amount of cash on hand for operations. Our cash balances at June 30, 2007 included approximately \$515 million remaining from the \$900 million cash received from the sale of our subconcession on September 11, 2006. At June 30, 2007, we had approximately \$838.5 million of cash and cash equivalents available for new development activities, general corporate purposes, enhancements to Wynn Las Vegas and Wynn Macau, and to support the development and construction of Encore and the second phase of Wynn Macau. Of this amount, approximately \$46.4 million is held by Wynn Resorts, Limited, which is not a guarantor of the debt of its subsidiaries, including Wynn Las Vegas, LLC and Wynn Macau, S.A.

At June 30, 2007, we had approximately \$40.6 million in cash and investments from the proceeds of our debt and equity financings, which is restricted for the following:

- Construction, development and pre-opening expenses of Encore and;
- \$30 million restricted for the Encore completion guarantee.

Cash equivalents include investments in overnight money market funds. Restricted investments are kept in money market funds or relatively short-term, government-backed, marketable debt securities as required by agreements governing our debt facilities.

[Table of Contents](#)

Investing Activities

Encore at Wynn Las Vegas

On April 28, 2006, we commenced construction on Encore. We expect to open Encore to the public in early 2009. Design and construction is progressing as expected at Encore. Current construction activities in the various project sections include the following:

- The high-rise concrete pours have been completed through the 38th floor deck.
- The drywall, mechanical, electrical and plumbing rough-in is completed up to the 10th floor and framing is completed up to the 19th floor.
- Exterior glass installation is complete up to the 26th floor.
- The low-rise casino concrete pours are complete.
- The valet under the parking area has been poured and the columns and footings for the back of house basement are substantially complete.
- The structural steel in the meeting rooms and the structural slab beneath the pool decks is in process.
- Concrete has been poured for all 10 levels in the employee parking garage and the 10-level guest self park garage is substantially complete.

Our project budget is currently estimated at approximately \$2.2 billion, consisting of approximately \$2.1 billion for Encore and approximately \$100 million for an employee parking garage on our Koval property, an associated pedestrian bridge and costs incurred in connection with the theatre remodeling and production of “Monty Python’s Spamalot” at Wynn Las Vegas. The project is being funded from our existing Credit Facilities and operating cash flow from Wynn Las Vegas. To the extent additional funds are required, we will provide these amounts with additional debt and equity contributions by Wynn Resorts or additional indebtedness to be incurred by Wynn Las Vegas.

On February 27, 2007, we entered into a Design Build Architectural, Engineering and Construction Services Agreement (the “Contract”) with Tutor-Saliba Corporation (“Tutor”) for the design and construction of Encore. The Contract sets forth all of the terms and conditions pursuant to which Tutor will design and construct Encore. In June 2007, we executed the first amendment to the Contract which set the guaranteed maximum price for work under the Contract at \$1.3 billion. In connection with the execution and delivery of the Contract, Tutor and the Ronald N. Tutor Separate Trust (the “Trust”) have entered into and consented to a Net Worth Agreement pursuant to which (x) the Trust agreed that it will retain its current majority holdings of Tutor and (y) the Trust and Tutor agreed that during the term of the Contract, Tutor will maintain (i) net worth of at least \$100 million, and (ii) liquid assets of at least \$50 million. As of June 30, 2007, we incurred approximately \$567 million of project costs related to the development and construction of Encore and related capital improvements.

The ongoing costs of Encore will be paid with funds from the following sources and in the following order of priority:

- First, by using agreed amounts of excess cash flow from the operations of Wynn Las Vegas and any debt or equity contributions from Wynn Resorts or proceeds of additional debt financing at Wynn Las Vegas;
- Second, by using the proceeds of borrowings under the Wynn Las Vegas Credit Facilities;
- Third, by using the funds from the completion guarantee deposit account.

Wynn Las Vegas

In response to our evaluation of Wynn Las Vegas and the reactions of our guests, we continue to make certain enhancements and refinements to the property. As a result, we have incurred and will continue to incur

[Table of Contents](#)

capital expenditures relating to these enhancements and refinements. Under the terms of the Wynn Las Vegas Credit Facilities, we are permitted to make up to \$172.2 million of capital expenditures in 2007, of which we have expended approximately \$23.8 million through June 30, 2007. The spending limit may be increased to the extent funds are contributed to Wynn Las Vegas by Wynn Resorts, Limited.

Wynn Macau

The first phase of Wynn Macau was completed, and the casino resort opened, on September 6, 2006. The construction of the expansion is progressing and is scheduled to open in stages, beginning in the third quarter of 2007. The overall Wynn Macau project remains within budget and the second phase is progressing according to our desired timeframe.

As of June 30, 2007, the Company has incurred approximately \$1 billion of the total project budget (excluding Wynn Diamond Suites) of approximately \$1.2 billion.

In July 2007, Wynn Macau S.A. issued a notice to proceed to the general contractor with respect to approximately \$347.8 million of construction costs relating to the construction of Wynn Diamond Suites. While the complete project budget is still being finalized, we expect total cost to be in the range of \$550 to \$600 million. We expect Wynn Diamond Suites to open to the public in the first half of 2010.

Financing Activities

Wynn Resorts, Limited

On June 7, 2007, our Board of Directors authorized an equity repurchase program of up to \$1.2 billion which may include purchases of both our common stock and our 6% Convertible Debentures due 2015. The repurchase program may include repurchases from time to time through open market purchases or negotiated transactions, depending upon market conditions. As of June 30, 2007, we had repurchased 1,310,834 shares of our common stock through open market purchases for a net cost of \$123.4 million, at an average price of \$94.13 per share.

On June 15, 2007, we announced that we had called for redemption on July 20, 2007, all of the outstanding principal amount of our 6% Convertible Subordinated Debentures due 2015 (the "Debentures"). Prior to redemption, in July 2007 all of the holders converted their Debentures into shares of our common stock at a conversion price of \$23 per share (a conversion rate of approximately 43.4782 shares per \$1,000 principal amount of Debentures). Cash was paid in lieu of fractional shares. As a result, in July 2007, \$224.1 million principal amount of the Debentures were converted into 9,744,680 shares of our common stock. Accordingly in July 2007 long-term debt was reduced by \$224.1 million, equity was increased by \$218.9 million, and deferred financing costs were reduced by approximately \$5.2 million.

On June 21, 2007, we entered into a \$1 billion term loan facility (the "Term Loan"). Borrowings under the Term Loan are available in the form of a delayed-draw term loan facility available through December 31, 2007, with the option to increase the facility to \$1.25 billion if certain conditions are met. The Term Loan will mature and be payable on June 21, 2010. We may use the Term Loan to fund (a) our equity repurchase program announced on June 7, 2007, (b) up to \$150 million in swing line (overnight) borrowings, and (c) up to \$350 million for general corporate purposes.

Loans under the Term Loan will accrue interest at our election of LIBOR or a Base Rate, plus a borrowing margin as described below. Interest on LIBOR loans shall be payable at the end of the applicable interest period in the case of interest periods of one, two or three months, and every three months in the case of interest periods of six months or longer. Base Rate loans are expected to bear interest at (a) the greater of (i) the rate most recently announced by Deutsche Bank as its "prime rate," or (ii) the Federal Funds Rate plus 1/2 of 1% per annum; plus (b) a borrowing margin as described below. Interest on Base Rate loans will be payable quarterly in

[Table of Contents](#)

arrears. The borrowing margin is 2.25% for LIBOR loans and 1% for Base Rate loans, if the Company's net liquidity is equal to or greater than \$400 million and 2.50% for LIBOR loans and 1.25% for Base Rate loans, if the Company's net liquidity is less than \$400 million. For borrowings under the Term Loan, we expect to elect interest at LIBOR plus a margin of 2.25% on the outstanding balance. We will pay 112.5 bps per annum of the actual daily amount by which the actual Term Loan commitment exceeds the outstanding amount of the Term Loan.

Wynn Las Vegas and Encore

As of June 30, 2007, our Wynn Las Vegas Credit Facilities consist of a \$900 million revolving credit facility (the "Revolver") and \$225 million term loan facility (the "Wynn Las Vegas Term Loan"). For borrowings under the Wynn Las Vegas Term Loan we have elected, and expect to continue to elect, Eurodollar loans which bear interest at the 1-month LIBOR and include a margin of 1.875% on that outstanding balance. We have a \$200 million notional amount interest rate swap to essentially fix the interest on \$200 million of the Wynn Las Vegas Term Loan at the rate of 5.7% per annum. (For further information, see Item 3. "Quantitative and Qualitative Discussions about Market Risk".)

As of June 30, 2007, there are no amounts outstanding under the Revolver. Consequently, \$900 million remains available under the Revolver for future borrowings for the construction of Encore or for other uses as necessary. For borrowings under the Revolver, we have elected, and expect to continue to elect, Eurodollar loans, which bear interest at the 1-month LIBOR and currently include a margin of 1.625% on the outstanding balance. After opening Encore, the margin will fluctuate between a range of 1% to 1.75%, depending on our leverage ratio. In addition to interest, we also pay quarterly in arrears, an annual rate of 0.375% on the daily average of unborrowed availability under the Revolver. After the opening of Encore, the annual fee that we will be required to pay for unborrowed availability under the Revolver will be based on our leverage ratio and will range from an annual rate of 0.25% to 0.50%.

The \$900 million Revolver will terminate and be payable in full on August 15, 2011. The Term Loan will mature in two installments: \$112.5 million will be payable on September 30, 2012 and the remaining \$112.5 million will be payable on August 15, 2013.

The Wynn Las Vegas Credit Facilities are obligations of Wynn Las Vegas, LLC and are guaranteed by and secured by substantially all of the assets (except the corporate aircraft) of each of its subsidiaries (other than Wynn Completion Guarantor, LLC). The obligations of Wynn Las Vegas, LLC and the guarantors under the Credit Facilities rank pari passu in right of payment with their existing and future senior indebtedness, including indebtedness with respect to the First Mortgage Notes and senior in right of payment to all of their existing and future subordinated indebtedness.

In April 2007, we amended our Wynn Las Vegas Credit Facilities to: (a) have the Final Completion as defined, be deemed satisfied for Wynn Las Vegas with the resulting release of (i) all amounts in excess of \$30 million, which amount must remain for the completion of Encore, from the Completion Guaranty Deposit Account, (\$24.6 million), and (ii) the balance of funds in the Project Liquidity Reserve Account (\$32.8 million), (b) increase the permitted expenditures for Encore from \$300 million to \$500 million prior to the execution of a guaranteed maximum price construction contract, and (c) permit the issuance of up to \$500 million of unsecured debt as and when permitted under the indenture governing the First Mortgage Notes.

\$32.5 Million Term Loan for Aircraft

On May 10, 2007, World Travel G-IV, a subsidiary of Wynn Resorts, entered into a term loan credit facility to finance the purchase of an aircraft. We may borrow up to \$32.5 million under this term loan facility of which approximately \$25 million has been drawn through June 30, 2007. The loan will bear interest at LIBOR plus

[Table of Contents](#)

1.15% and will mature on August 10, 2012. Principle and interest payments will be made quarterly beginning July 1, 2007. Principle payments will be approximately \$542,000 with a balloon payment of \$21.1 million due at maturity.

Wynn Macau

On June 27, 2007, Wynn Resorts (Macau) S.A., amended its credit facilities, dated September 14, 2005 (“Amended Common Terms Agreement”), and entered into other related amendments and agreements with a syndicate of lenders. The Amended Common Terms Agreement and related agreements took effect on June 29, 2007 and expand availability under Wynn Macau, S.A.’s existing senior bank facility from US\$764 million to US\$1.550 billion, including a US\$550 million equivalent fully funded senior term loan facility, and a US\$1 billion senior revolving credit facility. Wynn Macau, S.A. also has the ability to upsize the total facilities by an additional US\$50 million pursuant to the terms and provisions of the Amended Common Terms Agreement. All of the senior credit facilities described above are collectively referred to herein as the “Senior Secured Credit Facilities”.

The term loan facilities mature in June 2014, and the revolving credit facility matures in June 2012. The principal amount of the term loans is required to be repaid in quarterly installments, commencing in September 2011. Borrowings under the Senior Secured Credit Facilities will bear interest at LIBOR or HIBOR plus a margin of 1.75%.

Borrowings under the Senior Secured Credit Facilities will be used to complete the expansion of Wynn Macau and fund pre-opening expenses for the expansion, to finance the development of the Wynn Diamond Suites, make investments in other projects in and around Macau and for general corporate purposes.

As part of the amendment to the Senior Secured Credit Facilities, Wynn Resorts Limited’s remaining support obligations to Wynn Macau and US \$30 million in contingent equity previously provided by the Company have been released.

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

\$44.75 Million Note Payable

On March 30, 2007, World Travel, LLC, a subsidiary of Wynn Las Vegas, refinanced the \$44.75 million note payable. The new loan has a principal balance of \$42 million and is due April 1, 2017. The loan is guaranteed by Wynn Las Vegas, LLC and secured by a first priority security interest in one of the Company’s two aircraft. Principal and interest are due quarterly with a balloon payment of \$28 million due at maturity. Interest is calculated at the 90-day LIBOR plus 125 basis points. In connection with this transaction, we incurred a loss from extinguishment of debt of \$157,000 related to the write-off of unamortized debt issue costs associated with the original loan.

Contractual Obligation and Off Balance Sheet Arrangements

There have been no material changes outside the ordinary course of business during the first half of the year to our contractual obligations or off balance sheet arrangements as disclosed in our Annual Report on Form 10-K for the year ended December 31, 2006, except as follows. As of June 30, 2007, we had borrowed \$100 million under a \$1 billion term loan facility entered into on June 21, 2007 which will primarily be used to fund the \$1.2 billion board approved equity repurchase program. The term loan will mature and be payable on June 21, 2010. Additionally, in June 2007, our obligations over the next 1 to 3 years under construction contracts and commitments increased by \$1.3 billion upon our execution of a first amendment to the Contract with our contractor for the construction of Encore.

[Table of Contents](#)

Other Liquidity Matters

Wynn Resorts is a holding company and, as a result, its ability to pay dividends is dependent on its subsidiaries' ability to provide funds to it. Restrictions imposed by our subsidiaries' debt instruments significantly restrict certain key subsidiaries holding a majority of our assets, including Wynn Las Vegas, LLC and Wynn Macau, S.A., from making dividends or distributions to us. Specifically, Wynn Las Vegas, LLC and certain of its subsidiaries are restricted under the indenture governing the First Mortgage Notes from making certain "restricted payments" as defined in the indenture. These restricted payments include the payment of dividends or distributions to any direct or indirect holders of equity interests of Wynn Las Vegas, LLC. These restricted payments may not be made unless certain financial and non-financial criteria have been satisfied. The other Credit Facilities of Wynn Las Vegas, LLC and Wynn Macau, S.A. contain similar restrictions; although the Wynn Macau, S.A. loan agreements permit distribution of the net proceeds of the subconcession sale.

If completion of Encore or the second phase of Wynn Macau is delayed, then our debt service obligations accruing prior to the actual opening will increase correspondingly. Wynn Las Vegas will fund its operations and capital requirements from operating cash flow and remaining availability under Wynn Las Vegas, LLC's Credit Facilities. We cannot assure you, however, that Wynn Las Vegas will generate sufficient cash flow from operations or that future borrowings available to us under the Wynn Las Vegas Credit Facilities will be sufficient to enable us to service and repay Wynn Las Vegas, LLC's indebtedness and to fund its other liquidity needs. Similarly, we expect that Wynn Macau will fund Wynn Macau, S.A.'s debt service obligations with operating cash flow and remaining availability under its Senior Secured Credit Facility. However, we cannot assure you that operating cash flows and available borrowings will be sufficient to do so. We may refinance all or a portion of our indebtedness on or before maturity. We cannot assure you that we will be able to refinance any of the indebtedness on acceptable terms or at all.

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

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

Critical Accounting Policies and Estimates

A description of our critical accounting policies is included in Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2006. There has been no material change to these policies for the six months ended June 30, 2007, other than as related to the allowance for estimated doubtful accounts receivable and income taxes as noted below.

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 Wynn Las Vegas. However, the issuance of credit at Wynn Macau is less significant when compared to Wynn Las Vegas. We maintain strict controls over the issuance of credit and aggressively pursue collection from those customers who fail to pay their

[Table of Contents](#)

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 Wynn Las Vegas 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 particularly 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 June 30, 2007 and December 31, 2006, approximately 63% and 59% of our casino accounts receivable were owed by customers from foreign countries, primarily in Asia. The collectibility of markers given by foreign customers is affected by a number of factors including changes in currency exchange rates and economic conditions in the customers' home countries.

We regularly evaluate our reserve for bad debts based on a specific review of customer accounts as well as management's prior experience with collection trends in the casino industry and current economic and business conditions.

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

	June 30, 2007	December 31, 2006
Casino accounts receivable	\$ 147,695	\$ 148,929
Allowance for doubtful casino accounts receivable	\$ 55,077	\$ 35,183
Allowance as a percentage of casino accounts receivable	37.3%	23.6%
Percentage of casino accounts receivable outstanding over 180 days	20.6%	13.9%

The increase in the allowance for doubtful accounts as a percentage of casino accounts receivable is due to a normal increase in casino accounts receivable outstanding over 180 days. While collection efforts remain active, it is our current policy to fully reserve all accounts over one year old. Our reserve methodology is applied consistently to credit extended at both Wynn Las Vegas and Wynn Macau. As of June 30, 2007 and December 31, 2006, approximately 27% and 10% respectively, of our outstanding casino account receivable balances originated at Wynn Macau.

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

Income Taxes

We are subject to income taxes in the United States and other foreign jurisdictions where the Company operates. We account for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes". SFAS No. 109 requires 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 is recognized in the results of operations in the period that includes the enactment date.

[Table of Contents](#)

SFAS No. 109 requires 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 our development stage, we accumulated significant net operating losses, which generated significant deferred tax assets. Because of the Company's limited operating history, we had previously fully reserved these net deferred tax assets. On September 11, 2006, we recorded a gain on the sale of the subconcession right. Accordingly we determined that a substantial portion of these net deferred tax assets have become more likely than not realizable as defined by SFAS No. 109.

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 the criteria of FASB Interpretation No. 48 ("FIN 48") "Accounting for Uncertainty in Income Taxes" which the Company adopted on January 1, 2007. The Interpretation prescribes a minimum recognition threshold a tax position is required to meet before being recognized in the financial statements. As a result, the Company's income tax recognition policy related to uncertain income tax positions is no longer covered by SFAS No. 5.

FIN 48 applies to all tax positions related to income taxes subject to SFAS No. 109. FIN 48 utilizes a two-step approach for evaluating tax positions. Recognition (Step I) occurs when the Company concludes that a tax position, based on its technical merits, is more likely than not to be sustained upon examination. Measurement (Step II) is only addressed if the position is deemed to be more likely than not to be sustained. Under Step II, the tax benefit is measured as the largest amount of benefit that is more likely than not to be realized upon settlement. FIN 48's use of the term "more likely than not" is consistent with how that term is used in SFAS No. 109 (i.e. likelihood of occurrence is greater than 50%).

The tax positions failing to qualify for initial recognition is to be recognized in the first subsequent interim period that they meet the "more likely than not" standard. If it is subsequently determined that a previously recognized tax position no longer meets the "more likely than not" standard, it is required that the tax position is derecognized. FIN 48 specifically prohibits the use of a valuation allowance as a substitute for derecognition of tax positions. As applicable, the Company will recognize accrued penalties and interest related to unrecognized tax benefits in the provision for income taxes. During the six months ended June 30, 2007 and the year ended December 31, 2006, the Company recognized no amounts for interest or penalties.

Recently Issued Accounting Standards

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements". This Statement defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements under other accounting pronouncements that require or permit fair value measurements. Accordingly, this Statement does not require any new fair value measurements. This statement is effective for fiscal years beginning after November 15, 2007. We have not yet determined the impact this statement will have on our consolidated financial statements after it is adopted on January 1, 2008.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

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

Interest Rate Risks

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

[Table of Contents](#)

Interest Rate Swap Information

We have entered into floating-for-fixed interest rate swap arrangements relating to certain of our floating-rate debt facilities. We account for these swaps under SFAS No. 133 and its related interpretations.

Wynn Las Vegas

As of June 30, 2007, we have one interest rate swap arrangement to hedge the underlying interest rate risk on a total of \$200 million of borrowings under the current Wynn Las Vegas, LLC term loan facility, which bears interest at LIBOR plus 1.875%. Under this interest rate swap arrangement, we receive payments at a variable rate of LIBOR and pay a fixed rate of 3.793% on the \$200 million notional amount which expires on December 31, 2008. Although this interest rate swap is highly effective economically in fixing the interest rate on this borrowing under the new term loan facility at approximately 5.7%, changes in fair value of our interest rate swaps for each reporting period are, and will continue to be, recorded as an increase/(decrease) in swap fair value as the swap does not qualify for hedge accounting.

Wynn Macau

As of June 30, 2007, we have two interest rate swaps to hedge a portion of the underlying interest rate risk on borrowings under Wynn Macau S.A.'s senior term loan facility. Under the first swap agreement, we pay a fixed interest rate of 4.84% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately \$198.2 million, in exchange for receipts on the same amounts at a variable interest rate based on the applicable LIBOR at the time of payment. Under the second swap agreement, we pay a fixed interest rate of 4.77% on borrowings estimated to be incurred under the senior term loan facility up to a maximum of approximately HK\$1.1 billion (approximately US\$140.1 million), in exchange for receipts on the same amounts at a variable interest rate based on the applicable HIBOR at the time of payment. The term of both swap agreements is from November 28, 2005 through November 28, 2008.

These interest rate swaps are expected to be highly effective in fixing the interest rate on approximately 100% of the US dollar and approximately 35% of the Hong Kong dollar borrowings under the senior bank facility at approximately 6.59% and 6.52%, respectively. However, changes in the fair values of these interest rate swaps for each reporting period recorded are, and will continue to be, recognized as an increase/(decrease) in swap fair value as the swaps do not qualify for hedge accounting.

Summary of Historical Fair Values

The following table presents the historical asset or (liability) fair values of our interest rate swap arrangements (reflected in deposits and other assets or in other long-term liabilities as appropriate) as of June 30, 2007 and December 31, 2006 (all amounts in thousands):

<u>Asset / (Liability) Fair Value at:</u>	<u>Wynn Las Vegas Interest Rate Swap</u>	<u>Wynn Macau Interest Rate Swaps</u>	<u>All Interest Rate Swaps</u>
June 30, 2007	\$ 4,201	\$ 980	\$ 5,181
December 31, 2006	\$ 4,789	\$ (1,467)	\$ 3,322

The fair value approximates the amount we would receive if these contracts were settled at the respective valuation dates. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions, and therefore, is subject to significant estimation and a high degree of variability of fluctuation between periods.

Interest Rate Sensitivity

As of June 30, 2007, approximately 82% of our long-term debt was based on fixed rates, including the notional amounts related to interest rate swaps. Based on our borrowings as of June 30, 2007, an assumed 1% change in variable rates would cause our annual interest cost to change by \$4.5 million.

Foreign Currency Risks

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

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

Because many of Wynn Macau's payment and expenditure obligations are in Macau patacas, in the event of unfavorable Macau pataca or Hong Kong dollar rate changes, Wynn Macau's obligations, as denominated in U.S. dollars, would increase. In addition, because we expect that most of the revenues for any casino that Wynn Macau operates in Macau will be in Hong Kong dollars, we are subject to foreign exchange risk with respect to the exchange rate between the Hong Kong dollar and the U.S. dollar. Also, because our Macau-related entities incur U.S. dollar-denominated debt, fluctuations in the exchange rates of the Macau pataca or the Hong Kong dollar, in relation to the U.S. dollar, could have adverse effects on Wynn Macau's ability to service its debt, its results of operations and its financial condition.

Item 4. Controls and Procedures

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

(b) *Internal Control Over Financial Reporting.* There have not been any changes in the Company's internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Part II - OTHER INFORMATION**Item 1A. Risk Factors**

A description of our risk factors can be found in Item IA of our Annual Report on Form 10-K for the year ended December 31, 2006. There were no material changes to those risk factors during the six months ended June 30, 2007.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds*Dividend Restrictions*

We have not regularly declared or paid cash dividends on shares of our common stock.

Wynn Resorts, Limited is a holding company and, as a result, its ability to pay dividends is dependent on its subsidiaries' ability to provide funds to it. Restrictions imposed by Wynn Resorts, Limited subsidiaries' debt instruments significantly restrict certain key subsidiaries holding a majority of our assets, including Wynn Las Vegas, LLC and Wynn Macau, S.A. from making dividends or distributions to Wynn Resorts, Limited. Specifically, Wynn Las Vegas, LLC and certain of its subsidiaries are restricted under the indenture governing the First Mortgage Notes from making certain "restricted payments," as defined in the indenture. These restricted payments include the payment of dividends or distributions to any direct or indirect holders of equity interests of Wynn Las Vegas, LLC. These restricted payments cannot be made unless certain financial and non-financial criteria have been satisfied. In addition, the terms of the other loan agreements of Wynn Las Vegas, LLC and Wynn Macau, S.A. contain similar restrictions; provided that the Wynn Macau, S.A. loan documents permit distribution of the net proceeds from the sale of the subconcession right in September 2006.

\$1.2 billion Equity Repurchase Program

On June 7, 2007, the Board of Directors of Wynn Resorts, Limited authorized an equity repurchase program of up to \$1.2 billion which may include purchases of both its common stock and its 6% Convertible Debentures due 2015. The repurchase program may include repurchases from time to time through open market purchases or negotiated transactions, depending upon market conditions. As of June 30, 2007, the Company had repurchased 1,310,834 shares of its common stock through open market purchases for net costs of \$123.4 million, at an average price of \$94.13 per share.

	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of a Publicly Announced Plan</u>	<u>Maximum Dollar Value of Shares that May Yet Be Purchased Under the Plan</u>
April 2007	—	\$ —	—	\$ —
May 2007	—	—	—	—
June 2007	1,310,834	94.13	1,310,834	1,076,607,055
Total	<u>1,310,834</u>	<u>\$ 94.13</u>	<u>1,310,834</u>	<u>\$ 1,076,607,055</u>

Proceeds from our Initial Public Offering of Common Stock

As we have previously disclosed, using proceeds from our initial public common stock offering in October 2002, we placed \$50 million into a required completion guarantee deposit account for Wynn Las Vegas and \$30 million into a required liquidity reserve account for Wynn Las Vegas under the Wynn Las Vegas Credit Facilities. In April 2007, \$20 million of the completion guarantee account and all of the liquidity reserve account together with the interest earned on the funds while held in their respective accounts, were released. Such funds are expected to be used for the construction of Encore as disclosed in Note 14 to Notes to Condensed Consolidated Financial Statements included in Part I, Item 1 of this Form 10-Q.

[Table of Contents](#)

Item 4. Submission of Matters to a Vote of Security Holders

The Company's Annual Meeting of Stockholders was held on May 8, 2007. The following proposals were presented to a vote of the stockholders.

Proposal No. 1 - Election of Directors (Class II)

<u>Director</u>	<u>Votes For</u>	<u>Votes Withheld</u>
Stephen A. Wynn	92,791,877	814,938
Alvin V. Shoemaker	93,320,157	286,658
D. Boone Wayson	93,254,530	352,285

The following Class I directors remain in office with their term expiring in 2009 – Ronald J. Kramer, John A. Moran and Elaine P. Wynn. The following Class III directors remain in office with their term expiring in 2008—Kazuo Okada, Robert J. Miller and Allan Zeman.

Proposal No. 2 - Annual Performance Based Incentive Plan

To amend the Company's Annual Performance Based Incentive Plan to increase the maximum payable thereunder to any individual to \$10 million:

<u>Votes For</u>	<u>Against</u>	<u>Abstain</u>
84,766,270	701,607	65,441

Proposal No. 3 - Election of Independent Auditors

To ratify the Company's designation of Ernst & Young LLP as the independent auditors for the Company and all subsidiaries for the 2007 fiscal year:

<u>Votes For</u>	<u>Against</u>	<u>Abstain</u>
93,558,014	25,868	22,933

Item 6. Exhibits

(a) Exhibits

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amended and Restated Articles of Incorporation of the Registrant (1).
*3.2	Fourth Amended and Restated Bylaws of the Registrant, as amended.
*10.1	Credit Agreement dated June 21, 2007 among Wynn Resorts, Limited and Deutsche Bank Securities, Inc and Bank of America Securities LLC
*10.2	Revolving Credit Facility Second Amendment Agreement dated June 27, 2007 among Wynn Resorts (Macau), S.A. and Societe Generale, Hong Kong Branch as Revolving Credit Facility Agent and certain financial institutions as revolving credit facility lenders
*10.3	Second Amendment Agreement to the Common Terms Agreement dated June 27, 2007 among Wynn Resorts (Macau), S.A., certain financial institutions as Hotel Facility Lenders, Project Facility Lenders, and Revolving Credit Facility Lenders, Banc of America Securities Asia Limited, Deutsche Bank A.G. Hong Kong Branch, and Societe Generale Asia Limited as Global Lead Arrangers and Societe Generale Asia Limited as Hotel Facility Agent and Project Facility Agent and Societe Generale Hong Kong Branch as Intercreditor Agent.
*10.4	Second Amendment Agreement to the Hotel Facility Agreement dated June 27, 2007 among Wynn Resorts (Macau), S.A., Societe Generale Asia Limited as Hotel Facility Agent, and certain financial institutions as Hotel Facility Lenders
*10.5	Second Amendment Agreement to the Project Facility Agreement dated June 27, 2007 among Wynn Resorts (Macau), S.A., Societe Generale Asia Limited as Project Facility Agent, and certain financial institutions as Project Facility Lenders.
*10.6	First Amendment to Amended and Restated Credit Agreement dated April 9, 2007 among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Show Performers, LLC, Wynn Golf, LLC, Wynn Sunrise, LLC, World Travel, LLC, Kevyn, LLC, Las Vegas Jet, LLC, and Deutsche Bank Trust Company Americas, as Administrative Agent on behalf of the several banks and other financial institutions or entities from time to time party to Wynn Las Vegas LLC's Amended and Restated Credit Agreement, dated as of August 15, 2006.
*10.7	Fifth Amendment to Master Disbursement Agreement, dated as of April 9, 2007 among Wynn Las Vegas, LLC and Deutsche Bank Trust Company Americas.
*31.1	Certification of Chief Executive Officer of Periodic Report Pursuant to Rule 13a - 14(a) and Rule 15d - 14(a).
*31.2	Certification of Chief Financial Officer of Periodic Report Pursuant to Rule 13a - 14(a) and Rule 15d - 14(a).
*32.1	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350.

* Filed herewith.

(1) Previously filed with Amendment No. 4 to the Form S-1 filed by the Registrant on October 7, 2002 (File No. 333-90600) and incorporated herein by reference.

WYNN RESORTS, LIMITED
A NEVADA CORPORATION

**FOURTH AMENDED AND RESTATED BYLAWS
EFFECTIVE AS OF
NOVEMBER 13, 2006**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I OFFICES	1
Section 1.1 Principal Office	1
Section 1.2 Other Offices	1
ARTICLE II STOCKHOLDERS	1
Section 2.1 Annual Meeting	1
Section 2.2 Special Meetings	1
Section 2.3 Place of Meetings	1
Section 2.4 Notice of Meetings; Waiver of Notice	2
Section 2.5 Determination of Stockholders of Record	2
Section 2.6 Quorum; Adjourned Meetings	3
Section 2.7 Voting	3
Section 2.8 Proxies	5
Section 2.9 No Action Without A Meeting	5
Section 2.10 Organization	5
Section 2.11 Absentees' Consent to Meetings	6
Section 2.12 Director Nominations	6
Section 2.13 Advance Notice of Stockholder Proposals and Director Nominations by Stockholders	6
ARTICLE III DIRECTORS	8
Section 3.1 General Powers; Performance of Duties	8
Section 3.2 Number, Tenure, and Qualifications	8
Section 3.3 Chairman of the Board	8
Section 3.4 Vice-Chairman of the Board	8
Section 3.5 Classification and Elections	8
Section 3.6 Removal and Resignation of Directors	9
Section 3.7 Vacancies; Newly Created Directorships	9
Section 3.8 Annual and Regular Meetings	9
Section 3.9 Special Meetings	9
Section 3.10 Place of Meetings	10
Section 3.11 Notice of Meetings	10
Section 3.12 Quorum; Adjourned Meetings	10
Section 3.13 Manner of Acting	10
Section 3.14 Super-majority Approval	10
Section 3.15 Telephonic Meetings	11
Section 3.16 Action Without Meeting	11
Section 3.17 Powers and Duties	11
Section 3.18 Compensation	12
Section 3.19 Organization	12
ARTICLE IV OFFICERS	12
Section 4.1 Election	12
Section 4.2 Removal; Resignation	12

	<u>Page</u>
Section 4.3	12
Section 4.4	12
Section 4.5	12
Section 4.6	13
Section 4.7	13
Section 4.8	13
Section 4.9	13
Section 4.10	14
Section 4.11	14
ARTICLE V CAPITAL STOCK	14
Section 5.1	14
Section 5.2	14
Section 5.3	15
Section 5.4	16
Section 5.5	16
Section 5.6	16
Section 5.7	16
Section 5.8	16
ARTICLE VI DISTRIBUTIONS	17
ARTICLE VII RECORDS; REPORTS; SEAL; AND FINANCIAL MATTERS	17
Section 7.1	17
Section 7.2	17
Section 7.3	17
ARTICLE VIII INDEMNIFICATION	17
Section 8.1	17
Section 8.2	19
ARTICLE IX CHANGES IN NEVADA LAW	20
ARTICLE X AMENDMENT OR REPEAL	20
Section 10.1	20

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

ARTICLE I
OFFICES

Section 1.1 Principal Office. The principal office and place of business of Wynn Resorts, Limited (the “**Corporation**”) shall be at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

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

ARTICLE II
STOCKHOLDERS

Section 2.1 Annual Meeting. The annual meeting of the stockholders of the Corporation shall be held on such date and at such time as may be designated from time to time by the Board of Directors. At the annual meeting, directors shall be elected and any other business may be transacted as may be properly brought before the meeting.

Section 2.2 Special Meetings.

(a) Subject to the rights of the holders of preferred stock, if any, special meetings of the stockholders may be called only by the chairman of the board, if any, or the chief executive officer, if any, or, if there be no chairman of the board and no chief executive officer, by the president, and shall be called by the secretary upon the written request of at least a majority of the authorized number of directors. Such request shall state the purpose or purposes of the meeting. Stockholders shall have no right to request or call a special meeting.

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

Section 2.3 Place of Meetings. Any meeting of the stockholders of the Corporation may be held at the Corporation’s registered office in the State of Nevada or at such other place in or out of the State of Nevada and United States as may be designated in the notice of meeting. A waiver of notice signed by all stockholders entitled to vote may designate any place for the holding of such meeting.

Section 2.4 Notice of Meetings; Waiver of Notice.

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

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

(c) A copy of the notice shall be personally delivered or mailed postage prepaid to each stockholder of record entitled to vote at the meeting at the address appearing on the records of the Corporation. Upon mailing, service of the notice is complete, and the time of the notice begins to run from the date upon which the notice is deposited in the mail. If the address of any stockholder does not appear upon the records of the Corporation or is incomplete, it will be sufficient to address any notice to such stockholder at the registered office of the Corporation.

(d) The written certificate of the individual signing a notice of meeting, setting forth the substance of the notice or having a copy thereof attached, the date the notice was mailed or personally delivered to the stockholders and the addresses to which the notice was mailed, shall be prima facie evidence of the manner and fact of giving such notice.

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

Section 2.5 Determination of Stockholders of Record.

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

(b) If no record date is fixed, the record date for determining stockholders: (i) entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is

waived, at the close of business on the day next preceding the day on which the meeting is held; and (ii) for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at any meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting and must fix a new record date if the meeting is adjourned to a date more than 60 days later than the date set for the original meeting.

Section 2.6 Quorum; Adjourned Meetings.

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

(b) If a quorum is not represented, a majority of the voting power represented or the person presiding at the meeting may adjourn the meeting from time to time until a quorum shall be represented. At any such adjourned meeting at which a quorum shall be represented, any business may be transacted which might have been transacted as originally called. When a stockholders' meeting is adjourned to another time or place hereunder, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. However, if a new record date is fixed for the adjourned meeting, notice of the adjourned meeting must be given to each stockholder of record as of the new record date. The stockholders present at a duly convened meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the departure of enough stockholders to leave less than a quorum of the voting power.

Section 2.7 Voting.

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

(b) Except as otherwise provided herein, all votes with respect to shares standing in the name of an individual at the close of business on the record date (including pledged shares) shall be cast only by that individual or such individual's duly authorized proxy. With respect to shares held by a representative of the estate of a deceased stockholder, or a guardian, conservator, custodian or trustee, even though the shares do not stand in the name of such holder, votes may be cast by such holder upon proof of such

representative capacity. In the case of shares under the control of a receiver, the receiver may cast votes carried by such shares even though the shares do not stand of record in the name of the receiver; provided, that the order of a court of competent jurisdiction which appoints the receiver contains the authority to cast votes carried by such shares. If shares stand of record in the name of a minor, votes may be cast by the duly appointed guardian of the estate of such minor only if such guardian has provided the Corporation with written proof of such appointment.

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

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

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

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

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

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

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

(g) If a quorum is present, unless the Articles of Incorporation, these Bylaws, the NRS, or other applicable law provide for a different proportion, action by the stockholders entitled to vote on a matter, other than the election of directors, is approved by

and is the act of the stockholders if the number of votes cast in favor of the action exceeds the number of votes cast in opposition to the action, unless voting by classes or series is required for any action of the stockholders by the laws of the State of Nevada, the Articles of Incorporation or these Bylaws, in which case the number of votes cast in favor of the action by the voting power of each such class or series must exceed the number of votes cast in opposition to the action by the voting power of each such class or series.

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

Section 2.8 Proxies. At any meeting of stockholders, any holder of shares entitled to vote may designate, in a manner permitted by the laws of the State of Nevada, another person or persons to act as a proxy or proxies. Every proxy shall continue in full force and effect until its expiration or revocation in a manner permitted by the laws of the State of Nevada.

Section 2.9 No Action Without A Meeting. No action shall be taken by the stockholders except at an annual or special meeting of stockholders called and noticed in the manner required by these Bylaws. Prior to the completion of the initial public offering of the Corporation, the stockholders may take action by written consent. After the completion of the initial public offering of the Corporation, the stockholders may not in any circumstance take action by written consent.

Section 2.10 Organization.

(a) Meetings of stockholders shall be presided over by the chairman of the board, or, in the absence of the chairman, by the vice-chairman of the board, or in the absence of the vice-chairman, the president, or, in the absence of the president, by the chief executive officer, if any, or, in the absence of the foregoing persons, by a chairman designated by the Board of Directors, or, in the absence of such designation by the Board of Directors, by a chairman chosen at the meeting by the stockholders entitled to cast a majority of the votes which all stockholders present in person or by proxy are entitled to cast. The secretary, or in the absence of the secretary an assistant secretary, shall act as secretary of the meeting, but in the absence of the secretary and any assistant secretary the chairman of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitation on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls.

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

made to any determination made by the inspector(s); and (v) certify the determination of the number of shares represented at the meeting and the count of all votes and ballots.

Section 2.11 Absentees' Consent to Meetings. Transactions of any meeting of the stockholders are as valid as though had at a meeting duly held after regular call and notice if a quorum is represented, either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not represented in person or by proxy (and those who, although present, either object at the beginning of the meeting to the transaction of any business because the meeting has not been lawfully called or convened or expressly object at the meeting to the consideration of matters not included in the notice which are legally or by the terms of these Bylaws required to be included therein), signs a written waiver of notice and/or consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents, and approvals shall be filed with the corporate records and made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called, noticed or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not properly included in the notice if such objection is expressly made at the time any such matters are presented at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of stockholders need be specified in any written waiver of notice or consent, except as otherwise provided in these Bylaws.

Section 2.12 Director Nominations. Subject to the rights, if any, of the holders of preferred stock to nominate and elect directors, nominations of persons for election to the Board of Directors of the Corporation may be made by the Board of Directors, by a committee appointed by the Board of Directors, or by any stockholder of record entitled to vote in the election of directors who complies with the notice procedures set forth in Section 2.13 below.

Section 2.13 Advance Notice of Stockholder Proposals and Director Nominations by Stockholders. At any annual or special meeting of stockholders, proposals by stockholders and persons nominated for election as directors by stockholders shall be considered only if advance notice thereof has been timely given by the stockholder as provided herein and such proposals or nominations are otherwise proper for consideration under applicable law, the Articles of Incorporation and these Bylaws. Notice of any proposal to be presented by any stockholder or of the name of any person to be nominated by any stockholder for election as a director of the Corporation at any meeting of stockholders shall be delivered to the secretary of the Corporation at its principal office not less than sixty (60) nor more than ninety (90) days prior to the day of the meeting; provided, however, that if the date of the meeting is first publicly announced or disclosed (in a public filing or otherwise) less than seventy (70) days prior to the day of the meeting, such advance notice shall be given not more than ten (10) days after such date is first so announced or disclosed. Public notice shall be deemed to have been given more than seventy (70) days in advance of the annual meeting if the Corporation shall have previously disclosed, in these Bylaws or otherwise, that the annual meeting in each year is to be held on a determinable date, unless and until the Board of Directors determines to hold the meeting on a different date. For purposes of this Section, public disclosure of the date of a forthcoming meeting

may be made by the Corporation not only by giving formal notice of the meeting, but also by notice to a national securities exchange, the Nasdaq National Market or the Nasdaq SmallCap Market (if a corporation's common stock is then listed on such exchange or quoted on either such Nasdaq market), by filing a report under Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "**Act**") (if the Corporation is then subject thereto), by mailing to stockholders, or by a general press release.

Any stockholder who gives notice of any such proposal shall deliver therewith the text of the proposal to be presented and a brief written statement of the reasons why such stockholder favors the proposal and setting forth such stockholder's name and address, the number and class of all shares of each class of stock of the Corporation beneficially owned by such stockholder and any material interest of such stockholder in the proposal (other than as a stockholder). Any stockholder desiring to nominate any person for election as a director of the Corporation shall deliver with such notice a statement, in writing, setting forth (a) the name of the person to be nominated; (b) the number and class of all shares of each class of stock of the Corporation beneficially owned by such person; (c) the information regarding such person required by paragraphs (a), (e) and (f) of Item 401 of Regulation S-K adopted by the Securities and Exchange Commission (the "**SEC**") (or the corresponding provisions of any regulation subsequently adopted by the SEC applicable to the Corporation), and any other information regarding such person which would be required to be included in a proxy statement filed pursuant to the proxy rules of the SEC, had such nominee been nominated, or intended to be nominated by the Board of Directors; (d) such person's signed consent to serve as a director of the Corporation if elected and to file an application for licensing or finding of suitability if the Nevada Gaming Commission or other gaming authority shall so require or the Board of Directors deems it necessary or advisable; (e) such stockholder's name and address and the number and class of all shares of each class of stock of the Corporation beneficially owned by such stockholder; (f) a representation that such stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; and (g) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder. As used herein, shares "**beneficially owned**" shall mean all shares as to which such person, together with such person's affiliates and associates (as defined in Rule 12b-2 under the Act), may be deemed to beneficially own pursuant to Rules 13d-3 and 13d-5 under the Act, as well as all shares as to which such person, together with such person's affiliates and associates, has a right to become the beneficial owner pursuant to any agreement or understanding, whereupon the exercise of warrants, options or rights to convert or exchange (whether such rights are exercisable immediately or only after the passage of time or the occurrence of conditions). The person presiding at the meeting shall determine whether such notice has been duly given and shall direct that proposals and nominees not be considered if such notice has not been duly given. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section. Notwithstanding the foregoing provisions hereof, a stockholder shall also comply with all applicable requirements of the Act, and the rules and regulations thereunder with respect to the matters set forth herein.

ARTICLE III
DIRECTORS

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

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

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

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

Section 3.5 Classification and Elections. Upon the effectiveness of the Corporation's registration statement on Form S-1 with respect to its initial public offering of common stock, the directors shall be classified, with respect to the time for which they shall hold their respective offices, by dividing them into three classes, to be known as "Class I," "Class II" and "Class III." Directors of Class I shall hold office until the next annual meeting of stockholders after such effectiveness and until their successors are elected and qualified, directors of Class II shall hold office until the second annual meeting of stockholders after such effectiveness and until their successors are elected and qualified and directors of Class III shall hold office until the third annual meeting of stockholders after such effectiveness and until their successors are elected and qualified. At each annual meeting of stockholders following such effectiveness, successors to the directors of the class whose term of office expires at such annual meeting shall be elected to hold office until the third succeeding annual meeting of stockholders, so that the term of office of only one class of directors shall expire at each annual meeting. The number of directors in each class, which shall be such that as near as possible to one-third and at least one-fourth (or such other fraction as required by the NRS) in number are elected at each annual meeting, shall be established from time to

time by resolution of the board of directors and shall be increased or decreased by resolution of the board of directors, as may be appropriate whenever the total number of directors is increased or decreased.

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

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

Section 3.8 Annual and Regular Meetings. Immediately following the adjournment of, and at the same place as, the annual or any special meeting of the stockholders at which directors are elected, the Board of Directors, including directors newly elected, shall hold its annual meeting without call or notice, other than this provision, to elect officers and to transact such further business as may be necessary or appropriate. The Board of Directors may provide by resolution the place, date, and hour for holding regular meetings between annual meetings.

Section 3.9 Special Meetings. Except as otherwise required by law, and subject to any rights of the holders of preferred stock, special meetings of the Board of Directors may be called only by the chairman of the board, if any, or if there be no chairman of the board, by any of the chief executive officer, if any, the president, or the secretary, and shall be called by the chairman of the board, if any, the president, the chief executive officer, if any, or the secretary upon the request of at least a majority of the authorized number of directors. If the chairman of the board, or if there be no chairman of the board, each of the president, chief executive officer, if any, and secretary, refuses or neglects to call such special meeting, a special meeting may be called by a written request signed by at least a majority of the authorized number of directors.

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

Section 3.11 Notice of Meetings. Except as otherwise provided in Section 3.8 above, there shall be delivered to each director at the address appearing for him or her on the records of the Corporation, at least twenty-four (24) hours before the time of such meeting, a copy of a written notice of any meeting (a) by delivery of such notice personally, (b) by mailing such notice postage prepaid, (c) by facsimile, (d) by overnight courier, (e) by telegram, or (f) by electronic transmission or electronic writing, including, but not limited to, email. If mailed to an address inside the United States, the notice shall be deemed delivered two (2) business days following the date the same is deposited in the United States mail, postage prepaid. If mailed to an address outside the United States, the notice shall be deemed delivered four (4) business days following the date the same is deposited in the United States mail, postage prepaid. If sent via facsimile, by electronic transmission or electronic writing, including, but not limited to, email, the notice shall be deemed delivered upon sender's receipt of confirmation of the successful transmission. If sent via overnight courier, the notice shall be deemed delivered the business day following the delivery of such notice to the courier. If the address of any director is incomplete or does not appear upon the records of the Corporation it will be sufficient to address any notice to such director at the registered office of the Corporation. Any director may waive notice of any meeting, and the attendance of a director at a meeting and oral consent entered on the minutes of such meeting shall constitute waiver of notice of the meeting unless such director objects, prior to the transaction of any business, that the meeting was not lawfully called, noticed or convened. Attendance for the express purpose of objecting to the transaction of business thereat because the meeting was not properly called or convened shall not constitute presence or a waiver of notice for purposes hereof.

Section 3.12 Quorum; Adjourned Meetings.

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

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

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

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

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

Section 3.15 Telephonic Meetings. Members of the Board of Directors or of any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or such committee by means of a telephone conference or video or similar method of communication by which all persons participating in such meeting can hear each other. Participation in a meeting pursuant to this Section 3.15 constitutes presence in person at the meeting.

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

Section 3.17 Powers and Duties.

(a) Except as otherwise restricted by the laws of the State of Nevada or the Articles of Incorporation, the Board of Directors has full control over the business and affairs of the Corporation. The Board of Directors may delegate any of its authority to manage, control or conduct the business of the Corporation to any standing or special committee, or to any officer or agent, and to appoint any persons to be agents of the Corporation with such powers, including the power to subdelegate, and upon such terms as may be deemed fit.

(b) The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his discretion, may (i) require that any votes cast at such meeting shall be cast by written ballot, and/or (ii) submit any contract or act for approval or ratification at any annual meeting of the stockholders or any special meeting properly called and noticed for the purpose of considering any such contract or act, provided a quorum is present.

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

determined from time to time by resolution adopted by the Board of Directors. The committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

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

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

ARTICLE IV OFFICERS

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

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

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

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

Section 4.5 President. The president, subject to the supervision and control of the Board of Directors, shall in general actively supervise and control the business and affairs of

the Corporation. The president shall keep the Board of Directors fully informed as the Board of Directors may request and shall consult the Board of Directors concerning the business of the Corporation. The president shall perform such other duties and have such other powers which are delegated and assigned to him or her by the Board of Directors if any, these Bylaws or as may be provided by law.

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

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

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

Section 4.9 Treasurer. The treasurer, subject to the order of the Board of Directors, shall have the care and custody of, and be responsible for, all of the money, funds, securities, receipts and valuable papers, documents and instruments of the Corporation, and all books and records relating thereto. The treasurer shall keep, or cause to be kept, full and accurate books of accounts of the Corporation's transactions, which shall be the property of the Corporation, and shall render financial reports and statements of condition of the Corporation when so requested by the Board of Directors, the chairman of the board, if any, the chief executive officer, if any, or the president. The treasurer shall perform all other duties commonly incident to his or her office and such other duties as may, from time to time, be assigned to him or her by the Board of Directors, the chief executive officer, if any, the president, these Bylaws or as may be provided by law. The treasurer shall, if required by the Board of Directors, give bond to the Corporation in such sum and with such security as shall be approved by the Board of Directors for the faithful performance of all the duties of

the treasurer and for restoration to the Corporation, in the event of the treasurer's death, resignation, retirement or removal from office, of all books, records, papers, vouchers, money and other property in the treasurer's custody or control and belonging to the Corporation. The expense of such bond shall be borne by the Corporation. If a chief financial officer of the Corporation has not been appointed, the treasurer may be deemed the chief financial officer of the Corporation.

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

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

ARTICLE V CAPITAL STOCK

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

Section 5.2 Stock Certificates and Uncertified Shares. Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the president, the chief executive officer, if any, or a vice president, and by the secretary or an assistant secretary, of the Corporation (or any other two officers or agents so authorized by the Board of Directors), certifying the number of shares of stock owned by

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

Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written statement certifying the number of shares owned by him, her or it in the Corporation and, at least annually thereafter, the Corporation shall provide to such stockholders of record holding uncertificated shares, a written statement confirming the information contained in such written statement previously sent. Except as otherwise expressly provided by law, the rights and obligations of the stockholders shall be identical whether or not their shares of stock are represented by certificates.

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

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

Board of Directors shall require which shall indemnify the Corporation against any loss, damage, cost or inconvenience arising as a consequence of the issuance of a replacement certificate.

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

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

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

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

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

ARTICLE VI
DISTRIBUTIONS

Distributions may be declared, subject to the provisions of the laws of the State of Nevada and the Articles of Incorporation, by the Board of Directors and may be paid in cash, property, shares of corporate stock, or any other medium. The Board of Directors may fix in advance a record date, as provided in Section 2.5 above, prior to the distribution for the purpose of determining stockholders entitled to receive any distribution.

ARTICLE VII
RECORDS; REPORTS; SEAL; AND FINANCIAL MATTERS

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

Section 7.2 Corporate Seal. The Board of Directors may, by resolution, authorize a seal, and the seal may be used by causing it, or a facsimile, to be impressed or affixed or reproduced or otherwise. Except when otherwise specifically provided herein, any officer of the Corporation shall have the authority to affix the seal to any document requiring it.

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

ARTICLE VIII
INDEMNIFICATION

Section 8.1 Indemnification and Insurance.

(a) Indemnification of Directors and Officers.

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

(ii) Each Indemnitee shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Nevada law, against all expense, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding; provided that such Indemnitee either is not liable

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

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

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

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

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

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

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

(f) Other Matters Relating to Insurance or Financial Arrangements. Any insurance or other financial arrangement made on behalf of a person pursuant to this Section may be provided by the Corporation or any other person approved by the Board of Directors, even if all or part of the other person's stock or other securities is owned by the Corporation. In the absence of fraud (i) the decision of the Board of Directors as to the propriety of the terms and conditions of any insurance or other financial arrangement made pursuant to this Section and the choice of the person to provide the insurance or other financial arrangement is conclusive; and (ii) the insurance or other financial arrangement is not void or voidable and does not subject any director approving it to personal liability for his action; even if a director approving the insurance or other financial arrangement is a beneficiary of the insurance or other financial arrangement.

Section 8.2 Amendment. The provisions of this Article VIII relating to indemnification shall constitute a contract between the Corporation and each of its directors and officers which may be modified as to any director or officer only with that person's consent or as specifically provided in this Section. Notwithstanding any other provision of these Bylaws relating to their amendment generally, any repeal or amendment of this Article which is adverse to any director or officer shall apply to such director or officer only on a prospective basis, and shall not limit the rights of an Indemnitee to indemnification with respect to any action or failure to act occurring prior to the time of such repeal or amendment. Notwithstanding any other provision of these Bylaws (including, without limitation, Article X below), no repeal or amendment of these Bylaws shall affect any or all

of this Article VIII so as to limit or reduce the indemnification in any manner unless adopted by (a) the unanimous vote of the directors of the Corporation then serving, or (b) by the stockholders as set forth in Article X hereof; provided that no such amendment shall have a retroactive effect inconsistent with the preceding sentence.

ARTICLE IX
CHANGES IN NEVADA LAW

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

ARTICLE X
AMENDMENT OR REPEAL

Section 10.1 Amendment of Bylaws.

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

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

CERTIFICATION

The undersigned, as the duly elected secretary of Wynn Resorts, Limited, a Nevada corporation (the “**Corporation**”), does hereby certify that the Board of Directors of the Corporation adopted the foregoing Bylaws on the 13th day of November, 2006.

/s/ Kim Sinatra

Kim Sinatra, Secretary

CREDIT AGREEMENT

Among

WYNN RESORTS, LIMITED
as Borrower,

The Several Lenders from
Time to Time Party Hereto,

and

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent

Dated as of June 21, 2007

DEUTSCHE BANK SECURITIES INC.,
as Joint Lead Arranger and Joint Book Running Manager

BANC OF AMERICA SECURITIES LLC,
as Joint Lead Arranger and Joint Book Running Manager

BANK OF AMERICA, N.A.,
as Syndication Agent

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	1
SECTION 1.01. Defined Terms	1
SECTION 1.02. Other Interpretive Provisions	23
SECTION 1.03. Accounting Terms	24
SECTION 1.04. Rounding	24
SECTION 1.05. References to Agreements, Laws, Etc.	24
SECTION 1.06. Times of Day	24
SECTION 1.07. Timing of Payment of Performance	24
ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS	25
SECTION 2.02. Borrowings, Conversions and Continuations of Loans	25
SECTION 2.03. Swing Line Loans	26
SECTION 2.04. Prepayments	29
SECTION 2.05. Termination or Reduction of Commitments	31
SECTION 2.06. Repayment of Loans	32
SECTION 2.07. Interest	32
SECTION 2.08. Fees	32
SECTION 2.09. Computation of Interest and Fees	33
SECTION 2.10. Evidence of Indebtedness	33
SECTION 2.11. Payments Generally	34
SECTION 2.12. Sharing of Payments	35
SECTION 2.13. Incremental Facilities	36
ARTICLE III TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY	37
SECTION 3.01. Taxes	37
SECTION 3.02. Illegality	39
SECTION 3.03. Inability to Determine Rates	39
SECTION 3.04. Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Loans	40
SECTION 3.05. Funding Losses	41
SECTION 3.06. Matters Applicable to All Requests for Compensation	41
SECTION 3.07. Replacement of Lenders under Certain Circumstances	42
SECTION 3.08. Survival	43
ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	43
SECTION 4.01. Conditions to the Closing Date	43
SECTION 4.02. Conditions to All Extensions of Credit	44
ARTICLE V REPRESENTATIONS AND WARRANTIES	45
SECTION 5.01. Existence, Qualification and Power; Compliance with Laws	45
SECTION 5.02. Corporate Power and Authority.	45
SECTION 5.03. No Violation	45
SECTION 5.04. Governmental Authorization; Other Consents	46
SECTION 5.05. Financial Statements; No Material Adverse Effect	46
SECTION 5.06. Litigation	46
SECTION 5.07. Compliance	47

SECTION 5.08.	Properties	47
SECTION 5.09.	Environmental Compliance	47
SECTION 5.10.	Tax Returns and Payments	48
SECTION 5.11.	ERISA Compliance	48
SECTION 5.12.	Subsidiaries; Equity Interests	49
SECTION 5.13.	Margin Regulations; Investment Company Act; Public Utility Holding Company Act	49
SECTION 5.14.	Disclosure	49
SECTION 5.15.	Intellectual Property; Licenses, Etc.	49
SECTION 5.16.	Solvency	50
SECTION 5.17.	Maintenance of Insurance	50
SECTION 5.18.	Subordination of Junior Financing	50
SECTION 5.19.	Labor Matters	50
SECTION 5.20.	Permits	50
SECTION 5.21.	Fiscal Year	50
SECTION 5.22.	Patriot Act	51
SECTION 5.23.	Use of Proceeds	51
ARTICLE VI AFFIRMATIVE COVENANTS		51
SECTION 6.01.	Financial Statements	51
SECTION 6.02.	Certificates; Other Information	52
SECTION 6.03.	Notices	52
SECTION 6.04.	Payment of Obligations	53
SECTION 6.05.	Preservation of Existence, Etc.	53
SECTION 6.06.	Maintenance of Properties	53
SECTION 6.07.	Maintenance of Insurance	53
SECTION 6.08.	Compliance with Laws	53
SECTION 6.09.	Books and Records	54
SECTION 6.10.	Inspection Rights	54
SECTION 6.11.	Compliance with Environmental Laws	54
SECTION 6.12.	Use of Proceeds	54
ARTICLE VII NEGATIVE COVENANTS		54
SECTION 7.01.	Liens	55
SECTION 7.02.	Accounting Changes	56
SECTION 7.03.	Indebtedness	56
SECTION 7.04.	Fundamental Changes	57
SECTION 7.05.	Dispositions	57
SECTION 7.06.	Restricted Payments	58
SECTION 7.07.	Change in Nature of Business	58
SECTION 7.08.	Transactions with Affiliates	58
SECTION 7.09.	Burdensome Agreements	59
SECTION 7.10.	Prepayments, Etc. of Indebtedness	60
SECTION 7.11.	Equity Interests of the Borrower and Restricted Subsidiaries	60
SECTION 7.12.	Holding Company	60
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES		61
SECTION 8.01.	Events of Default	61
SECTION 8.02.	Remedies Upon Event of Default	63
SECTION 8.03.	Application of Funds	63

ARTICLE IX ADMINISTRATIVE AGENT AND OTHER AGENTS	64
SECTION 9.01. Appointment and Authorization of Agents	64
SECTION 9.02. Delegation of Duties	64
SECTION 9.03. Liability of Agents	64
SECTION 9.04. Reliance by Agents	65
SECTION 9.05. Notice of Default	65
SECTION 9.06. Credit Decision; Disclosure of Information by Agents	65
SECTION 9.07. Indemnification of Agents	66
SECTION 9.08. Agents in their Individual Capacities	66
SECTION 9.09. Successor Agents	67
SECTION 9.10. Administrative Agent May File Proofs of Claim	67
SECTION 9.11. Other Agents; Lead Arrangers and Managers	68
SECTION 9.12. Appointment of Supplemental Administrative Agents	68
ARTICLE X MISCELLANEOUS	68
SECTION 10.01. Amendments, Etc.	68
SECTION 10.02. Notices and Other Communications; Facsimile Copies	70
SECTION 10.03. No Waiver; Cumulative Remedies	71
SECTION 10.04. Attorney Costs, Expenses and Taxes	71
SECTION 10.05. Indemnification by the Borrower	71
SECTION 10.06. Payments Set Aside	72
SECTION 10.07. Successors and Assigns	73
SECTION 10.08. Confidentiality	76
SECTION 10.09. Setoff	77
SECTION 10.10. Interest Rate Limitation	77
SECTION 10.11. Counterparts	78
SECTION 10.12. Integration	78
SECTION 10.13. Survival of Representations and Warranties	78
SECTION 10.14. Severability	78
SECTION 10.15. Tax Forms	78
SECTION 10.16. GOVERNING LAW	80
SECTION 10.17. WAIVER OF RIGHT TO TRIAL BY JURY	80
SECTION 10.18. Binding Effect	81
SECTION 10.19. Lender Action	81
SECTION 10.20. Acknowledgments	81
SECTION 10.21. USA PATRIOT Act	81
SECTION 10.22. Gaming Authorities	81
SECTION 10.23. Certain Matters Affecting Lenders	82

SCHEDULES

2.01	Commitments
5.04	Consents
5.09(b)	Environmental Compliance
5.09(d)	Environmental Investigations
5.11(a)	ERISA Compliance
5.12	Subsidiaries and Other Equity Investments
7.03(b)	Existing Indebtedness
7.08	Transactions with Affiliates
7.09	Existing Restrictions
10.02	Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

A	Borrowing Notice
B	Swing Line Loan Notice
C-1	Term Note
C-2	Swing Line Note
D	Net Liquidity Confirmation Certificate
E	Assignment and Assumption
F	Joinder Agreement

CREDIT AGREEMENT

This CREDIT AGREEMENT ("**Agreement**") is entered into as of June 21, 2007, among WYNN RESORTS, LIMITED, a Nevada corporation (the "**Borrower**"), DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent (in such capacity, together with any successor thereto, the "**Administrative Agent**"), each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**") and each of the other banks, financial institutions and other entities from time to time party hereto.

PRELIMINARY STATEMENTS

WHEREAS, the Borrower has instituted a stock repurchase program pursuant to which the Borrower may acquire in the open market from stockholders of the Borrower publicly traded common Equity Interests (as defined below) issued by the Borrower.

WHEREAS, the Borrower has requested that the Lenders extend credit to the Borrower in an aggregate amount of \$1,000,000,000, the proceeds of which will be used by the Borrower to so acquire such Equity Interests.

WHEREAS, the applicable Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

Definitions and Accounting Terms

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"**Adjusted LIBO Rate**" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the product of (a) the LIBO Rate in effect for such Interest Period and (b) Statutory Reserves.

"**Administrative Agent**" has the meaning specified in the preamble hereto.

"**Administrative Agent's Office**" means the Administrative Agent's address as set forth on Schedule 10.02 or such other address as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

“**Agent-Related Persons**” means the Agents and the Lead Arrangers, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“**Agents**” means, collectively, the Administrative Agent, the Syndication Agent, the Book Running Managers and the Supplemental Administrative Agents (if any).

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Credit Agreement.

“**Applicable Rate**” means a percentage per annum equal to, (a) initially, but only if the Borrower’s Net Liquidity is equal to or greater than \$400,000,000, 2.00% for Eurodollar Loans and 1.00% for Base Rate Loans and (b) if the Borrower’s Net Liquidity as of the Closing Date or at the end of any fiscal quarter as set forth in the Net Liquidity Confirmation Certificate delivered in respect of such fiscal quarter is less than \$400,000,000, then from and after such time and (subject to Section 2.07) through the Maturity Date, 2.25% for Eurodollar Loans and 1.25% for Base Rate Loans; *provided* that if the Borrower fails to submit a Net Liquidity Confirmation Certificate within five (5) Business Days after the date required herein, the margin set forth in clause (b) above shall apply until such time as a Net Liquidity Confirmation Certificate is delivered.

“**Approved Bank**” has the meaning specified in clause (c) of the definition of “Cash Equivalents”.

“**Approved Fund**” means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“**Aruze Corp.**” means Aruze Corp., a Japanese public corporation.

“**Aruze USA**” means Aruze USA, Inc., a Nevada corporation.

“**Assignees**” has the meaning specified in Section 10.07(b).

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit E.

“**Attorney Costs**” means and includes all reasonable fees, expenses and disbursements of any law firm or other external legal counsel.

“**Attributable Indebtedness**” means, on any date, in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Audited Financial Statements**” means the audited consolidated balance sheets of Borrower and its Subsidiaries as of each of December 31, 2006, 2005 and 2004, and the related audited Consolidated statements of income, stockholders’ equity and cash flows for Borrower and its Subsidiaries for the fiscal years ended December 31, 2006, 2005 and 2004, respectively.

“**Base Rate**” means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Rate in effect on such day plus 1/2 of 1%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective as of the opening of business on the effective date of such change in the Prime Rate or the Federal Funds Rate, respectively.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

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

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Board of Directors” means (a) with respect to a corporation, the board of directors of the corporation; (b) with respect to a partnership, the board of directors of the general partner of the partnership; (c) with respect to a limited liability company, the manager(s) or sole or managing member of such limited liability company; and (d) with respect to any other Person, the Person, the board or committee of such Person serving a similar function.

“Book Running Managers” means DBSI and Banc of America Securities LLC, each in its capacity as joint book running manager with respect to the Facilities, together with any successor thereto.

“Borrower” has the meaning specified in the preamble hereto.

“Borrower’s Net Liquidity” means the aggregate amount of cash and Cash Equivalents held by the Borrower and Wynn Resorts Macau.

“Borrowing” means a Swing Line Borrowing, a New Loan Borrowing or a Term Borrowing, as the context may require.

“Borrowing Notice” means a notice of (a) a Term Borrowing or New Loan Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to close in New York City; *provided, however*, that when used in connection with a Eurodollar Loan (including with respect to all notices and determinations in connection therewith and any payments of principal, interest or other amounts thereon), the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases; *provided* that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“Cash Collateral Account” means an account at DBTCA (or another commercial bank selected in compliance with Section 9.09) in the name of the Administrative Agent, or in which the Administrative Agent has a perfected first priority lien, and in either case under the sole dominion and control of the Administrative Agent, and otherwise established in a manner satisfactory to the Administrative Agent

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any Restricted Subsidiary:

(a) Dollars;

(b) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States having average maturities of not more than 12 months from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is a Lender or (ii) (A) is organized under the Laws of the United States, any state thereof or the District of Columbia or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, and (B) has combined capital and surplus of at least \$250,000,000 (any such bank in the foregoing clauses (i) or (ii) being an **“Approved Bank”**), in each case with average maturities of not more than 12 months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody’s, in each case with average maturities of not more than 12 months from the date of acquisition thereof;

(e) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer, in each case, having capital and surplus in excess of \$250,000,000 for direct obligations issued by or fully guaranteed or insured by the government or any agency or instrumentality of the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations;

(f) securities with average maturities of 12 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government having an investment grade rating from either S&P or Moody’s (or the equivalent thereof);

(g) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody’s;

(h) instruments equivalent to those referred to in clauses (a) through (g) above denominated in Euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash

management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction; and

(i) Investments, classified in accordance with GAAP as current assets of the Borrower or any Restricted Subsidiary, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of at least \$250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such investments are of the character, quality and maturity described in clauses (a) through (h) of this definition;

(j) HKD (the lawful currency of the Hong Kong Special Administrative Region);

(k) Patacas (the lawful currency of the Macau Special Administrative Region);

(l) Readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the Hong Kong SAR having average maturities of not more than 12 months from the date of acquisition thereof; *provided* that the full faith and credit of the Hong Kong SAR is pledged in support thereof.

“**Cash Management Obligations**” means obligations owed by the Borrower or any Restricted Subsidiary in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds.

“**Casino Licenses**” means, collectively, all licenses that are required to be granted by any applicable federal, state, local, tribal or other regulatory body, gaming board or other agency that has jurisdiction over (i) any casino now or hereafter located in the State of Nevada, and (ii) any other casinos otherwise owned or operated by the Borrower or any Subsidiary.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as subsequently amended.

“**CERCLIS**” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“**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 the Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary, to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act), other than to Mr. Wynn or a Related Party of Mr. Wynn, (b) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that (i) any “person” (as defined in clause (a) above), other than Mr. Wynn and any of his Related Parties becomes the Beneficial Owner, directly or indirectly, of more than 50% of the outstanding Voting Stock of the Borrower, measured by voting power rather than number of equity interests, (ii) any “person” (as defined in clause (a) above)(other than Kazuo Okada, Aruze USA and Aruze Corp., so long as (A) the Stockholders Agreement remains in full force and effect, (B) a majority of the Board of Directors of the Borrower is constituted of Persons named on any slate of directors chosen by Mr. Wynn and Aruze USA pursuant to the Stockholders Agreement, as in effect on the Closing Date and (C) Kazuo Okada and his Related Parties either (1) “control” (as that term is used in Rule 405 under the Securities Act) Aruze Corp. and Aruze USA or (2) otherwise remain the direct or indirect Beneficial Owners of the Voting Stock of the Borrower held by Aruze Corp.) becomes the Beneficial Owner, directly or indirectly, of a greater percentage of the outstanding

Voting Stock of the Borrower, measured by voting power rather than number of equity interests, than is at that time Beneficially Owned by Mr. Wynn and his Related Parties as a group, (iii) prior to December 31, 2007, Mr. Wynn and his Related Parties as a group own less than 80% of the outstanding Voting Stock of the Borrower owned by such group as of the Closing Date, or (iv) prior to December 31, 2007 Mr. Wynn and his Related Parties as a group own less than 10% of the outstanding Voting Stock of the Borrower, measured by voting power rather than number of equity interests, (c) the first day prior to December 31, 2007 on which Mr. Wynn does not act as either the Chairman of the Board of Directors of the Borrower or the Chief Executive Officer of the Borrower, other than (A) as a result of death or disability or (B) if the Board of Directors of the Borrower, exercising their fiduciary duties in good faith, removes or fails to re-appoint Mr. Wynn as Chairman of the Board of Directors of the Borrower or Chief Executive Officer of the Borrower, (d) the first day on which a majority of the members of the Board of Directors of the Borrower are not Continuing Directors, (e) the first day on which the Borrower ceases to own, directly or indirectly, 100% of the outstanding Equity Interests of any Restricted Subsidiary or Material Unrestricted Subsidiary or (f) the Borrower consolidates with, or merges with or into, any Person or sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with, or merges with or into, the Borrower, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Borrower is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of Wynn Resorts outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock (other than Disqualified Equity Interests) of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance).

“**Charges**” has the meaning specified in Section 10.10.

“**Class**” (a) when used with respect to Lenders, refers to whether such Lenders are New Loan Lenders or Term Lenders and (b) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are New Loans or Term Loans.

“**Closing Date**” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01.

“**Code**” means the U.S. Internal Revenue Code of 1986 and rules and regulations related thereto.

“**Commitment**” means, as to any Lender, the sum of the Term Loan Commitments and New Loan Commitments of such Lender.

“**Compensation Period**” has the meaning specified in Section 2.11(c)(ii).

“**Continuing Directors**” means, as of any date of determination, with respect to any Person, any member of the Board of Directors of such Person who (a) was a member of such board of directors on the Closing Date or (b) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such board at the time of such nomination or election.

“**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.

“**Control**” has the meaning specified in the definition of “Affiliate.”

“**Convertible Notes**” means those certain 6% Convertible Subordinated Debentures due 2015 issued by the Borrower on or about July 7, 2003.

“**DBSI**” means Deutsche Bank Securities Inc.

“**DBTCA**” means Deutsche Bank Trust Company Americas.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means, with respect to any Loan, an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2.0% per annum, in each case, to the fullest extent permitted by applicable Laws.

“**Defaulting Lender**” means any Lender that (a) has failed to fund any portion of the Loans or participations in Swing Line Loans required to be funded by it hereunder within one (1) Business Day of the date required to be funded by it hereunder, unless the subject of a good faith dispute or subsequently cured, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due, unless the subject of a good faith dispute or subsequently cured, or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

“**Disposition**” or “**Dispose**” means the sale, transfer, lease or other disposition (including any sale and leaseback transaction and any sale of Equity Interests) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Equity Interests**” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date of any Loans hereunder. Notwithstanding the preceding sentence, any Equity Interests will not constitute Disqualified Equity Interests solely because it is required to be redeemed under applicable Gaming Laws.

“**Disqualified Institutions**” means any banks, financial institutions or other Persons separately identified by the Borrower to the Lead Arrangers in writing prior to the Closing Date.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“Eligible Assignee” means any Assignee permitted by and consented to in accordance with Section 10.07(b).

“Environmental Laws” means any and all Federal, state, and local statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, the protection of the environment, natural resources, or, to the extent relating to exposure to Hazardous Materials, human health or to the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (a) any Environmental Law or violation thereof, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through debt securities convertible into equity securities).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with the Borrower within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Excluded Distributions**” means any (i) amounts permitted to be paid to the Borrower pursuant to Section 7.22 of the Wynn Las Vegas Credit Agreement in respect of management fees or other amounts applied to pay or reimburse management fees, (ii) amounts permitted to be paid to the Borrower pursuant to Section 7.10(c) of the Wynn Las Vegas Credit Agreement or other amounts applied to reimburse the Borrower for, or fund the payment of, overhead expenses incurred by the Borrower or its Affiliates, (iii) royalties and amounts in respect of overhead expenses similar to those described in clause (ii), including those permitted to be paid by Wynn Resorts Macau to the Borrower pursuant to Section 6.1 of Part B of Schedule 5 of the Common Terms Agreement described in the definition of Wynn Macau Credit Agreement, (iv) dividends, distributions and other amounts paid by Subsidiaries of the Borrower to the Borrower and used to pay interest and other amounts in respect of the Loans, Permitted Subordinated Indebtedness or the Convertible Notes, (v) dividends, distributions and other amounts paid by Wynn Resorts Macau consisting of cash or Cash Equivalents in an aggregate amount not to exceed \$545,000,000, and (vi) amounts received by the Borrower or its Subsidiaries from the future sale of any Permit or the ability to use any Permit or a portion of the rights granted under any Permit so long as such sale will not prevent, to any material extent, the Borrower or any Subsidiary thereof from conducting its business in the same manner as prior to such sale or will have any other adverse effect on the Borrower or any Subsidiary thereof or their operations.

“**Facility**” means the Term Loan Facility, each New Loan Facility or the Swing Line Sublimit, as the context may require.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates (rounded upwards, if necessary, to the next 1/100 of 1%) on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to JPMorgan Chase Bank on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means the Fee Letter dated as of June 21, 2007, among the Borrower, DBSI and Banc of America Securities LLC, as amended, amended and restated, supplemented or otherwise modified from time to time.

“**Foreign Lender**” has the meaning specified in Section 10.15(a).

“**Foreign Plan**” shall mean any employee benefit plan, program, fund, policy, arrangement or agreement maintained or contributed to by the Borrower or any of its Subsidiaries with respect to employees employed outside the United States.

“**Former Lender**” has the meaning specified in Section 10.23(a).

“**Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

“**Gaming Authorities**” shall mean, in any jurisdiction in which the Borrower or any of its Subsidiaries manages or conducts any racing, riverboat and/or casino gaming operations or activities or sells or distributes liquor, the applicable gaming board, commission or other governmental authority responsible for interpreting, administering and enforcing the Gaming Laws, including without limitation, the Nevada Gaming Authorities and the Gaming Inspection and Coordination Bureau of Macau, Special Administrative Region of the Peoples Republic of China.

“**Gaming Laws**” shall mean all laws, rules, regulations, orders and other enactments applicable to racing, riverboat and/or casino gaming operations or activities or the sale or distribution of liquor in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by any Gaming Authorities, including Law 16/2001 of Macau, Special Administrative Region of the Peoples Republic of China, the Nevada Gaming Control Act, as codified in Chapter 463 of the Nevada Revised Statutes, the regulations of the Nevada Gaming Commission promulgated thereunder, and other laws or regulations promulgated by the Nevada Gaming Authorities and applying to gaming operations in the State of Nevada.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Granting Lender**” has the meaning specified in Section 10.07(h).

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any

acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Increased Amount Date" has the meaning specified in Section 2.13.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) of all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business and (ii) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Equity Interests; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (A) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited and (B) in the case of the Borrower, exclude all intercompany Indebtedness made in the ordinary course of business consistent with past practice and which is subordinated to the Obligations in a manner reasonably acceptable to the Administrative Agent (*provided* that such intercompany

Indebtedness in an amount up to \$10,000,000 shall not be required to be so subordinated). The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“**Indemnified Liabilities**” has the meaning set forth in Section 10.05.

“**Indemnitees**” has the meaning set forth in Section 10.05.

“**Information**” has the meaning specified in Section 10.08.

“**Intellectual Property**” means all (a) United States, and foreign copyrights, including but not limited to copyrights in technology, software and all rights in and to databases, whether registered or unregistered, (b) all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, whether registered or unregistered, and (c) all United States, and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, whether registered or unregistered and, with respect to any and all of the foregoing: (i) all registrations and applications therefor, (ii) all extensions and renewals thereof and (iii) all rights corresponding thereto throughout the world.

“**Interest Payment Date**” means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided* that if any Interest Period for a Eurodollar Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date and (c) as to any Swing Line Loan, the day that such Loan is repaid and the Maturity Date.

“**Interest Period**” means, as to each Eurodollar Loan, the period commencing on the date such Eurodollar Loan is disbursed or converted to or continued as a Eurodollar Loan and (i) with respect to Borrowings prior to the date that is the earlier to occur of the thirtieth day after the Closing Date and the date upon which the Lead Arrangers determine in their sole discretion that Successful Syndication of the Facilities has been achieved, ending on the date that is one month from the date of such Borrowing and (ii) thereafter ending one, three or six months (or, if available from all Lenders, 9 months or 12 months) after the date of such Borrowing as selected by the Borrower in its Borrowing Notice; *provided* that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day; and

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IP Rights” has the meaning set forth in Section 5.15.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” an agreement substantially in the form of Exhibit F hereto or such other form as shall be approved by the Administrative Agent

“Junior Financing” has the meaning specified in Section 7.10.

“Junior Financing Documentation” means any documentation governing any Junior Financing.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lead Arrangers” means DBSI and Banc of America Securities LLC, each in its capacity as a joint lead arranger with respect to the Facilities, together with any successor thereto.

“Lender” means each Person from time to time part hereto as a lender, including any Person that becomes party hereto pursuant to an Assignment and Assumption and, as the context requires, includes each Swing Line Lender, and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.”

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate (adjusted for statutory reserve requirements for eurocurrency liabilities) for eurodollar deposits for a period equal to one, two, three or six months (or, if available from all Lenders, 9 months or 12 months) (as selected by the Borrower) appearing on Reuters Screen LIBOR1 Page; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “LIBO Rate” shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

“**Lien**” means any mortgage, pledge, hypothecation, assignment for security purposes, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest, any conditional sale or other title retention agreement and any Capitalized Lease having substantially the same economic effect as any of the foregoing).

“**Loan**” means an extension of credit by a Lender to the Borrower under Article 2 in the form of a Term Loan, New Loan or a Swing Line Loan.

“**Loan Documents**” means, collectively, this Agreement, the Notes, the Fee Letter, each Net Liquidity Confirmation Certificate, each Joinder Agreement, and any other instruments, documents or agreements of any type or nature hereafter executed and delivered by the Borrower or the Subsidiaries to the Administrative Agent or to any Lender in any way relating to or in furtherance of this Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified, amended, restated, extended or supplanted.

“**Material Adverse Effect**” means any change, occurrence, event, circumstance or development that has had or could reasonably be expected to have a material adverse effect on (a) the business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management of the Borrower and its Subsidiaries, taken as a whole or (b) the validity or enforceability of any of the Loan Documents or the rights and remedies of the Administrative Agent, the Lenders, the Supplemental Administrative Agent or any co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.02.

“**Material Debt Agreement**” means any loan agreement, credit agreement, indenture, or other contract or agreement evidencing or documenting any Indebtedness of Borrower or any Subsidiary thereof in an amount exceeding the Threshold Amount.

“**Material Unrestricted Subsidiary**” means Wynn Las Vegas, Wynn Design & Development, LLC, Wynn Resorts Macau, any other Subsidiary of the Borrower (other than any Restricted Subsidiary) in which the Borrower or its Subsidiaries have made an Investment equal to or exceeding \$300,000,000 and any other entity (other than a Restricted Subsidiary) designated by the Borrower as a Material Unrestricted Subsidiary.

“**Maturity Date**” means June 21, 2010.

“**Maximum Rate**” has the meaning specified in Section 10.10.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Mr. Wynn**” means Stephen A. Wynn, an individual, and his heirs.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Nevada Gaming Authorities**”: collectively, the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board and any other federal, state or local agency having jurisdiction over gaming operations in the State of Nevada.

“Net Cash Proceeds” means:

(a) with respect to the Disposition of any asset by the Borrower or any Restricted Subsidiary, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received over (ii) the sum of (A) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness that is secured by the asset subject to such Disposition and that is required to be repaid (and is timely repaid) in connection with such Disposition (other than Indebtedness under the Loan Documents), (B) the out-of-pocket expenses (including attorneys’ fees, investment banking fees, accounting fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees) actually incurred by the Borrower or such Restricted Subsidiary in connection with such Disposition, (C) taxes paid or reasonably estimated to be actually payable in connection therewith, and (D) any reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction and it being understood that “Net Cash Proceeds” shall include any cash or Cash Equivalents (i) received upon the Disposition of any non-cash consideration received by the Borrower or any Restricted Subsidiary in any such Disposition and (ii) upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in clause (D) above or, if such liabilities have not been satisfied in cash and such reserve is not reversed within three hundred and sixty-five (365) days after such Disposition, the amount of such reserve; *provided* that no net cash proceeds calculated in accordance with the foregoing shall constitute Net Cash Proceeds under this clause (a) in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed \$25,000,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Cash Proceeds under this clause (a)); and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, the excess, if any, of (i) the sum of the cash received in connection with such incurrence or issuance over (ii) the investment banking fees, accounting fees, underwriting discounts, commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance.

“Net Liquidity Confirmation Certificate” means a certificate substantially in the form of Exhibit D.

“New Loan” means a Loan made pursuant to Section 2.13.

“New Loan Borrowing” means a borrowing consisting of simultaneous New Loans of the same Type and currency and, in the case of Eurodollar Loans, have the same Interest Period, made by each of the New Loan Lenders pursuant to Section 2.13.

“New Loan Commitment Termination Date” means, with respect to any Series of New Loans, the earlier to occur of (a) the date agreed by the Borrower and the New Lenders in respect of such Series as the commitment termination date of such Series, but in no event later than June 30, 2008, or (b) the date upon which the Loans become due and payable pursuant to Section 8.

“New Loan Commitments” means as to each New Loan Lender, its obligation to (a) make New Loans to the Borrower pursuant to Section 2.13 and (b) purchase participations in Swing Line Loans, in an aggregate principal amount not to exceed the amount set forth in the Joinder Agreement pursuant to which such Lender becomes a party hereto, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate New Loan Commitments of all New Loan Lenders shall not exceed \$250,000,000 prior to the Term Loan Commitment Termination Date or, with respect to New Loan Commitments made after the Term Loan Commitment Termination Date, \$500,000,000; *provided, however*, that in no event shall the aggregate amount of the Loans and Commitments at any time outstanding hereunder exceed \$1,250,000,000.

“New Loan Facility” means, at any time, the aggregate amount of New Loan Lenders’ New Loan Commitments at such time.

“New Loan Lender” has the meaning specified in Section 2.13.

“New Loan Note” means a promissory note of the Borrower payable to any New Loan Lender or its registered assigns, in substantially the form of the Term Notes, with such changes as may be necessary or appropriate to reflect the terms and provisions of the New Loans, evidencing the aggregate indebtedness of the Borrower to such New Loan Lender resulting from the New Loans made by such New Loan Lender.

“Non-Consenting Lenders” has the meaning specified in Section 3.07(c).

“Note” means the collective reference to the Term Notes, New Loan Notes and Swing Line Notes.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower or any Subsidiary or Affiliate thereof party to any Loan Document arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower, any Subsidiary or Affiliate of the Borrower that is party to any Loan Document or any Subsidiary of any of the foregoing Persons of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Borrower under the Loan Documents (and of its Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Borrower, any Subsidiary or Affiliate of the Borrower that is party to any Loan Document or any Subsidiary of any of the foregoing Persons under any Loan Document and (b) the obligation of Borrower, any Subsidiary or Affiliate of the Borrower that is party to any Loan Document or any Subsidiary of any of the foregoing Persons to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Person.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of

formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Taxes**” has the meaning specified in Section 3.01(b).

“**Outstanding Amount**” means with respect to the Term Loans, New Loans and Swing Line Loans on any date, the aggregate amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, New Loans and Swing Line Loans, as the case may be, occurring on such date.

“**Participant**” has the meaning specified in Section 10.07(e).

“**Patriot Act**” has the meaning specified in Section 10.21.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

“**Permits**” means any and all franchises, licenses, leases, permits, concessions, subconcessions, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any applicable Law.

“**Permitted Lien**” means each Lien permitted under Section 7.01.

“**Permitted Refinancing**” means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (b) such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) at the time thereof, no Event of Default shall have occurred and be continuing, and (d) if such Indebtedness being modified, refinanced, refunded, renewed or extended is Indebtedness permitted pursuant to Section 7.03(b), 7.03(k) or 7.10(a), (i) to the extent such Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (ii) the terms and conditions (including, if applicable, as to collateral but excluding as to subordination, interest rate and redemption premium) of any such modified, refinanced, refunded, renewed or extended Indebtedness, taken as a whole, are

not materially less favorable to the Borrower or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended; *provided* that a certificate of a Responsible Officer delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies the Borrower within such five Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees) and (iii) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor of the Indebtedness being modified, refinanced, refunded, renewed or extended.

“Permitted Subordinated Indebtedness” shall mean Indebtedness of the Borrower that (a) does not mature, and is not subject to mandatory repurchase, redemption or amortization (other than pursuant to customary asset sale or change in control provisions requiring redemption or repurchase only if and to the extent then permitted by this Agreement), in each case, prior to the date that is six months after the Maturity Date, (b) is not secured by any assets of any Borrower or any Subsidiary, (c) is not exchangeable or convertible into any other Indebtedness of any Borrower or any Subsidiary or any preferred stock or other Equity Interest of any Subsidiary, (d) is subordinated to the obligations under the Loan Documents pursuant to a written instrument delivered containing terms reasonably acceptable to the Administrative Agent, (e) does not contain any financial maintenance covenants, (f) contains such other covenants and events of default, which, when taken as a whole, are no less favorable, to the Borrower in any material respect than the covenants and events of default herein, (g) so long as immediately after giving effect to any such Indebtedness, no Event of Default has occurred and is continuing and (h) is not guaranteed by any Subsidiary unless such Subsidiary had Guaranteed the Obligations pursuant to a guarantee in form and substance reasonably satisfactory to the Administrative Agent.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by DBTCA as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective as of the opening of business on the date such change is publicly announced as being effective. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually available.

“Pro Rata Share” means, (a) with respect to funding any Loans under a Facility, the payment of commitment fees with respect to a Facility, or the reduction of the Commitments under a Facility, or the buying of participations in any Swing Line Loans by the Lenders under a Facility, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments of such Lender under the applicable Facility at such time and the denominator of which is the amount of the aggregate Commitments under the applicable Facility at such time, and (b) for all other purposes, including with respect to the voluntary or mandatory repayment or prepayment of any Loans, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Outstanding Amount of all Loans held by such Lender at such time and the denominator of which is the Total Outstandings at such time.

“**Qualified Equity Interests**” means any Equity Interests that are not Disqualified Equity Interests.

“**Real Property**” means all real property owned or leased from time to time by any of the Borrower or any Subsidiary.

“**Register**” has the meaning set forth in Section 10.07(d).

“**Regulation U**” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Related Party**” means either (a) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of Mr. Wynn; or (b) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons beneficially holding an 80% or more controlling interest of which consist of Mr. Wynn and/or such other Persons referred to in the immediately preceding clause (a).

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

“**Required Lenders**” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in Swing Line Loans being deemed “held” by such Lender for purposes of this definition) and (b) aggregate unused Commitments; *provided* that the unused Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“**Responsible Officer**” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer of the Borrower or any Subsidiary or Affiliate of the Borrower that is a party to any Loan Document and, as to any document delivered on the Closing Date, any secretary or assistant secretary of the Borrower. Any document delivered hereunder that is signed by a Responsible Officer of the Borrower or any Subsidiary or Affiliate of the Borrower that is a party to any Loan Document shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person party to such Loan Document and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

“**Restricted Payment**” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any Restricted Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Persons thereof) or any option, warrant or other right to acquire any such Equity Interests in the Borrower or any Restricted Subsidiary.

“Restricted Subsidiary” means each of Wynn Resorts Holdings, LLC, Wynn Group Asia, Inc., Wynn Resorts International, Ltd., Wynn Resorts (Macau) Holdings, Ltd., Wynn Resorts (Macau), Ltd. and any other entity designated by the Borrower as a Restricted Subsidiary so long as such entity is directly owned by the Borrower or another Restricted Subsidiary.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Securities Act” means the Securities Act of 1933.

“Series” has the meaning specified in Section 2.13.

“Solvent” and **“Solvency”** mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“SPC” has the meaning specified in Section 10.07(h).

“Statutory Reserves” means a fraction (expressed as a decimal), the numerator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) applicable on the interest rate determination date (expressed as a decimal) established by the Board and applicable to any member bank of the Federal Reserve System in respect of Eurocurrency Liabilities (as defined in Regulation D of the Board).

“Stockholders Agreement” means that certain Stockholders Agreement, dated as of April 11, 2002, by and among Mr. Wynn, Baron Asset Fund and Aruze USA, as in effect on the Closing Date and as amended from time to time.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Substitute Lender” has the meaning specified in Section 10.23(a).

“Successful Syndication” has the meaning specified in the Fee Letter.

“**Supplemental Administrative Agent**” has the meaning specified in Section 9.12(a) and “Supplemental Administrative Agents” shall have the corresponding meaning.

“**Surplus Land**” means any land if (i) the structures on such land (if any) do not represent more than 25% of its value, or (ii) the present use of such land does not generate net income representing more than 5% of the net income of the Material Unrestricted Subsidiary owning such land.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Swing Line Borrowing**” means a borrowing of a Swing Line Loan pursuant to Section 2.03.

“**Swing Line Lender**” means DBTCA, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“**Swing Line Loan**” has the meaning specified in Section 2.03(a).

“**Swing Line Note**” means a promissory note of the Borrower payable to any Swing Line Lender or its registered assigns, in substantially the form of Exhibit C-2 hereto, evidencing the aggregate Indebtedness of the Borrower to such Swing Line Lender resulting from the Swing Line Loans made by such Swing Line Lender.

“**Swing Line Loan Notice**” means a notice of a Swing Line Borrowing pursuant to Section 2.03(b), which, if in writing, shall be substantially in the form of Exhibit B.

“**Swing Line Sublimit**” means, at any given time, an amount equal to the lesser of (a) \$150,000,000 and (b) the unused Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Term Loan Commitments and the New Loan Commitments.

“**Syndication Agent**” means Bank of America, N.A., in its capacity as syndication agent with respect to the Facilities, together with any successor thereto.

“**Taxes**” has the meaning specified in Section 3.01(a).

“**Term Borrowing**” means a borrowing consisting of simultaneous Term Loans of the same Type and currency and, in the case of Eurodollar Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01.

“**Term Lender**” means, at any time, any Lender that has a Term Loan at such time.

“**Term Loan**” means a Loan made pursuant to Section 2.01.

“**Term Loan Commitment Period**” means the period from and including the Closing Date to the Term Loan Commitment Termination Date.

“**Term Loan Commitment Termination Date**” means the earlier to occur of (a) December 31, 2007 or (b) the date upon which the Loans become due and payable pursuant to Section 8.

“**Term Loan Commitments**” means as to each Term Lender, its obligation to (a) make Term Loans to the Borrower pursuant to Section 2.01 and (b) purchase participations in Swing Line Loans, in an aggregate principal amount not to exceed the amount set forth, and opposite such Lender’s name on Schedule 2.01 under the caption “Term Loan Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Term Loan Commitments of all Term Lenders shall be \$1,000,000,000 on the Closing Date, as such amount may be adjusted from time to time in accordance with the terms of this Agreement.

“**Term Loan Facility**” means at any time, the aggregate amount of the Term Lenders’ Term Loan Commitments at such time.

“**Term Note**” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit C-1 hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“**Threshold Amount**” means \$100,000,000.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Loan.

“**Unaudited Financial Statements**” means, the unaudited consolidated balance sheet and related statement of income, stockholders’ equity and cash flows of the Borrower and its Subsidiaries for the fiscal quarter ended March 31, 2007, each of which shall have been prepared in accordance with GAAP.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unrestricted Subsidiary**” means each Subsidiary other than any Restricted Subsidiary.

“**U.S. Lender**” has the meaning set forth in Section 10.15(b).

“**Voting Stock**” means with respect to any Person as of any date, the Equity Interests of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

“**Wynn Las Vegas**” means Wynn Las Vegas, LLC, a Nevada limited liability company.

“**Wynn Las Vegas Credit Agreement**” means that certain Amended and Restated Credit Agreement, dated as of August 15, 2006, by and among Wynn Las Vegas, LLC, DBTCA, as administrative agent, and each of the lenders, banks and other financial institutions from time to time party thereto, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time.

“**Wynn Macau Credit Agreement**” means, collectively, (i) that certain Common Terms Agreement Amendment Agreement, dated as of September 14, 2005, among Wynn Resorts Macau and certain financial institutions from time to time party thereto as lenders and agents, (ii) that certain Hotel Facility Agreement Amendment Agreement, dated as of September 14, 2005, among Wynn Resorts Macau, Societe Generale Asia Limited and certain other financial institutions party from time to time thereto, (iii) that certain Project Facility Agreement Amendment Agreement, dated as of September 14, 2005, among Wynn Resorts Macau, Societe Generale Asia Limited and certain other financial institutions party from time to time thereto and (iv) that certain Revolving Credit Facility Agreement Amendment Agreement, dated as of September 14, 2005, among Wynn Resorts Macau, Societe Generale Asia Limited and certain other financial institutions party from time to time thereto, in each case as the same may be amended, amended and restated, supplemented or otherwise modified from time to time.

“**Wynn Resorts Macau**” means Wynn Resorts (Macau) S.A., a Macau corporation.

SECTION 1.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The terms “include,” “includes” and “including” are each by way of example and not limitation and shall be deemed to be followed by the phrase “without limitation.”

(iv) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(d) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(e) The words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all rights and interests in tangible and intangible assets and properties of any kind whatsoever, whether real, personal or mixed, including cash, securities, Equity Interests, accounts and contract rights.

SECTION 1.03. Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

SECTION 1.04. Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.05. References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

SECTION 1.06. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to the time of day in New York, New York (daylight savings or standard, as applicable).

SECTION 1.07. Timing of Payment of Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

ARTICLE II

The Commitments and Credit Extensions

SECTION 2.01. Subject to the terms set forth herein, each Term Lender severally agrees to make term loans (“**Term Loans**”) to the Borrower on any Business Day during the Term Loan Commitment Period in an aggregate principal amount not to exceed the amount of the Term Loan Commitment of such Lender; *provided* that no Term Loans shall be made if after the making of such Loan the Total Outstandings, excluding the Outstanding Amount of any New Loans, would exceed \$1,000,000,000 or, if less, the aggregate amount of the Term Loan Commitments. Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Section 2.02. Term Loans borrowed and subsequently repaid or prepaid may not be reborrowed.

SECTION 2.02. Borrowings, Conversions and Continuations of Loans. (a) Each Term Borrowing, each New Loan Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Loans shall be made upon the Borrower’s delivery of an irrevocable Borrowing Notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 12:30 p.m. (i) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurodollar Loans or any conversion of Base Rate Loans to Eurodollar Loans, and (ii) one (1) Business Day before the requested date of any Term Borrowing or New Loan Borrowing of Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of Term Loans shall be in a minimum amount of \$20,000,000 or a whole multiple of \$1,000,000 in excess thereof and each Borrowing of any Series of New Loans shall be in an amount agreed upon with the New Loan Lender in respect of such New Loans. Each conversion to or continuation of Eurodollar Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Each conversion to Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Each Borrowing Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Term Borrowing, a New Loan Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Borrowing Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Loans in any such Borrowing Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Borrowing Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each applicable Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of each Term Borrowing or New Loan Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent’s Office not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing Notice. Upon satisfaction of the applicable conditions set forth in

Section 4.02, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds (including to any Cash Collateral Account at the request of the Borrower or otherwise in accordance with the terms hereof), in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided*, that if on the date of a Term Borrowing or New Loan Borrowing there are Swing Line Loans outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such Swing Line Loans, and second, to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the existence of an Event of Default, the Administrative Agent or the Required Lenders may require that no Loans may be converted to or continued as Eurodollar Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. The determination of the Adjusted LIBO Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

SECTION 2.03. Swing Line Loans. (a) *The Swing Line.* Subject to the terms and conditions set forth herein, the Swing Line Lender agrees to make loans (each such loan, a “**Swing Line Loan**”) to the Borrower from time to time on any Business Day (other than the Closing Date) from the Closing Date and until the Business Day preceding the Term Loan Commitment Termination Date or, if applicable, any New Loan Commitment Termination Date, in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, *provided* that, the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan and *provided further* that (i) no Swing Line Loans shall be made if after the making of such Loan the Total Outstandings hereunder would exceed (A) \$1,000,000,000 less (B) the amount of Term Loan Commitments that have terminated or expired, plus (C) the aggregate amount of any New Loans and New Loan Commitments and (ii) no Swing Line Loan shall be made in an amount exceeding the outstanding and unfunded Commitments hereunder at such time. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.03, prepay under Section 2.04 and re-borrow under this Section 2.03. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan by the Swing Line Lender, each other Lender under a Facility required to buy participations in such Swing Line Loan pursuant to Section 2.03(d)(v) shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender’s Pro Rata Share times the amount of such Swing Line Loan.

(b) *Borrowing Procedures.* Each Swing Line Borrowing shall be made upon the Borrower's delivery of an irrevocable Swing Line Loan Notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 12:30 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing and if by telephone with written notice to follow promptly thereafter) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the provisos to the first sentence of Section 2.03(a) or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in the applicable Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower.

(c) Following receipt of a Swing Line Loan Notice, the Administrative Agent shall promptly notify each Lender thereof and of the amount of its Pro Rata Share of any Swing Line Loans to be made pursuant to such Swing Line Loan Notice and repaid by Loans pursuant to clause (d) below.

(d) *Repayment of Swing Line Loans.*

(i) On the first Business Day immediately following the day on which any Swing Line Loan is made, the entire principal amount of outstanding Swing Line Loans shall be repaid by Base Rate Loans (other than Swing Line Loans). In furtherance thereof, upon delivery of any Swing Line Loan Notice, the Borrower shall also submit (and, if it fails to so submit, shall be deemed to have submitted) a Borrowing Notice for the Borrowing of Base Rate Loans (other than Swing Line Loans) on the next Business Day in an amount equal to the amount to be borrowed pursuant to such Swing Line Loan Notice. Each Lender shall make an amount equal to its Pro Rata Share of the amount specified in the applicable Borrowing Notice delivered (or deemed delivered) to the Administrative Agent available to the Administrative Agent in immediately available funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on such day, whereupon each Lender that so makes funds available shall be deemed to have made a Base Rate Loan under its Commitments to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Borrowing in accordance with Section 2.03(d)(i), the Swing Line Lender shall be deemed to have requested that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.03(d)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(d) by the time specified in Section 2.03(d)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Base Rate Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.03(d) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided* that each Lender's obligation to make Loans pursuant to this Section 2.03(d) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein

(v) For the avoidance of doubt, all Borrowings of Loans to refinance Swing Line Loans, and all fundings of risk participations in Swing Line Loans, shall be made first from Term Loans and at such time as the Term Loan Commitments have been fully utilized, from New Loans.

(e) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Pro Rata Share of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender.

(f) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Lender funds its Pro Rata Share of Base Rate Loans or Pro Rata Share of the risk participation pursuant to this Section 2.03 to refinance any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Swing Line Lender.

(g) *Payments Directly to Swing Line Lender.* The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

SECTION 2.04. Prepayments.

(a) *Optional.*

(i) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Administrative Agent not later than 12:30 p.m. (A) three (3) Business Days prior to any date of prepayment of Eurodollar Loans and (B) on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurodollar Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (3) any prepayment of Base Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Loan shall be accompanied by all accrued and unpaid interest thereon, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the Loans pursuant to this Section 2.04(a) shall be paid to the Lenders in accordance with their respective Pro Rata Shares.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind any notice of prepayment under Section 2.04(a) if such prepayment would have resulted from a refinancing of all of the Facilities, which refinancing shall not be consummated or shall otherwise be delayed.

(b) *Mandatory.*

(i) (A) If the Borrower or any Restricted Subsidiary Disposes of any property or assets (other than in a Disposition of Intellectual Property not prohibited hereunder), which in the aggregate results in the realization or receipt by the Borrower or such Restricted Subsidiary of Net Cash Proceeds, the Borrower shall cause the Loans to be prepaid, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt of such Net Cash Proceeds in an amount equal to 100% of all Net Cash Proceeds received; *provided* that no such prepayment shall be required pursuant to this Section 2.04(b)(i)(A) with respect to such portion of such Net Cash Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest in accordance with Section 2.04(b)(i)(B) (which notice may only be provided if no Event of Default has occurred and is then continuing);

(B) With respect to any Net Cash Proceeds realized or received with respect to any Disposition (other than any Disposition involving the sale of Equity Interests in any Subsidiary of the Borrower), the Borrower may reinvest all or any portion of such Net Cash Proceeds in assets useful for its business (including, without limitation, Investments in its Subsidiaries) within (x) twelve (12) months following receipt of such Net Cash Proceeds or (y) if the Borrower enters into a legally binding commitment to reinvest such Net Cash Proceeds within twelve (12) months following receipt thereof,

within one hundred eighty (180) days of the date of such legally binding commitment; *provided* that (i) so long as an Event of Default shall have occurred and be continuing, the Borrower shall not be permitted to make any such reinvestments (other than pursuant to a legally binding commitment that the Borrower entered into at a time when no Event of Default was continuing) and (ii) if any Net Cash Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election or if any Net Cash Proceeds are not reinvested by the expiration of the relevant time periods set forth above, an amount equal to any such Net Cash Proceeds shall be applied to the prepayment of the Loans as set forth in this Section 2.04 within five (5) Business Days after the Borrower reasonably determines that such Net Cash Proceeds are no longer intended to be or cannot be so reinvested or the expiration of such time periods.

(ii) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall cause Loans to be prepaid in an amount equal to 100% of all Net Cash Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt of such Net Cash Proceeds.

(iii) If for any reason the Total Outstandings at any time exceeds the Aggregate Commitments then in effect, the Borrower shall promptly prepay, or cause to be promptly prepaid, Loans in an aggregate amount equal to such excess.

(iv) If any Subsidiary (other than any Restricted Subsidiary) of the Borrower or the Restricted Subsidiaries makes any dividend or distribution (in each case, whether in cash or Cash Equivalents) with respect to any Equity Interests in such Subsidiary, or any other payment on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to Borrower or any Restricted Subsidiary, or makes an advance or loan to the Borrower or any Restricted Subsidiary, then the Borrower shall cause Loans to be prepaid in an amount equal to 50% of such dividends, distributions and loans on or prior to the date which is five (5) Business Days after the receipt thereof; *provided* that any proceeds from any Excluded Distributions shall not be required to be so repaid.

(v) Each prepayment of Loans pursuant to this Section 2.04(b) shall be paid to the Lenders in accordance with their respective Pro Rata Shares.

(vi) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Loans required to be made pursuant to this Section 2.04 at least three (3) Business Days prior to the date of such prepayment (except in the case of prepayments to be made pursuant clause (iii) above, which shall be made promptly after, or concurrently with, the delivery of such notice). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent will promptly notify each Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share of the prepayment, which shall be pro rata across all Facilities.

(c) *Funding Losses, Etc.* All prepayments under this Section 2.04 shall be made together with, in the case of any such prepayment of a Eurodollar Loan on a date other than the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Loan pursuant to Section 3.05. Notwithstanding any of the other provisions of this Section 2.04, so long as no Event of Default shall have occurred and be continuing (unless agreed to by the Administrative Agent), if any prepayment of Eurodollar Loans

is required to be made under Section 2.04(b), other than on the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower) to apply such amount to the prepayment of such Loans in accordance with Section 2.04(b). Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower) to apply such amount to the prepayment of the outstanding Loans in accordance with Section 2.04(b).

(d) Notwithstanding anything herein to the contrary, in the event that, prior to the first anniversary of the Closing Date, (i) any amendment, amendment and restatement or other modification of this Agreement is entered into or (ii) any voluntary prepayment of all, but not less than all, of the Term Loans is made with the proceeds of Indebtedness (other than Indebtedness incurred through a debt or equity securities offering) (which voluntary prepayment shall be deemed to have been made even if a portion of the Term Loans are replaced, converted re-evidenced with, into or by such Indebtedness so long as all, but not less than all, of the Term Loans are so prepaid), in connection with which, in the case of either clause (i) or clause (ii), the Applicable Rate with the respect to the Term Loans is decreased (or the interest rate applicable to such Indebtedness is lower than the interest rate applicable to the Term Loans), the Borrower shall pay to each holder of a Term Loan, concurrently with such amendment, amendment and restatement or other modification of this Agreement or such voluntary prepayment, a prepayment fee equal to 1% of the aggregate principal amount of Term Loans then outstanding. Notwithstanding the foregoing, no such fee shall be payable if the incurrence of such Indebtedness and prepayment of the Loans are part of another material transaction or series of related material transactions the primary purpose of which is not the refinancing of the Term Loans. For the avoidance of doubt, no such fee shall be payable in connection with (i) any prepayment from the proceeds of the issuance of a debt or equity securities offering or (ii) any prepayment from the proceeds of debt with an interest rate that is equal to or higher than that applicable to the Term Loans.

SECTION 2.05. Termination or Reduction of Commitments. (a) *Optional.* The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments, or from time to time permanently reduce the unused Term Loan Commitments or New Loan Commitments (but the amount of any such Commitment reduction shall not (except as set forth in clause (iii) below) be applied to the Swing Line Sublimit unless otherwise specified by the Borrower); *provided* that (i) any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction and (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$500,000 in excess thereof and (iii) if after giving effect to any reduction of the Commitments, the Swing Line Sublimit exceeds the sum of the unused Commitments under the Term Loan Facility and New Loan Facility, such Swing Line Sublimit shall be automatically reduced by the amount of such excess. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of the Commitments if such termination would have resulted from a refinancing of the Facilities, which refinancing shall not be consummated or otherwise shall be delayed.

(b) *Application of Commitment Reductions; Payment of Fees.* The Administrative Agent will promptly notify the Lenders of any termination or reduction of unused portions of the Swing Line Sublimit or the unused Term Loan Commitments or New Loan Commitments under this Section 2.05. Upon any reduction of unused Term Loan Commitments, the Commitment of each Term Lender shall be reduced by such Lender's Pro Rata Share of the amount by which such Commitments are reduced (other than the termination of Commitments of any Lender as provided in Section 3.07). Upon any reduction of any unused New Loan Commitments, the Commitment each New Loan Lender shall be reduced by such Lender's Pro Rata Share of the amount by which

such Commitments are reduced (other than the termination of Commitments of any Lender as provided in Section 3.07). All commitment fees accrued until the effective date of any termination of any Commitments shall be paid on the effective date of such termination.

SECTION 2.06. Repayment of Loans. (a) *Generally*. The Borrower shall repay to the Administrative Agent for the ratable account of the Lenders on the Maturity Date the aggregate principal amount of all of its Loans outstanding on such date.

(b) *Swing Line Loans*. The Borrower shall repay each Swing Line Loan on the date that is one (1) Business Day after such Loan is made.

SECTION 2.07. Interest. (a) Subject to the provisions of Section 2.07(b), (i) each Eurodollar Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Adjusted LIBO Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) The Borrower shall pay interest on past due amounts hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.08. Fees.

(a) *Commitment Fee – Term Loans*. The Borrower shall pay to the Administrative Agent for the account of each Term Lender in accordance with its Pro Rata Share, a commitment fee equal to 0.500% per annum times the actual daily amount by which the aggregate Term Loan Commitment exceeds the Outstanding Amount of Term Loans; *provided* that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; *provided, further*, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee shall accrue at all times from the date hereof until the Term Loan Commitment Termination Date, including at any time during which one or more of the conditions in Article 4 is not met, and shall be due and payable quarterly in arrears on the last Business Day of each fiscal quarter of the Borrower, commencing with the first such date to occur after the Closing Date, and on the Term Loan Commitment Termination Date.

(b) *Commitment Fee – New Loans*. The Borrower shall pay to the Administrative Agent for the account of each New Loan Lender in accordance with its Pro Rata Share, a commitment fee equal to 0.500% per annum times the actual daily amount by which the aggregate New Loan Commitment exceeds the Outstanding Amount of New Loans; *provided* that any commitment fee accrued

with respect to any of the Commitments of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; *provided, further*, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee shall accrue at all times from the date hereof until the New Loan Commitment Termination Date, including at any time during which one or more of the conditions in Article 4 is not met, and shall be due and payable quarterly in arrears on the last Business Day of each fiscal quarter of the Borrower, commencing with the first such date to occur after the Closing Date, and on the New Loan Commitment Termination Date.

(c) *Other Fees.* The Borrower shall pay to the Agents and the Lead Arrangers the fees set forth in the Fee Letter and such other fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent or Lead Arranger, as the case may be).

SECTION 2.09. Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime Rate shall be made on the basis of a year of three hundred and sixty-five (365) days and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.11(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.10. Evidence of Indebtedness. (a) Each Borrowing shall be evidenced by one or more accounts or records maintained by each Lender making Loans thereunder and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be *prima facie* evidence absent manifest error of the amount of the Borrowing and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Term Note, New Loan Note or Swing Line Note, as the case may be, payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.10(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.10(a), and by each Lender in its account or accounts pursuant to Sections 2.10(a), shall be *prima facie* evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

SECTION 2.11. Payments Generally. (a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. All payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; *provided* that, if such extension would cause payment of interest on or principal of Eurodollar Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in immediately available funds at the Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at a rate per annum equal to the Federal Funds Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand

therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.11(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article 4 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to fund participations in Swing Line Loans are several and not joint. The failure of any Lender to make any Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03. If the Administrative Agent receives funds for application to the Obligations of the Borrower or its Subsidiaries under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the sum of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.

SECTION 2.12. Sharing of Payments. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, or the participations in Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; *provided* that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any

settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.12 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.12 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

SECTION 2.13. **Incremental Facilities.** (a) At any time and from time to time following Successful Syndication, but prior to June 30, 2008, the Borrower may by written notice to the Administrative Agent, request the establishment of one or more New Loan Commitments, in an amount not in excess of (i) with respect to New Loan Commitments established on or prior to the Term Loan Commitment Termination Date, \$250,000,000 in the aggregate and (ii) with respect to New Loan Commitments established after the Term Loan Commitment Termination Date, \$500,000,000 in the aggregate, and in each case not less than \$20,000,000 individually (or such lesser amount which shall be approved by the Administrative Agent) or an integral multiple of \$5,000,000 in excess thereof; *provided* that at no time shall the Aggregate Commitments and Loans outstanding hereunder exceed \$1,250,000,000. For purposes of clarification, it is understood that the aggregate amount of New Loan Commitments may exceed \$250,000,000 only to the extent that the Borrower did not borrow the full amount available under the Term Loan Commitments prior to the Term Loan Commitment Termination Date. Each such notice shall set forth (A) the date (each, an **"Increased Amount Date"**) on which the Borrower proposes that the New Loan Commitments shall be effective, which shall be a date not less than 15 Business Days after the date on which such notice is delivered to the Administrative Agent; and (B) the identity of each Lender or other Person that is an Eligible Assignee (each, a **"New Loan Lender"**) to whom the Borrower proposes any portion of such New Loan Commitments be allocated and the amounts of such allocations (provided that any Lender approached to provide all or a portion of the New Loan Commitments may elect or decline, in its sole discretion, to provide a New Loan Commitment). The establishment of the New Loan Commitments shall be subject to the following conditions: (1) no Event of Default shall exist on such Increased Amount Date before or after giving effect to such New Loan Commitments; (2) both before and after giving effect to the making of any Series of New Loans, each of the conditions set forth in Section 4.02 shall be satisfied; (3) the New Loan Commitments shall be effected pursuant to one or more Joinder Agreements executed and delivered by the Borrower, the Administrative Agent and each applicable New Loan Lender, each of which shall be recorded in the Register and shall be subject to the requirements set forth in Section 10.15; and (4) the Borrower shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction. Any New Loans made on an Increased Amount Date shall be designated a separate series (a "Series") of New Loans for all purposes of this Agreement. Such New Loan Commitments shall become effective as of such Increased Amount Date; *provided, however*, that the Borrower shall not be permitted to make any Borrowing with respect to New Loans until the earlier of (a) the date on which the Term Loans have been fully funded and (b) the Term Loan Commitment Termination Date, has occurred.

(b) On any Increased Amount Date on which any New Loan Commitments of any Series are effective, subject to the satisfaction of the foregoing terms and conditions, each New Loan Lender of any Series shall become a Lender hereunder with respect to the New Loan Commitment of such Series and the New Loans of such Series made pursuant thereto and shall automatically and without further act be deemed to have assumed its Pro Rata Share of participations in outstanding Swing Line Loans.

(c) The Administrative Agent shall notify the Lenders promptly upon receipt of each notice delivered by the Borrower pursuant to the first sentence of Section 2.13(a) and in respect thereof, the Series of New Loan Commitments.

(d) The terms and provisions of the New Loans and New Loan Commitments of any Series shall be, except as otherwise set forth herein or in the Joinder Agreement, identical to the terms and provisions of the Term Loans. In any event, (i) the maturity date of the New Loans shall be the Maturity Date and shall not be subject to amortization and (ii) the rate of interest applicable to the New Loans of each Series shall be determined by the Borrower and the applicable New Loan Lenders and shall be set forth in each applicable Joinder Agreement; provided, however, that to the extent that the interest rate payable in respect of the New Loans (whether in the form of interest, fees, original issue discount or a combination of any thereof) is higher by more than 0.25% than the interest rate payable in respect of the Term Loans immediately prior to the incurrence of any such New Loans, the interest rates applicable to the existing Term Loans shall be increased to provide the existing Term Lenders the same interest rate provided to the New Loan Lenders. The Administrative Agent and the Borrower may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.13.

ARTICLE III

Taxes, Increased Costs Protection and Illegality

SECTION 3.01. Taxes. (a) Except as provided in this Section 3.01, any and all payments by the Borrower to or for the account of any Agent, the Lead Arrangers or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, excluding, in the case of each Agent, Lead Arranger and Lender, taxes imposed on or measured by its net income or overall gross income (including branch profits), and franchise (and similar) taxes imposed on it in lieu of net income taxes, by the jurisdiction (or any political subdivision thereof) under the Laws of which such Agent, Lead Arranger or Lender, as the case may be, is organized or maintains a Lending Office, and all liabilities (including additions to tax, penalties and interest) with respect thereto (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and liabilities being hereinafter referred to as "**Taxes**"). If the Borrower shall be required by any Laws to deduct any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to any Agent, Lead Arranger or Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), each of such Agent, Lead Arranger and Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), the Borrower shall furnish to such Agent, Lead Arranger or Lender (as the case may be) the original or a certified copy of a receipt evidencing payment thereof to the extent such a

receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Administrative Agent. If the Borrower fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to any Agent, Lead Arranger or Lender the required receipts or other required documentary evidence, the Borrower shall indemnify such Agent, Lead Arranger and Lender for any incremental taxes, interest or penalties that may become payable by such Agent, Lead Arranger or Lender arising out of such failure.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible or mortgage recording taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as “**Other Taxes**”).

(c) The Borrower agrees to indemnify each Agent, Lead Arranger and Lender for (i) the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 3.01) paid by such Agent, Lead Arranger or Lender and (ii) any liability (including additions to tax, penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided* such Agent, Lead Arranger or Lender, as the case may be, provides the Borrower with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts. Payment under this Section 3.01(c) shall be made within thirty (30) days after the date such Lender, Lead Arranger or Agent makes a demand therefor.

(d) The Borrower shall not be required pursuant to this Section 3.01 to pay any additional amount to, or to indemnify, any Lender, Lead Arranger or Agent, as the case may be, to the extent that such Lender, Lead Arranger or Agent becomes subject to Taxes subsequent to the Closing Date (or, if later, the date such Lender, Lead Arranger or Agent becomes a party to this Agreement) as a result of a change in the place of organization of such Lender, Lead Arranger or Agent or a change in the lending office of such Lender, except to the extent that any such change is requested or required in writing by the Borrower (and provided that nothing in this clause (d) shall be construed as relieving the Borrower from any obligation to make such payments or indemnification in the event of a change in lending office or place of organization that precedes a change in Law to the extent such Taxes result from a change in Law).

(e) Notwithstanding anything else herein to the contrary, if a Lender, a Lead Arranger or an Agent is subject to withholding tax imposed by any jurisdiction in which the Borrower is formed or organized at a rate in excess of zero percent at the time such Lender, Lead Arranger or Agent, as the case may be, first becomes a party to this Agreement, withholding tax imposed by such jurisdiction at such rate shall be considered excluded from Taxes unless and until such Lender, Lead Arranger or Agent, as the case may be, provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such forms; *provided* that, if at the date of the Assignment and Acceptance pursuant to which a Lender becomes a party to this Agreement, the Lender assignor was entitled to payments under clause (a) of this Section 3.01 in respect of withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) withholding tax, if any, applicable with respect to the Lender assignee on such date.

(f) If any Lender, Lead Arranger or Agent determines, in its reasonable discretion, that it has received a refund in respect of any Taxes or Other Taxes as to which indemnification or additional amounts have previously been paid to it by the Borrower pursuant

to this Section 3.01, it shall promptly remit such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund plus any interest included in such refund by the relevant taxing authority attributable thereto) to the Borrower, net of all out-of-pocket expenses of such Lender, Lead Arranger or Agent, as the case may be and without interest (other than any interest paid by the relevant taxing authority with respect to such refund); *provided* that the Borrower, upon the request of such Lender, Lead Arranger or Agent, as the case may be, agrees promptly to return such refund to such party in the event such party is required to repay such refund to the relevant taxing authority. Such Lender, Lead Arranger or Agent, as the case may be, shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant taxing authority (*provided* that such Lender, Lead Arranger or Agent may delete any information therein that such Lender, Lead Arranger or Agent deems confidential). Nothing herein contained shall interfere with the right of a Lender, Lead Arranger or Agent to arrange its tax affairs in whatever manner it thinks fit nor oblige any Lender, Lead Arranger or Agent to claim any tax refund or to make available its tax returns or disclose any information relating to its tax affairs or any computations in respect thereof or require any Lender, Lead Arranger or Agent to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled.

(g) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.01(a) or (c) with respect to such Lender it will, if requested by the Borrower, use commercially reasonable efforts (subject to such Lender's overall internal policies of general application and legal and regulatory restrictions) to designate another Lending Office for any Loan affected by such event; *provided* that such efforts are made on terms that, in the sole judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no economic, legal or regulatory disadvantage; *provided, further*, that nothing in this Section 3.01(g) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.01(a) or (c).

SECTION 3.02. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurodollar Loans, or to determine or charge interest rates based upon the Adjusted LIBO Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Loans or to convert Base Rate Loans to Eurodollar Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or promptly, if such Lender may not lawfully continue to maintain such Eurodollar Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due, if any, in connection with such prepayment or conversion under Section 3.05. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

SECTION 3.03. Inability to Determine Rates. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan, or that the Adjusted LIBO Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, or that Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and the Interest Period of such Eurodollar Loan, the Administrative

Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

SECTION 3.04. Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Loans. (a) If any Lender determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the date hereof, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurodollar Loans, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i) Taxes or Other Taxes (as to which Section 3.01 shall govern), (ii) changes in the basis of taxation of overall net income or overall gross income (including branch profits), and franchise (and similar) taxes imposed in lieu of net income taxes, by the United States or any political subdivision thereof under the Laws of which such Lender is organized or maintains a Lending Office and (iii) reserve requirements contemplated by Section 3.04(c) then from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, in each case after the date hereof, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent given in accordance with Section 3.06), the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within fifteen (15) days after receipt of such demand.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each Eurodollar Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurodollar Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least fifteen (15) days' prior notice (with a copy to the Administrative Agent) of such additional interest or cost from such Lender. If a Lender fails to give notice fifteen (15) days prior to the relevant Interest Payment Date, such additional interest or cost shall be due and payable fifteen (15) days from receipt of such notice.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to Section 3.04(a), (b) or (c) for any such increased cost or reduction incurred more than one hundred twenty (120) days prior to the date that such Lender demands, or notifies the Borrower of its intention to demand, compensation therefor, provided further that, if the circumstance giving rise to such increased cost or reduction is retroactive, then such 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) If any Lender requests compensation under this Section 3.04, then such Lender will, if requested by the Borrower, use commercially reasonable efforts to designate another Lending Office for any Loan affected by such event; *provided* that such efforts are made on terms that, in the reasonable judgment of such Lender, cause such Lender and its Lending Office(s) to suffer no material economic, legal or regulatory disadvantage; *provided*, further, that nothing in this Section 3.04(e) shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to Section 3.04(a), (b), (c) or (d).

SECTION 3.05. Funding Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the Adjusted LIBO Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded.

SECTION 3.06. Matters Applicable to all Requests for Compensation. (a) Any Agent or any Lender claiming compensation under this Article 3 shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01 or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred twenty (120) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 120-day period referred to above shall be extended to include the period of retroactive effect thereof. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue from one Interest Period to another Eurodollar Loans, or to

convert Base Rate Loans into Eurodollar Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue from one Interest Period to another any Eurodollar Loan, or to convert Base Rate Loans into Eurodollar Loans shall be suspended pursuant to Section 3.06(b) hereof, such Lender's Eurodollar Loans shall be automatically converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for such Eurodollar Loans (or, in the case of an immediate conversion required by Section 3.02, on such earlier date as required by Law) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 3.01 or 3.04 hereof that gave rise to such conversion no longer exist:

(i) to the extent that such Lender's Eurodollar Loans have been so converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Eurodollar Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or continued from one Interest Period to another by such Lender as Eurodollar Loans shall be made or continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be converted into Eurodollar Loans shall remain as Base Rate Loans.

(d) If any Lender gives notice to the Borrower (with a copy to the Agent) that the circumstances specified in Section 3.01, 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's Eurodollar Loans pursuant to this Section 3.06 no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding Eurodollar Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Commitments.

SECTION 3.07. Replacement of Lenders under Certain Circumstances. (a) If at any time (i) the Borrower becomes obligated to pay additional amounts or indemnity payments described in Section 3.01 or 3.04 as a result of any condition described in such Sections or any Lender ceases to make Eurodollar Loans as a result of any condition described in Section 3.02 or Section 3.04, (ii) any Lender becomes a Defaulting Lender or (iii) any Lender becomes a Non-Consenting Lender, then the Borrower may, on ten (10) Business Days' prior written notice to the Administrative Agent and such Lender, replace such Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.07(b) (with the assignment fee to be waived and, in the case of the assignment by a Non-Consenting Lender who does not agree to any amendment, amendment and restatement or modification referred to in Section 2.04(d) prior to the first anniversary of the Closing Date, the prepayment fee required by 2.04(d) to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more Eligible Assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender or other such Person; *provided, further*, that (A) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments and (B) in the case of any such assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable Eligible Assignees shall have agreed to the applicable departure, waiver or amendment of the Loan Documents; and *provided further*, that the Administrative Agent is authorized to execute any such assignment on behalf of any Lender described in clauses (i), (ii), or (iii) above.

(b) Any Lender being replaced pursuant to Section 3.07(a) above shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans and participations in Swing Line Loans and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all or a portion, as the case may be, of the assigning Lender's Commitment and outstanding Loans and participations in Swing Line Loans, (B) all obligations of the Borrower owing to the assigning Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such assigning Lender concurrently with such assignment and assumption and (C) upon such payment and, if so requested by the assignee Lender, delivery to the assignee Lender of the appropriate Note executed by the Borrower, the assignee Lender shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender.

(c) In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of all affected Lenders in accordance with the terms of Section 10.01 or all the Term Lenders, New Loan Lenders or Swing Line Lenders, as the case may be and (iii) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**Non-Consenting Lender.**"

SECTION 3.08. Survival. All of the Borrower's obligations under this Article 3 shall survive termination of this Agreement, termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

Conditions Precedent to Credit Extensions

SECTION 4.01. Conditions to the Closing Date. The occurrence of the Closing Date hereunder is subject to satisfaction of the following conditions precedent, except as otherwise agreed to between the Borrower and the Administrative Agent:

(a) The Administrative Agent shall have received the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Borrower, and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement;

(ii) a certificate, executed by an officer of the Borrower in form and substance reasonably satisfactory to the Administrative Agent, attaching:

(i) a copy of the resolutions, in form and substance reasonably satisfactory to the Administrative Agent, of the board of directors (or similar body) of the Borrower (or a duly authorized committee thereof) authorizing (A) the execution, delivery and performance of this Agreement (and any other agreements relating thereto) and (B) the extensions of credit contemplated hereunder; (ii) the certificate of incorporation and bylaws (or memorandum and

articles, or other documents of similar import pursuant to the laws of the Borrower's jurisdiction of organization) of the Borrower; (iii) a certificate of good standing (or such other document of similar import as may be acceptable to the Administrative Agent) with respect to the Borrower from the secretary of state (or comparable body) of the jurisdiction in which the Borrower is organized, dated as of a recent date and (iv) an incumbency certificate executed by Responsible Officers of the Borrower evidencing the identity, authority and capacity of each Responsible Officer authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which the Borrower is a party. In addition, the Administrative Agent shall have received such other certificates and instruments from the Borrower or any of its Subsidiaries or Affiliates as reasonably requested;

(iii) a legal opinion from (A) Skadden, Arps, Slate, Meagher & Flom LLP, New York counsel to the Borrower and (B) Brownstein Hyatt Farber Schreck, P.C., Nevada counsel to the Borrower, in each case, reasonably satisfactory to the Administrative Agent;

(iv) a certificate signed by a Responsible Officer of the Company certifying that there has been no change, effect, event or occurrence since March 31, 2007, that has had or could reasonably be expected to result in a Material Adverse Effect; and

(v) a certificate attesting to the Solvency of the Borrower from a Responsible Officer of the Borrower.

(b) All representations and warranties made by the Borrower herein and in each other Loan Document shall be true and correct in all material respects on and as of the Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date);

(c) No Default or Event of Default shall result from the Borrower's entering into this Agreement or performance of its Obligations hereunder;

(d) All costs, fees and expenses required to be paid hereunder (including costs, fees, expenses, disbursements and other charges of counsel) and invoiced on or prior to the Closing Date shall have been paid in full in cash.

SECTION 4.02. Conditions to All Extensions of Credit. The obligation of each Lender to make Loans to the Borrower hereunder is subject in each case to the following conditions precedent:

(a) the Closing Date shall have occurred or will occur simultaneously with the making of such Loans.

(b) The representations and warranties of the Borrower and any Subsidiary or Affiliate of the Borrower that is a party to any Loan Document made herein or any other Loan Document shall be true and correct in all material respects on and as of the borrowing date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date); *provided*, that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on such respective dates.

(c) No Default or Event of Default shall exist, or would result from the making of such Loan to Borrower or from the application of the proceeds therefrom.

(d) The Administrative Agent and, if applicable, the Swing Line Lender shall have received a Borrowing Notice and/or Swing Line Loan Notice, as applicable, in accordance with the requirements hereof.

(e) Each Lender that has requested a Term Note, New Loan Note or Swing Line Note at least two Business Days in advance of the borrowing date shall have received such Note executed by the Borrower in favor of such Lender, evidencing such Lender's Loan or Loans;

Each Borrowing Notice or Swing Line Loan Notice, as applicable, (other than a Borrowing Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a), (b) and (c) have been satisfied on and as of the applicable borrowing date.

ARTICLE V

Representations and Warranties

In order to induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans as provided for herein, the Borrower makes the following representations and warranties to, and agreements with, the Administrative Agent and the Lenders on the Closing Date and as of the date each Loan is made hereunder:

SECTION 5.01. Existence, Qualification and Power; Compliance with Laws. Each of the Borrower, the Restricted Subsidiaries and the Material Unrestricted Subsidiaries (a) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to own or lease its assets and transact the business in which it is engaged and, (c) is duly qualified and in good standing and authorized to do business under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs, injunctions and orders and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clause (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02. Corporate Power and Authority. The Borrower has all requisite corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Loan Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. The Borrower has duly executed and delivered each Loan Document to which it is a party and each such Loan Document which is currently in effect constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity.

SECTION 5.03. No Violation. Neither the execution, delivery or performance by the Borrower of the Loan Documents to which it is a party and which is currently in effect nor compliance with the terms and provisions thereof nor the consummation of the transactions contemplated hereby or thereby will (a) except as could not reasonably be expected to have a Material Adverse Effect, contravene any applicable provision of any material law, statute, rule, regulation, order, writ, injunction or decree of any court or

Governmental Authority, (b) result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of the Borrower or any of the Restricted Subsidiaries or Material Unrestricted Subsidiaries pursuant to the terms of any material indenture, loan agreement, lease agreement, mortgage, deed of trust, agreement or other material instrument to which the Borrower or any Restricted Subsidiary or Material Unrestricted Subsidiary is a party or by which it or any of its property or assets is bound or (c) violate any provision of the Organization Documents of the Borrower.

SECTION 5.04. Governmental Authorization; Other Consents. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, the Borrower or any Subsidiary or Affiliate of the Borrower that is a party to any Loan Document of this Agreement or any other Loan Document, or (b) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents except for (i) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect and (ii) those items set forth on Schedule 5.04.

SECTION 5.05. Financial Statements; No Material Adverse Effect.

(a) (i) The Audited Financial Statements, the Unaudited Financial Statements, and any financial statements delivered or deemed delivered under Section 6.01(a) and (b) fairly present (or will fairly present) in all material respects the financial condition of the Borrower and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby. All such financial statements, including the related schedules and notes thereto, have been (or will be) prepared in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein. During the period from December 31, 2006 to and including the Closing Date, there has been (i) no sale, transfer or other disposition by the Borrower or any of its Subsidiaries of any material part of the business or property of the Borrower or any of its Subsidiaries, taken as a whole and (ii) no purchase or other acquisition by the Borrower or any of its Subsidiaries of any business or property (including any Equity Interests of any other Person) material in relation to the consolidated financial condition of the Borrower and its Subsidiaries, in each case, which is not reflected in the foregoing financial statements or in the notes thereto or has not otherwise been disclosed in writing to the Lenders prior to the Closing Date. As of the Closing Date, none of the Borrower, any Restricted Subsidiary, or any Material Unrestricted Subsidiary has any material Guarantee, contingent liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including, without limitation, any interest rate of foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph.

(b) Since December 31, 2006, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

SECTION 5.06. Litigation. There are no actions, suits, proceedings, claims or disputes (including any of the foregoing that alleges Environmental Liability of the Borrower or its Subsidiaries) pending or, to the knowledge of the Borrower, threatened in writing or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 5.07. Compliance. Neither the Borrower nor any of its Subsidiaries (before and after giving effect to the transactions contemplated hereby) is (i) in violation of its certificate or articles of incorporation, bylaws, memorandum of association or limited liability company or operating agreement (or similar organizational document), (ii) in breach or violation of any statute, judgment, decree, order, rule or regulation applicable to any of them or any of their respective properties or assets, except for any such breach or violation that could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, or (iii) in breach of or default under (nor has any event occurred that, with notice or passage of time or both, would constitute a default under) or in violation of any of the terms or provisions of any indenture, mortgage, deed of trust, loan agreement, note, lease, license, franchise agreement, permit, certificate, contract or other agreement or instrument to which any of them is a party or to which any of them or their respective properties or assets is subject, except for any such breach, default, violation or event that could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

SECTION 5.08. Properties. The Borrower and each of the Subsidiaries have good and marketable title to or leasehold interest in all properties that are necessary for the operation of their respective businesses as currently conducted and as proposed to be conducted, in the case of the Borrower and the Restricted Subsidiaries, free and clear of all Liens (other than any Liens permitted by this Agreement) and except where the failure to have such good title could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.09. Environmental Compliance. (a) To Borrower's knowledge, there are no claims, actions, suits, or proceedings alleging potential liability or responsibility for violation of, or otherwise relating to, any Environmental Law that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as specifically disclosed in Schedule 5.09(b) or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (i) none of the properties currently or formerly owned, leased or operated by the Borrower or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being treated, stored or disposed on any property currently owned, leased or operated by the Borrower or any of its Subsidiaries or, to its knowledge, on any property formerly owned or operated by the Borrower or any of its Subsidiaries; (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by the Borrower or any of its Subsidiaries; and (iv) to Borrower's knowledge, Hazardous Materials have not been released, discharged or disposed of by any Person on any property currently or formerly owned, leased or operated by the Borrower or any of its Subsidiaries and Hazardous Materials have not otherwise been released, discharged or disposed of by the Borrower or its Subsidiaries at any other location.

(c) The properties owned, leased or operated by the Borrower and the Subsidiaries do not contain any Hazardous Materials in amounts or concentrations which (i) constitute, or constituted a violation of, (ii) require remedial action under, or (iii) could give rise to liability under, Environmental Laws, which violations, remedial actions and liabilities, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(d) Except as disclosed in Schedule 5.09(d), neither the Borrower nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law except for such investigation or assessment or remedial or response action that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(e) All Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by the Borrower or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result, individually or in the aggregate, in a Material Adverse Effect.

(f) Except as could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, none of the Borrower or any of its Subsidiaries has contractually assumed any liability or obligation under or relating to any Environmental Law.

(g) Except as could not reasonably be expected to result in a Material Adverse Effect, the Borrower and each of the Subsidiaries and all Real Property are in compliance with Environmental Laws.

SECTION 5.10. Tax Returns and Payments. The Borrower and each of its Subsidiaries has filed all federal income tax returns and all other material tax returns, domestic and foreign, required to be filed by it and has paid all material Taxes payable by it that have become due, other than those (i) not yet delinquent or (ii) contested in good faith as to which adequate reserves have been provided in accordance with GAAP and which could not reasonably be expected to result in a Material Adverse Effect. No tax lien has been filed and to the knowledge of Borrower, no claim is being asserted, with respect to any Tax.

SECTION 5.11. ERISA Compliance. (a) Except as set forth in Schedule 5.11(a) or as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance in with the applicable provisions of ERISA, the Code and other Federal or state Laws.

(b) (i) No ERISA Event has occurred during the five year period prior to the date on which this representation is made or deemed made with respect to any Pension Plan; (ii) no Pension Plan has an “accumulated funding deficiency” (as defined in Section 412 of the Code), whether or not waived; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 5.11(b), as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) All Foreign Plans are in compliance with, and have been established, administered and operated in accordance with, the terms of such Foreign Plans and applicable law, except for any failure to so comply, establish, administer or operate the Foreign Plans as could not reasonably be expected to have a Material Adverse Effect. All contributions or other payments which are due with respect to each Foreign Plan have been made in full and there are no funding deficiencies thereunder, except to the extent any such events could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 5.12. Subsidiaries; Equity Interests As of the Closing Date, neither the Borrower, any Restricted Subsidiary, nor any Material Unrestricted Subsidiary has any Subsidiaries other than those specifically disclosed in Schedule 5.12, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, and with respect to those Subsidiaries that are corporations, are fully paid and nonassessable, and all Equity Interests owned by the Borrower or any of its Subsidiaries are owned free and clear of all Liens except any Permitted Lien described in Section 7.01. As of the Closing Date, Schedule 5.12 (a) sets forth the name and jurisdiction of each Subsidiary and (b) sets forth the ownership interest of the Borrower and any other Subsidiary in Borrower and each Subsidiary, including the percentage of such ownership.

SECTION 5.13. Margin Regulations; Investment Company Act; Public Utility Holding Company Act. (a) Neither the Borrower, any Restricted Subsidiary, nor any Material Unrestricted Subsidiary is engaged nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Borrowings will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for purchasing or carrying margin stock or for the purpose of purchasing, carrying or trading in any securities under such circumstances as to involve the Borrower in a violation of Regulation X. No Indebtedness being reduced or retired out of the proceeds of any Loans was or will be incurred for the purpose of purchasing or carrying any margin stock in violation of Regulation U issued by the Board. Following the application of the proceeds of the Loans, margin stock will not constitute more than 25% of the value of the assets of the Borrower and its Subsidiaries. None of the transactions contemplated by this Agreement (including without limitation, the making of any Loan or the use of any proceeds thereof) will violate or result in the violation of Regulation U or Regulation X. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

(b) Neither the Borrower nor any Subsidiary is an “investment company” within the meaning of, or required to be registered as an “investment company” under, the Investment Company Act of 1940.

SECTION 5.14. Disclosure. No report, financial statement, certificate or other written information furnished by or on behalf of the Borrower or any Affiliate of the Borrower to any Agent, Lead Arranger or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished) when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to projected financial information and pro forma financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

SECTION 5.15 Intellectual Property; Licenses, Etc. The Borrower, each Restricted Subsidiary, and each Material Unrestricted Subsidiary owns, licenses or possesses the right to use, all Intellectual Property and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the operation of its business as currently conducted, and, without conflict with the rights of any Person, except to the extent the lack of such rights or the existence of such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the Borrower’s knowledge, no IP Rights, advertising, product, process, method, substance, part or other material used by the Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary in the operation of their respective businesses as currently conducted infringes upon any rights held by any Person except

for such infringements, individually or in the aggregate, which could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the IP Rights, is pending or, to the knowledge of the Borrower, threatened against the Borrower any Restricted Subsidiary, or any Material Unrestricted Subsidiary, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 5.16. Solvency. On the Closing Date (prior to and after giving effect to the transactions contemplated hereby), immediately following the making of each Loan and after giving effect to the application of the proceeds of such Loans, the Borrower is Solvent.

SECTION 5.17. Maintenance of Insurance. The Borrower and its Subsidiaries, as applicable, maintain insurance in accordance with the requirements set forth in Section 6.07. None of the Borrower or any of its Subsidiaries (a) has received notice from any insurer (or any agent thereof) that substantial capital improvements or other substantial expenditures will have to be made in order to continue such insurance or (b) has any reason to believe that it will not be able to renew its existing coverage as and when such coverage expires or to obtain similar coverage from similar insurers at a substantially similar cost except in each case as would not, individually or in the aggregate, have a Material Adverse Effect.

SECTION 5.18. Subordination of Junior Financing. The Obligations are “Senior Debt,” or “Senior Indebtedness,” (or any comparable term) under, and as defined in, any Junior Financing Documentation.

SECTION 5.19. Labor Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any of the Borrower or its Subsidiaries pending or, to the knowledge of Borrower, threatened; (b) hours worked by and payment made to employees of each of the Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with such matters; and (c) all payments due from any of the Borrower or its Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

SECTION 5.20. Permits. In each case, except as could not reasonably be expected to have a Material Adverse Effect, (a) the Borrower and each Subsidiary has obtained and holds all Permits required in respect of all Real Property and for any other property otherwise operated by or on behalf of, or for the benefit of, such person and for the operation of each of its businesses as presently conducted, (b) all such Permits are in full force and effect, and each such Person has performed and observed all requirements of such Permits, (c) no event has occurred that allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (d) no such Permits contain any restrictions, either individually or in the aggregate, that are materially burdensome to any such Person, or to the operation of any of its businesses or any property owned, leased or otherwise operated by such person, (e) each such Person reasonably believes that each of its Permits will be timely renewed and complied with, without material expense, and that any additional Permits that may be required of such Person will be timely obtained and complied with, without material expense and (f) no such Person has any knowledge or reason to believe that any Governmental Authority is considering limiting, suspending, revoking or renewing on materially burdensome terms any such Permit.

SECTION 5.21. Fiscal Year. The fiscal year of each the Borrower and each Restricted Subsidiary ends on December 31 of each calendar year.

SECTION 5.22. Patriot Act. To the extent applicable, the Borrower, each Restricted Subsidiary and each Material Unrestricted Subsidiary is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Patriot Act.

SECTION 5.23. Use of Proceeds. The Borrower has used the proceeds of the Loans only as permitted hereunder.

ARTICLE VI

Affirmative Covenants

The Borrower hereby covenants and agrees that on the Closing Date and thereafter, so long as any Lender shall have any Commitment hereunder or any Loan, fee or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each Restricted Subsidiary to:

SECTION 6.01. Financial Statements. Deliver to the Administrative Agent:

(a) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of the Borrower's Annual Report on Form 10-K (or successor form thereto) with respect to each fiscal year of the Borrower and (ii) the day on which such financial statements are required to be delivered to the holders of the Convertible Notes or any other Indebtedness of the Borrower, a copy of the audited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related audited consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and opinion of Ernst & Young LLP or any other independent registered public accounting firm of nationally recognized standing, which report and opinion shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; and

(b) as soon as available, but in any event not later than the earlier of (i) 10 days after the filing with the SEC of the Borrower's Quarterly Report on Form 10-Q (or successor form thereto) with respect to each of the first three (3) fiscal quarters of each fiscal year of the Borrower and (ii) the day on which such financial statements are required to be delivered to the holders of the Convertible Notes or any other Indebtedness of the Borrower unaudited consolidated balance sheets of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations and of cash flows for such fiscal quarter and for the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments;

All such financial statements shall be complete and correct in all material respects (in the case of financial statements delivered pursuant to subsection (b) of this Section 6.01, subject to normal year-end audit adjustments) and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

Information required to be delivered to this Section 6.01 shall be deemed to have been delivered if such information, or one or more annual or quarterly reports containing such information, shall have been posted by the Administrative Agent on a SyndTrak, IntraLinks or similar site to which the Lenders have been granted access or shall be available on the website of the Securities and Exchange commission at <http://www.sec.gov> or on the website of the Borrower. Information required to be delivered pursuant to this Section 6.01 may also be delivered by electronic communications pursuant to procedures approved by the Administrative Agent.

Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

SECTION 6.02. Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(a) within five (5) Business Days after the end of each fiscal quarter of the Borrower, a duly completed Net Liquidity Confirmation Certificate, signed by a Responsible Officer of the Borrower and in form and substance reasonably acceptable to the Administrative Agent, showing in reasonable detail the Borrower's Net Liquidity as of the end of such fiscal quarter; provided, however, that the Borrower shall not be required to continue to provide such certificates from and after the time that the Borrower submits such a certificate to the effect that the Borrower's Net Liquidity is less than \$400 million; and

(b) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request.

SECTION 6.03. Notices. Promptly after obtaining knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of any material amendment, waiver or other modification made to, or any default or termination of (and delivery of any notice thereof), or entry into, any Material Debt Agreement of the Borrower or its Subsidiaries (together with a copy of any such amendment, waiver, modification or notice);

(c) the occurrence of any ERISA Event described in clause (a) of the definition thereof or any other ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding the Threshold Amount;

(d) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including arising out of or resulting from (i) breach or non-performance of, or any default or event of default under, a Contractual Obligation of the Borrower, any Restricted Subsidiary, any Material Unrestricted Subsidiary or any of their Subsidiaries, (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower, any Restricted Subsidiary, any Material Unrestricted

Subsidiary or any of their Subsidiaries and any Governmental Authority, (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary or any of their Subsidiaries, including pursuant to any applicable Environmental Laws or in respect of IP Rights or the assertion or occurrence of any noncompliance by the Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary or any of their Subsidiaries with, or liability under, any Environmental Law or Environmental Permit, or (iv) the occurrence of any ERISA Event.

Each notice provided pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.04. Payment of Obligations. Pay, discharge or otherwise satisfy as the same shall become due and payable, all its obligations and liabilities in respect of taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property before the same shall become delinquent or in default, or that, if unpaid, might give rise to a Lien upon such properties or any part thereof; *provided, however*, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the Borrower or the applicable Subsidiary shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP.

SECTION 6.05. Preservation of Existence, Etc. (a) Do all things necessary to preserve, renew and maintain in full force and effect its legal existence, corporate rights and authority, under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05 and (b) take all reasonable action to maintain all rights, privileges (including its good standing), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except (i) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect or (ii) pursuant to a transaction permitted by Section 7.04 or 7.05.

SECTION 6.06. Maintenance of Properties. Except if the failure to do so could not reasonably be expected to have a Material Adverse Effect, (a) maintain, preserve and protect and cause each Material Unrestricted Subsidiary to maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted, and (b) make and cause each Material Unrestricted Subsidiary to make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with prudent industry practice.

SECTION 6.07. Maintenance of Insurance. Obtain, maintain and keep in full force and effect and cause each Material Unrestricted Subsidiary to obtain, maintain and keep in full force and effect, in each case, with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons.

SECTION 6.08. Compliance with Laws. Comply in all material respects with and enforce its rights under all Laws, rules and regulations, all orders, writs, injunctions and decrees, and all Permits applicable to it or to its business or property, except if the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 6.09. Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and are in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be.

SECTION 6.10. Inspection Rights Subject to any Gaming Laws restricting such actions, permit representatives of any Lender, coordinated through the Administrative Agent, to visit and inspect any of its properties and examine and, at such Person's expense (unless a Default or Event of Default is continuing, in which case at the Borrower's expense), make abstracts from any of its books and records at any reasonable time and upon reasonable prior notice, and as often as may reasonably be desired and, during normal business hours, to discuss the business, operations, properties and financial and other condition of the Borrower and its Subsidiaries with officers of the Borrower or its Subsidiaries and with their respective independent certified public accountants (provided that a Responsible Officer may be present for any such discussions with independent certified public if the Borrower so chooses).

SECTION 6.11. Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent required by Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws.

SECTION 6.12. Use of Proceeds. The Borrower will use the proceeds of the Loans only as follows: (i) to repay all obligations under that certain Facility Agreement dated June 14, 2007, by and between the Borrower, as borrower, and Wynn Resorts Macau, as lender, which the Borrower agrees to repay on or before June 29, 2007, (ii) to redeem or otherwise repay Indebtedness represented by the Convertible Notes, (iii) to reimburse the Borrower for amounts used to repurchase the Borrower's publicly held common Equity Interests between June 8, 2007 and the Closing Date, (iv) to pay for the prior or concurrent repurchase of publicly held common Equity Interests of the Borrower between the Closing Date and the Term Loan Commitment Termination Date, (v) for other general corporate purposes in an aggregate amount not to exceed \$350,000,000, including to pay fees and expenses incurred in connection with this Agreement, (vi) to pay interest and principal in respect of the Loans, or (vii) to be deposited in a segregated Cash Collateral Account from which funds may be drawn solely to repurchase publicly held common Equity Interests of the Borrower or to prepay or repay the Loans or Obligations hereunder.

ARTICLE VII

Negative Covenants

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any of the Restricted Subsidiaries to, directly or indirectly:

SECTION 7.01. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;

- (b) Liens for taxes, assessments or governmental charges which are not required to be paid pursuant to Section 6.04;
- (c) pledges or deposits in the ordinary course of business in connection with (i) workers' compensation, unemployment insurance and other social security legislation, (ii) to secure the performance of statutory obligations, bids, leases, government contracts, trade contracts, and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) securing insurance premiums or reimbursement obligations under insurance policies and (iv) obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items in clauses (i) through (iii) above;
- (d) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);
- (e) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business which do not secure any Indebtedness;
- (f) Liens in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;
- (g) Liens consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;
- (h) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, or (ii) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Restricted Subsidiaries;
- (i) Liens placed upon assets of any Restricted Subsidiary securing Guarantees permitted by Section 7.03(k);
- (j) Liens placed on treasury stock acquired pursuant to the Share Repurchase Program;
- (k) Liens currently existing pursuant to the Wynn Las Vegas Credit Agreement and/or the Wynn Macau Credit Agreement and any Liens on the same assets securing Indebtedness refinancing such Indebtedness;
- (l) Liens arising from filing UCC financing statements relating solely to leases not prohibited by this Agreement;
- (m) Liens in favor of customs and revenue authorities arising as a matter of law to secure a payment of customs duties in connection with the importation of goods;

(n) Liens on the Borrower's Equity Interests in Wynn Resorts Funding, LLC arising under that certain Pledge and Security Agreement dated July 7, 2003, by and among the Borrower, as pledgor, and U.S. Bank National Association, as trustee and collateral agent; and

(o) Other Liens securing Indebtedness outstanding in an aggregate amount not to exceed \$25,000,000.

SECTION 7.02. Accounting Changes. Make any change in fiscal year; provided, however, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 7.03. Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness of the Borrower and any of its Subsidiaries under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.03(b) and any Permitted Refinancing thereof;

(c) Indebtedness of any Restricted Subsidiary owing to (i) the Borrower or (ii) any Restricted Subsidiaries that own (directly or indirectly) Equity Interests in such Restricted Subsidiary or whose Equity Interests are owned (directly or indirectly) by such Restricted Subsidiary;

(d) Indebtedness in respect of Swap Contracts designed to hedge against interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes;

(e) Indebtedness representing deferred compensation to employees of the Borrower and the Restricted Subsidiaries incurred in the ordinary course of business;

(f) Indebtedness consisting of promissory notes issued by the Borrower or any Restricted Subsidiary to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by Section 7.06;

(g) Cash Management Obligations and other Indebtedness in respect of netting services, overdraft protections and similar arrangements in each case in connection with deposit accounts;

(h) Indebtedness consisting of the financing of insurance premiums;

(i) Indebtedness incurred by the Borrower or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 30 days following the incurrence thereof;

(j) Permitted Subordinated Indebtedness of the Borrower (which shall not be guaranteed by any Restricted Subsidiary or Material Unrestricted Subsidiary except as permitted in the definition of such term); and

(k) Any Guarantee (express or implied) by (i) any Restricted Subsidiary of Wynn Resorts Holdings, LLC of any senior secured Indebtedness of Wynn Las Vegas or, if Wynn Las Vegas has no material senior secured Indebtedness, any senior unsecured Indebtedness of Wynn Las Vegas, (ii) Wynn Group Asia, Inc., Wynn Resorts International, Ltd., Wynn Resorts (Macau) Holdings, Ltd. or Wynn Resorts (Macau), Ltd. or any Restricted Subsidiary thereof of any senior secured Indebtedness of Wynn Resorts Macau or, if Wynn Resorts Macau has no material senior secured Indebtedness, any senior unsecured Indebtedness of Wynn Resorts Macau or (iii) any other Restricted Subsidiary (other than Wynn Las Vegas) of any senior secured Indebtedness of any Material Unrestricted Subsidiary thereof or, if such other Material Unrestricted Subsidiary has no material senior secured Indebtedness, any senior unsecured Indebtedness of such Material Unrestricted Subsidiary;

(l) Other Indebtedness outstanding not to exceed \$25,000,000; and

(m) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (l) above.

SECTION 7.04. Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Restricted Subsidiary may merge with (i) the Borrower; provided that (x) the Borrower shall be the continuing or surviving Person and (y) such merger does not result in the Borrower ceasing to be incorporated under the Laws of the United States, any state thereof or the District of Columbia, or (ii) any one or more Restricted Subsidiaries thereof; and

(b) any Restricted Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Restricted Subsidiary.

SECTION 7.05. Dispositions. Make any Disposition or enter into any agreement to make any Disposition:

(a) of Intellectual Property constituting the “Wynn” name and mark (other than granting licenses in respect thereof); and

(b) of the Equity Interests in any Restricted Subsidiary or Material Unrestricted Subsidiary (except, in the case of a disposition by Wynn Resorts Holdings, LLC or a Restricted Subsidiary owned thereby, to another Restricted Subsidiary owned by Wynn Resorts Holdings, LLC and, in the case of a disposition by Wynn Group Asia, Inc. or any Restricted Subsidiary owned thereby, to another Restricted Subsidiary owned by Wynn Group Asia, Inc.) or permit Wynn Las Vegas or any Subsidiary thereof to Dispose of a material portion of the collective property of Wynn Las Vegas and the other Subsidiaries of Wynn Resorts Holdings, LLC (except to Wynn Las Vegas, a Subsidiary of Wynn Las Vegas or a Material Unrestricted Subsidiary that

is a Subsidiary of Wynn Resorts Holdings, LLC) or permit Wynn Resorts Macau or any Subsidiary thereof to Dispose of a material portion of the collective property of Wynn Resorts Macau and the other Subsidiaries of Wynn Resorts (Macau), Ltd. (except to Wynn Resorts Macau, a Subsidiary of Wynn Resorts Macau or a Material Unrestricted Subsidiary that is a Subsidiary of Wynn Resorts (Macau), Ltd.) or permit any other Material Unrestricted Subsidiary or Subsidiary thereof not described in the foregoing to Dispose of a material portion of the property of such Material Unrestricted Subsidiary and its Subsidiaries (other than to a Subsidiary of such Material Unrestricted Subsidiary or to another Material Unrestricted Subsidiary owned by the same Restricted Subsidiary); provided that, so long as no Event of Default exists or would result from such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists or would result therefrom), the Borrower may Dispose (directly or indirectly by Disposing of its interest in Restricted Subsidiaries) of up to 25% of the Equity Interests representing each of the capital, voting, economic rights (profits and dividends) and other ownership rights in Wynn Resorts Macau and its Subsidiaries and up to 20% of such Equity Interests in each other Material Unrestricted Subsidiary and its Subsidiaries, so long as the Borrower or Restricted Subsidiary that is making the Disposition shall receive all of the consideration from such Disposition in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received, other than nonconsensual Permitted Liens and payable no later than 364 days after the consummation of the transaction); provided, however, that for the purposes of the foregoing, each of the following shall be deemed to be cash: (x) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing and (y) any securities received by the Borrower or such Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable Disposition, and (c) any Material Unrestricted Subsidiary may Dispose of any Surplus Land owned or leased by such Material Unrestricted Subsidiary.

SECTION 7.06. Restricted Payments. Declare or make or agree to declare or make, directly or indirectly, any Restricted Payment by Borrower, or incur any obligations (contingent or otherwise) Borrower to do so:

- (a) using funds required to be applied to prepay Loans pursuant to Section 2.04(b); or
- (b) consisting of assets other than cash or Cash Equivalents in an aggregate amount exceeding \$25,000,000; or
- (c) from proceeds of Indebtedness (other than intercompany Indebtedness and Loans as permitted hereunder);

SECTION 7.07. Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the date hereof or any business reasonably related or ancillary thereto.

SECTION 7.08. Transactions with Affiliates. Enter into or permit any Subsidiary to enter into, any transaction, including, without limitation, any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate thereof unless such transaction is:

- (a) on terms that are not less favorable to the Borrower, or in the case of a transaction between a Restricted Subsidiary and an Unrestricted Subsidiary, on terms no less favorable to the Restricted Subsidiary, than those that might be obtained at the time in a comparable arm's length transaction with Persons who are not Affiliates of such Person;

(b) a Disposition permitted pursuant to Section 7.05 or a Restricted Payment permitted pursuant to Section 7.06;

(c) the reimbursement by Wynn Las Vegas and its Subsidiaries and Wynn Resorts Macau and its Subsidiaries to the Borrower of costs incurred by the Borrower for salary and benefits, office operations, development, advertising, insurance and other corporate overhead;

(d) expressly contemplated by agreements in existence on the Closing Date and set forth on Schedule 7.08 or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect;

(e) reimbursements associated with the use of any aircraft owned or leased by any Subsidiary in an amount equal to (i) the amount determined pursuant to the Standard Industry Fare Level formula, as described in Treasury Regulation Section 1.61-21(g) or (ii) all variable costs and expenses (including, without limitation, fuel costs, personnel costs, overhead and similar operating costs and expenses but in no event costs or expenses related to the acquisition, maintenance or repair of any such aircraft or any fixed assets related thereto) incurred by such Subsidiary in connection with such use;

(f) associated with an employment agreement entered into by the Borrower or any Subsidiary with a Person in the ordinary course of business;

(g) to the extent not covered in clauses (c) or (d) above, the payment of reasonable directors'/managers' fees to directors and managers of the Borrower or any Subsidiary, and customary indemnification and insurance arrangements in favor of such directors and managers, in each case in the ordinary course of business; and

(h) between or among (i) Wynn Las Vegas and its Subsidiaries, (ii) Wynn Resorts Macau and its Subsidiaries and (iii) any other Material Unrestricted Subsidiary and its Subsidiaries.

SECTION 7.09. Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of Wynn Resorts Macau or its Subsidiaries, or any Restricted Subsidiary of the Borrower, to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower; provided that the foregoing shall not apply to Contractual Obligations which (i) (x) exist on the date hereof (or are substantially similar to or have similar substantive effect but do not expand the scope of those in existence on the date hereof) and (to the extent not otherwise permitted by this Section 7.09) are listed on Schedule 7.09 or (y) to the extent Contractual Obligations permitted by clause (x) are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted renewal, extension or refinancing of such Indebtedness so long as such renewal, extension or refinancing does not, in the reasonable opinion of the Administrative Agent, materially expand the scope of such restriction, (ii) arise in connection with any Disposition permitted by Section 7.05 and are limited to the assets subject to such Disposition, (iii) are customary provisions in joint

venture agreements and other similar agreements applicable to joint ventures and applicable solely to such joint venture entered into in the ordinary course of business, (iv) are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (v) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary in existence as of the Closing Date, (vi) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (vii) are restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and *provided further*, that from and after the effective date of the amendment to the Wynn Macau Credit Agreement scheduled to occur in June, 2007, (the “**Macau Credit Agreement Amendment**”), the Macau Credit Agreement Amendment, if in the form previously provided to the Administrative Agent or otherwise approved by the Administrative Agent, shall be deemed to have existed on the date hereof for all purposes of this paragraph (and the amendments effected thereby shall be deemed to have been in effect on the date hereof).

SECTION 7.10. Prepayments, Etc. of Indebtedness. (a) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest shall be permitted) any subordinated Indebtedness incurred under Section 7.03(j) or any other Indebtedness that is required to be subordinated to the Obligations pursuant to the terms of the Loan Documents (collectively, “**Junior Financing**”) or make any payment in violation of any subordination terms of any Junior Financing Documentation, except (i) the refinancing thereof with the Net Cash Proceeds of any Indebtedness (to the extent such Indebtedness constitutes a Permitted Refinancing and, if applicable, is permitted pursuant to Section 7.03(j)), to the extent not required to prepay any Loans or Facility pursuant to Section 2.04(b), (ii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests) of the Borrower or any of its direct or indirect parents, and (iii) the prepayment or redemption of the Convertible Notes. Notwithstanding the foregoing, the Borrower and its Subsidiaries may repay any intercompany Indebtedness as long as no Default or Event of Default has occurred and is continuing at the time of such repayment or would result therefrom.

(b) Amend, modify or change in any manner materially adverse to the interests of the Lenders any term or condition of any Junior Financing Documentation without the consent of the Administrative Agent.

SECTION 7.11. Equity Interests of the Borrower and Restricted Subsidiaries. Permit (i) an Unrestricted Subsidiary to own any Equity Interests in a Restricted Subsidiary or (ii) an Unrestricted Subsidiary (other than a Material Unrestricted Subsidiary) own any Equity Interests in a Material Unrestricted Subsidiary.

SECTION 7.12. Holding Company. Conduct, transact or otherwise engage in any business or operations other than those incidental to (i) its ownership (or, to the extent not prohibited by Article 7, Disposition) of the Equity Interests of its Subsidiaries and further Investments (other than in any operating assets) in conformity with Section 7.07. (ii) the maintenance of its legal existence, (iii) the performance of the Loan Documents and the other agreements contemplated thereby, (iv) any public offering of its common stock or any other issuance of its Equity Interests not prohibited by Article 7, (v) participating in tax, accounting and other administrative activities as the parent of the Subsidiaries, (v) the incurrence of Liens, Indebtedness, making of Dispositions, making Restricted Payments and other transactions not prohibited under Article 7 that are incidental to any of the foregoing and (vi) the ownership of Intellectual Property relating to the business conducted by Subsidiaries of the Borrower.

ARTICLE VIII

Events Of Default and Remedies

SECTION 8.01. Events of Default. Any of the following shall constitute an "Event of Default":

(a) *Non-Payment*. The Borrower or any Subsidiary or Affiliate of the Borrower that is a party to any Loan Document fails to pay, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise, (i) when and as required to be paid herein, any amount of principal of any Loan (other than amounts due pursuant to Section 2.04(b)), (ii) within five (5) Business Days after the same becomes due, any amounts due pursuant to Section 2.04(b) or (iii) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) *Specific Covenants*. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 6.05 or 6.12 or Article 7; or

(c) *Other Defaults*. The Borrower or any Subsidiary that is party to a Loan Document fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of knowledge thereof by the Borrower and notice thereof by the Administrative Agent to the Borrower; or

(d) *Representations and Warranties*. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any Subsidiary that is party to a Loan Document herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made or furnished; or

(e) *Cross-Default*. The Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary (A) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate principal amount of not less than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Swap Contracts, termination events or equivalent events pursuant to the terms of such Swap Contracts), the effect of which default or other event is (i) to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; provided that, no Event of Default shall occur under this clause (i) if such default is cured or voided during the first ninety (90) days (or in the case of defaults caused by the failure to make scheduled payments of principal or interest, fifteen (15) days) following the date of any such failure (it being understood that any such failure shall be deemed to have been cured if such Indebtedness is repaid in full) or (ii) to cause the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; or

(f) *Insolvency Proceedings, Etc.* The Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undischarged or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment.* (i) The Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts in excess of the Threshold Amount as they become due or makes a general assignment for the benefit of its creditors, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary, and is not satisfied, released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) *Judgments.* There is entered against the Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(i) *ERISA.* (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower, any Restricted Subsidiary or any Material Unrestricted Subsidiary under Title IV of ERISA in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, or (ii) the Borrower, any Restricted Subsidiary, any Material Unrestricted Subsidiary or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect; or

(j) *Invalidity of Loan Documents.* Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or the Borrower or any Subsidiary that is party to a Loan Document contests in writing the validity or enforceability of any provision of any Loan Document; or the Borrower or any Subsidiary that is party to a Loan Document denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Obligations and termination of the Aggregate Commitments), or purports in writing to revoke or rescind any Loan Document; or

(k) *Change of Control*. There occurs any Change of Control; or

(l) *Junior Financing Documentation*. (i) Any of the Obligations of the Borrower or any Subsidiary that is party to a Loan Document under the Loan Documents for any reason shall cease to be "Senior Debt" or "Senior Indebtedness" (or any comparable term) or under, and as defined in any Junior Financing Documentation or (ii) the subordination provisions set forth in any Junior Financing Documentation shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of any Junior Financing, if applicable; or

(m) *Loss or Revocation of Casino License*. Any Casino License (or the aggregate number of licenses in the case of clause (ii) of the definition of "Casino Licenses") of the Borrower or any of the Borrower's Subsidiaries is revoked, suspended, rescinded, denied or not renewed when required in accordance with its terms and as a result the casino or casinos governed thereby are not able to operate for a period of three (3) or more days.

SECTION 8.02. Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of any event described in Section 8.01(f) (subject to Section 8.03) or actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

SECTION 8.03. Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article 3) payable to the Administrative Agent, the other Agents or the Lead Arrangers, each in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.05 and amounts payable under Article 3), ratably among them in proportion to the amounts described in this clause *Second* payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause *Third* payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause *Fourth* held by them;

Fifth, to the payment of all other Obligations of the Borrower and any Subsidiary that is party to a Loan Document that are due and payable to the Administrative Agent, the other Agents, the Lead Arrangers, and the Lenders on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent, the other Agents, the Lead Arrangers, and the Lenders on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

ARTICLE IX

Administrative Agent and Other Agents

SECTION 9.01. Appointment and Authorization of Agents. Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Administrative Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

SECTION 9.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact including for the purpose of any Borrowings, such sub-agents as shall be deemed necessary by the Administrative Agent and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct (as determined in the final judgment of a court of competent jurisdiction).

SECTION 9.03. Liability of Agents. No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital,

statement, representation or warranty made by the Borrower or any Subsidiary or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under any Loan Document, or for any failure of the Borrower or any Subsidiary or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Borrower or any Subsidiary or any Affiliate thereof.

SECTION 9.04. Reliance by Agents. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Borrower or any Subsidiary), independent accountants and other experts selected by such Agent. Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 9.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders in accordance with Article 8; *provided* that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

SECTION 9.06. Credit Decision; Disclosure of Information by Agents. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of the Borrower, any Subsidiary or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether

Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent and each Lead Arranger that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the Subsidiaries hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the Subsidiaries. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, neither such Agent nor the Lead Arrangers shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Borrower, any Subsidiary or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

SECTION 9.07. Indemnification of Agents. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of the Borrower or any Subsidiary and without limiting the obligation of the Borrower or any Subsidiary to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; *provided* that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction; *provided* that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

SECTION 9.08. Agents in their Individual Capacities. DBTCA and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower and each of the Subsidiaries and their respective Affiliates as though DBTCA were not the Administrative Agent hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, DBTCA or its Affiliates may receive information regarding any the Borrower, any Subsidiary or any of their Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower, such Subsidiary or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its

Loans, DBTCA shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Administrative Agent, and the terms “Lender” and “Lenders” include DBTCA in its individual capacity.

SECTION 9.09. Successor Agents. The Administrative Agent may resign as the Administrative Agent upon thirty (30) days’ notice to the Lenders and the Borrower. If the Administrative Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall be consented to by the Borrower at all times other than during the existence of an Event of Default under Section 8.01(f) or (g) (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Borrower, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term “Administrative Agent,” shall mean such successor administrative agent and/or supplemental administrative agent, as the case may be, and the retiring Administrative Agent’s appointment, powers and duties as the Administrative Agent shall be terminated. After the retiring Administrative Agent’s resignation hereunder as the Administrative Agent, the provisions of this Article 9 and Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement. If no successor agent has accepted appointment as the Administrative Agent by the date which is thirty (30) days following the retiring Administrative Agent’s notice of resignation, the retiring Administrative Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor, the Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After the retiring Administrative Agent’s resignation hereunder as the Administrative Agent, the provisions of this Article 9 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent.

SECTION 9.10. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or any Subsidiary, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.08 and 10.04) allowed in such judicial proceeding; and
- (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.08 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

SECTION 9.11. Other Agents; Lead Arrangers and Managers. None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a “syndication agent”, “book running manager”, “documentation agent” or “lead arranger” shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

SECTION 9.12. Appointment of Supplemental Administrative Agents. (a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a “**Supplemental Administrative Agent**” and collectively as “**Supplemental Administrative Agents**”).

(b) Should any instrument in writing from the Borrower or any Subsidiary by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Subsidiary to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

ARTICLE X

Miscellaneous

SECTION 10.01. Amendments, Etc. Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any Subsidiary party thereto

shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Subsidiary, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of each Lender directly affected thereby (it being agreed that, notwithstanding the foregoing, any Lender may agree to extend its Commitment without the consent of the Required Lenders) (it being understood that a waiver of any condition precedent set forth in Section 4.02 or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.06 or 2.07 without the written consent of each Lender directly affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(c) reduce the principal of, or the rate of interest specified herein on any Loan, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees (including fees set forth in Section 2.04(d) or 2.08) or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; *provided* that, only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) change any provision of this Section 10.01, the definition of "Required Lenders" or "Pro Rata Share" or Section 2.05(b), 2.06(a), 2.12 or 8.03 without the written consent of all Lenders affected by such change;

and *provided further* that (i) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; (iii) Section 10.07(h) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; (iv) the consent of Lenders holding more than 50% of any Class of Commitments shall be required with respect to any amendment that (x) waives any condition precedent set forth in Section 4.02 solely with respect to the making of Loans or other extensions of credit by such Class (it being understood that a general waiver of a Default or an Event of Default by the Required Lenders, as opposed to a waiver only for the purposes of making Loans or other extensions of credit, shall not constitute a waiver of a condition precedent governed under this clause) or (y) by its terms adversely affects the rights of such Class in respect of payments hereunder in a manner different than such amendment affects other Classes; (v) for purposes of the exercise of remedies following an Event of Default, the Required Lenders shall be determined by reference to Total Outstandings only (without taking into account unused Commitments); and (vi) the Administrative Agent and the Borrower may make the amendments contemplated in Section 2.13 without the consent of any Lender. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders).

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

Notwithstanding anything to the contrary in this Section 10.01, the parties to the Fee Letter may, (i) enter into written amendments, supplements or modifications thereto for the purpose of adding any provisions thereto or changing in any manner the rights thereunder of the parties thereto or (ii) waive, on such terms and conditions as may be specified in the instrument of waiver, (1) any of the requirements of the Fee Letter or (2) any Default or Event of Default to the extent (and only to the extent) relating to the Fee Letter, it being understood that the waiver of any Default or Event of Default (or portion thereof) relating to any of the other Loan Documents may be accomplished only as set forth in this Section 10.01.

Notwithstanding anything to the contrary in this Section 10.01, the Administrative Agent is authorized by the Lenders to enter into amendments to this Agreement or any other Loan Documents with the Borrower or the Subsidiaries for the purpose of curing any typographical error, incorrect cross-reference, defect in form, inconsistency, omission or ambiguity in this Agreement or any other Loan Document to which it is a party (without any consent or approval by the Lenders).

SECTION 10.02. Notices and Other Communications; Facsimile Copies. (a) *General.* Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower, the Administrative Agent, and the Swing Line Lender.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of Section 10.02(c)), when delivered; *provided* that notices and other communications to the Administrative Agent and the Swing Line Lender pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(b) *Effectiveness of Facsimile Documents and Signatures.* Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually signed originals and shall be binding on the Borrower, each Subsidiary party thereto, the Agents and the Lenders.

(c) *Reliance by Agents and Lenders.* The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct. All telephonic notices to the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 10.03. No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

SECTION 10.04. Attorney Costs, Expenses and Taxes. The Borrower agrees (a) to pay or reimburse the Administrative Agent, the other Agents and the Lead Arrangers for all reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of Latham & Watkins LLP, and (b) to pay or reimburse the Administrative Agent, the other Agents, the Lead Arrangers and each Lender for all out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of counsel to the Administrative Agent). The foregoing costs and expenses shall include all reasonable search charges and fees and taxes related thereto, and other out-of-pocket expenses incurred by any Agent or Lead Arranger. The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within ten (10) Business Days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If the Borrower or any Subsidiary fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Person by the Administrative Agent in its sole discretion.

SECTION 10.05. Indemnification by the Borrower. The Borrower shall indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents, trustees, investment advisors and attorneys-in-fact (collectively the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties,

claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or the use or proposed use of the proceeds therefrom, or (c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower or any Subsidiary or any other party to a Loan Document, or any Environmental Liability related in any way to the Borrower, any Subsidiary or any other party to a Loan Document, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from the gross negligence or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee, in each case as determined by a final, non-appealable judgment of a court of competent jurisdiction. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, any Subsidiary, or any other party to a Loan Document, or any of their directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto. All amounts due under this Section 10.05 shall be paid within ten (10) Business Days after demand therefor; *provided, however*, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification or contribution rights with respect to such payment pursuant to the express terms of this Section 10.05. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any Law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all indemnified liabilities incurred by any Indemnitee. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. Notwithstanding anything herein or in any other Loan Document to the contrary, the parties hereto agree that each Indemnitee not party hereto shall be a third-party beneficiary of the provisions of this Section 10.05 and shall be entitled to enforce the same as if it were a party hereto.

SECTION 10.06. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to any Agent, Lead Arranger or Lender, or any Agent, Lead Arranger or Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent, Lead Arranger or Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such

payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent or Lead Arranger, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

SECTION 10.07. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee, (ii) by way of participation in accordance with the provisions of Section 10.07(e), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(g) or (iv) to an SPC in accordance with the provisions of Section 10.07(h) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than to Disqualified Institutions) (“**Assignees**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b), participations in Swing Line Loans) at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, *provided* that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a payment or bankruptcy Event of Default has occurred and is continuing, any Assignee;

(B) the Administrative Agent, *provided* that no consent of the Administrative Agent shall be required for an assignment to an Agent, a Lender or an Affiliate of an Agent or Lender;

(C) the Swing Line Lender; *provided* that no consent of the Swing Line Lender shall be required for any assignment to an Agent or an Affiliate of an Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender’s Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless each of the Borrower and the Administrative Agent otherwise consents; *provided* that (1) no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

(D) none of the Borrower, any direct or indirect holder of an Equity Interest in the Borrower, or any Affiliate of the Borrower or any Person that has been denied an approval or a license, or otherwise found unsuitable by any Gaming Authorities under the Gaming Laws applicable to the Lenders shall be an Eligible Assignee.

This paragraph (b) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(d), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Swing Line Note, a New Loan Note or a Term Note, as applicable, to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(e).

(d) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in Swing Line Loans) owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents, the Lead Arrangers and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender

sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that directly affects such Participant. Subject to Section 10.07(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to this Section 10.07 but shall not be entitled to recover greater amounts under such Sections than the selling Lender would be entitled to recover unless the sale of such participation was made with Borrower's prior consent. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.12 as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 10.15 as though it were a Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. No such SPC shall be entitled to exercise rights as a Lender hereunder or under the other Loan Documents. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC; *provided*, such SPC agrees to be bound by the confidentiality provisions of this Agreement.

(i) Notwithstanding anything to the contrary contained herein, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained herein, the Swing Line Lender may, upon thirty (30) days' notice to the Borrower and the Lenders, resign as the Swing Line Lender; *provided* that on or prior to the expiration of such 30-day period with respect to such resignation, the Swing Line Lender shall have identified a successor Swing Line Lender reasonably acceptable to the Borrower willing to accept its appointment as successor Swing Line Lender. In the event of any such resignation of the Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor Swing Line Lender hereunder; *provided* that no failure by the Borrower to appoint any such successor shall affect the resignation of the Swing Line Lender, except as expressly provided above. If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.03(d).

SECTION 10.08. Confidentiality. Each of the Agents and the Lenders agrees to use commercially reasonable efforts (equivalent to the efforts each such Person applies to maintain the confidentiality of its own confidential information) to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' directors, officers, employees, trustees, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) subject to an agreement containing provisions substantially the same as those of this Section 10.08 (or as may otherwise be reasonably acceptable to the Borrower), to any pledgee referred to in Section 10.07(g), counterparty to a Swap Contract, Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement; (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08; (h) to any Governmental Authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender; (i) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder or (j) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Borrower and its Subsidiaries received by it from such Lender). In addition, the Agents, the Lead Arrangers and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents, the Lead Arrangers and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Loans made hereunder. For the purposes of this Section 10.08, "**Information**" means all information received from the Borrower or any Subsidiary or to the Borrower or any Subsidiary or its

business, other than any such information that is publicly available to any Agent, Lead Arranger or Lender prior to disclosure by the Borrower or any Subsidiary other than as a result of a breach of this Section 10.08; *provided* that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential or (ii) is delivered pursuant to Section 6.01, 6.02 or 6.03 hereof.

SECTION 10.09. Setoff. In addition to any rights and remedies of the Agents, the Lead Arranger or the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Agent, Lead Arranger and Lender, and each of their Affiliates, is authorized at any time and from time to time, without prior notice to the Borrower or any Subsidiary, any such notice being waived by the Borrower (on its own behalf and on behalf of each of its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Agent, Lead Arranger, Lender or Affiliate to or for the credit or the account of the Borrower and the Subsidiaries against any and all Obligations owing to such Agent, Lead Arranger, Lender or Affiliate hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Agent, Lead Arranger, Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmaturing or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Agent, Lead Arranger and Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set off and application made by such Lender; *provided*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Agent, Lead Arranger and Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that each Agent, Lead Arranger and Lender may have.

SECTION 10.10. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents (collectively, the “**Charges**”) shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. To the extent permitted by applicable Law, the interest and other Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 10.10 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender. Thereafter, interest hereunder shall be paid at the rate(s) of interest and in the manner provided in this Agreement, unless and until the rate of interest again exceeds the Maximum Rate, and at that time this paragraph shall again apply. In no event shall the total interest received by any Lender pursuant to the terms hereof exceed the amount that such Lender could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Rate. If the Maximum Rate is calculated pursuant to this Section 10.10, such interest shall be calculated at a daily rate equal to the Maximum Rate divided by the number of days in the year in which such calculation is made. If, notwithstanding the provisions of this Section 10.10, a court of competent jurisdiction shall finally determine that a Lender has received interest hereunder in excess of the Maximum Rate, the Administrative Agent shall, to the extent permitted by applicable Law, promptly apply such excess in the order specified in this Agreement and thereafter shall refund any excess to the Borrower or as a court of competent jurisdiction may otherwise order.

SECTION 10.11. Counterparts. This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by telecopier of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Agents may also require that any such documents and signatures delivered by telecopier be confirmed by a manually signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by telecopier.

SECTION 10.12. Integration. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Agents, the Lead Arrangers or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

SECTION 10.13. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent, Lead Arranger or Lender or on their behalf and notwithstanding that any Agent, Lead Arranger or Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.14. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.15. Tax Forms. (a) (i) Each Lender and Agent that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (each, a "**Foreign Lender**") shall deliver to the Borrower and the Administrative Agent, on or prior to the date which is ten (10) Business Days after the Closing Date (or upon accepting an assignment of an interest herein), two duly signed, properly completed copies of either IRS Form W-8BEN or any successor thereto (relating to such Foreign Lender and entitling it to an exemption from, or reduction of, United States withholding tax on all payments to be made to such Foreign Lender by the Borrower or any Subsidiary pursuant to this Agreement or any other Loan Document) or IRS Form W-8ECI or any successor thereto (relating to all payments to be made to such Foreign Lender by the Borrower or any Subsidiary pursuant to this Agreement or any other Loan Document) or such other evidence reasonably satisfactory to the Borrower and the Administrative Agent that such Foreign Lender is entitled to an exemption from, or reduction of, United States withholding tax, including any exemption pursuant to Section 871(h) or 881(c) of the Code, and in the case of a Foreign Lender claiming such an exemption under Section 881(c) of the Code, a certificate that establishes in writing to the Borrower and the Administrative Agent that such Foreign Lender is not (A) a "bank" as

defined in Section 881(c)(3)(A) of the Code, (B) a 10-percent stockholder within the meaning of Section 871(h)(3)(B) of the Code, or (C) a controlled foreign corporation related to the Borrower with the meaning of Section 864(d) of the Code. Thereafter and from time to time, each such Foreign Lender shall (Y) promptly submit to the Borrower and the Administrative Agent such additional duly completed and signed copies of one or more of such forms or certificates (or such successor forms or certificates as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States Laws and regulations to avoid, or such evidence as is reasonably satisfactory to the Borrower and the Administrative Agent of any available exemption from, or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Lender by the Borrower or any Subsidiary pursuant to this Agreement, or any other Loan Document, in each case, (1) on or before the date that any such form, certificate or other evidence expires or becomes obsolete, (2) after the occurrence of any event requiring a change in the most recent form, certificate or evidence previously delivered by it to the Borrower and the Administrative Agent and (3) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent, and (Z) promptly notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(ii) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Foreign Lender under any of the Loan Documents (for example, in the case of a typical participation by such Foreign Lender), shall deliver to the Borrower and the Administrative Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of the Borrower or the Administrative Agent (in either case, in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Foreign Lender as set forth above, to establish the portion of any such sums paid or payable with respect to which such Foreign Lender acts for its own account that is not subject to United States withholding tax, and (B) two duly signed completed copies of IRS Form W 8IMY (or any successor thereto), together with any information such Foreign Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Foreign Lender is not acting for its own account with respect to a portion of any such sums payable to such Foreign Lender.

(iii) The Borrower shall not be required to pay any additional amount or any indemnity payment under Section 3.01 to (A) any Foreign Lender if such Foreign Lender shall have failed to satisfy the foregoing provisions of this Section 10.15(a), or (B) any U.S. Lender if such U.S. Lender shall have failed to satisfy the provisions of Section 10.15(b); *provided* that (1) if such Lender shall have satisfied the requirement of this Section 10.15(a) or Section 10.15(b), as applicable, on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Loan Documents, nothing in this Section 10.15(a) or Section 10.15(b) shall relieve the Borrower of its obligation to pay any amounts pursuant to Section 3.01 in the event that, as a result of any change in any applicable Law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other Person for the account of which such Lender receives any sums payable under any of the Loan Documents is not subject to withholding or is subject to withholding at a reduced rate and (2) nothing in this Section 10.15(a) shall relieve the Borrower of its obligation to pay any amounts pursuant to Section 3.01 in the event that the requirements of 10.15(a)(ii) have not been satisfied if the Borrower is entitled, under applicable Law, to rely on any applicable forms and statements

required to be provided under this Section 10.15 by the Foreign Lender that does not act or has ceased to act for its own account under any of the Loan Documents, including in the case of a typical participation.

(iv) The Administrative Agent may deduct and withhold any taxes required by any Laws to be deducted and withheld from any payment under any of the Loan Documents.

(b) Each Lender and Agent that is a "United States person" within the meaning of Section 7701(a)(30) of the Code (each, a "U.S. Lender") shall deliver to the Administrative Agent and the Borrower two duly signed, properly completed copies of IRS Form W-9 on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), certifying that such U.S. Lender is entitled to an exemption from United States backup withholding tax, or any successor form. If such U.S. Lender fails to deliver such forms, then the Administrative Agent may withhold from any payment to such U.S. Lender an amount equivalent to the applicable backup withholding tax imposed by the Code.

SECTION 10.16. GOVERNING LAW. THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(a) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER AND EACH LEAD ARRANGER, AGENT AND LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE BORROWER AND EACH LEAD ARRANGER, AGENT AND LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO.

(b) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 10.16, NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT THE AGENTS, THE LEAD ARRANGERS, OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS AGAINST THE BORROWER OR ANY OF THEIR SUBSIDIARIES OR ANY OF THEIR PROPERTIES OR ASSETS IN THE COURTS OF ANY JURISDICTION.

SECTION 10.17. WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY

OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.17 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

SECTION 10.18. Binding Effect. This Agreement shall become effective when it shall have been executed by each party hereto and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, Lead Arranger and Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders except as permitted by Section 7.04.

SECTION 10.19. Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against the Borrower or any Subsidiary or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any property of any such Person, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, the Borrower or any Subsidiary or any other obligor under any of the Loan Documents.

SECTION 10.20. Acknowledgments. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) no Lead Arranger, Agent or Lender has any fiduciary relationship with or duty to the Borrower or any Subsidiary arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Lead Arrangers, the Agents and the Lenders, on one hand, and the Borrower and the Subsidiaries, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lead Arrangers, the Agents, the Lenders, the Borrower or the Subsidiaries. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

SECTION 10.21. USA PATRIOT Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

SECTION 10.22. Gaming Authorities. Each Agent, Lead Arranger and Lender agree to cooperate with the applicable Gaming Authorities in connection with the administration of their regulatory jurisdiction over the Borrower and the Subsidiaries, including,

without limitation, to the extent not inconsistent with the internal policies of such Agent, Lead Arranger Lender and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to the Agents, the Lead Arrangers, any of the Lenders, the Borrower or any Subsidiary, or the Loan Documents. Notwithstanding any other provision of this Agreement, the Borrower expressly authorizes, and will cause each Subsidiary to authorize, each Agent, Lead Arranger and Lender to cooperate with the Gaming Authorities as described above.

SECTION 10.23. Certain Matters Affecting Lenders. (a) If (i) any Gaming Authority shall determine that any Lender does not meet suitability standards prescribed under applicable Gaming Laws or (ii) any other gaming authority with jurisdiction over the gaming business of the Borrower or the Subsidiaries shall determine that any Lender does not meet its suitability standards (in any such case, a “**Former Lender**”), the Administrative Agent shall have the right (but not the duty) to designate bank(s) or other financial institution(s) (in each case, a “**Substitute Lender**”) that agree to become a Substitute Lender and to assume the rights and obligations of the Former Lender, subject to receipt by the Administrative Agent of evidence that such Substitute Lender (if not a Lender or Lenders or Affiliated Fund of a Lender) is an Eligible Assignee. The Substitute Lender shall assume the rights and obligations of the Former Lender under this Agreement. The Borrower shall bear the reasonable costs and expenses of any Lender required by any Gaming Authority, or any other gaming authority with jurisdiction over the gaming business of the Borrower, to file an application for a finding of suitability. In the event a Former Lender is replaced by a Substitute Lender in accordance with this Section 10.23(a), the Borrower and the Substitute Lender shall pay to the Former Lender (or the Administrative Agent pursuant to Section 10.07) all amounts that would have been required to be paid pursuant to Section 3.07 had such Former Lender been replaced in accordance with such provisions.

(b) Notwithstanding the provisions of subsection (a) of this Section 10.23, if any Lender becomes a Former Lender, and if the Administrative Agent fails to find a Substitute Lender pursuant to subsection (a) of this Section 10.23 within any time period specified by the appropriate gaming authority for the withdrawal of a Former Lender (the “**Withdrawal Period**”), the Borrower shall immediately prepay in full the outstanding amount of all Loans of such Former Lender, together with accrued interest thereon to the earlier of (x) the date of payment or (y) the last day of the applicable Withdrawal Period and any other amounts that would have been required to be paid to such Former Lender pursuant to Section 3.07 had such Former Lender been replaced in accordance with such provisions. Upon the prepayment of all amounts owing to any Lender in accordance with this Section 10.23, such replaced Lender shall no longer constitute a “Lender” for purposes hereof; *provided*, any rights of such Lender to indemnification hereunder shall survive as to such Lender.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WYNN RESORTS, LIMITED,
a Nevada Corporation

by /s/ Marc Schorr

Name: Marc Schorr

Title: Chief Operating Officer

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent and Swing Line Lender

by: /s/ Mary Kay Cole

Name: Mary Kay Cole

Title: Managing Director

by: /s/ J.T. Johnston Coe

Name: Johnston Coe

Title: Managing Director

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Lender

by: /s/ Mary Kay Cole

Name: Mary Kay Cole

Title: Managing Director

by: /s/ J.T. Johnston Coe

Name: Johnston Coe

Title: Managing Director

BANK OF AMERICA, N.A.,
as Lender

by: /s/ Jeff Susman

Name: Jeff Susman

Title: Senior Vice President

C L I F F O R D
C H A N C E

CONFORMED COPY

DATED 27 JUNE 2007

WYNN RESORTS (MACAU) S.A.
as Company

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Revolving Credit Facility Agent

and

CERTAIN FINANCIAL INSTITUTIONS
as Revolving Credit Facility Lenders

REVOLVING CREDIT FACILITY AGREEMENT
SECOND AMENDMENT AGREEMENT

CONTENTS

<u>Clause</u>	<u>Page</u>
1. DEFINITIONS AND INTERPRETATION	1
2. AMENDMENT	1
3. CONTINUITY AND FURTHER ASSURANCE	2
4. MISCELLANEOUS	2
5. GOVERNING LAW	2
SIGNATURES	3
SCHEDULE Amended Revolving Credit Facility Agreement	24

THIS AGREEMENT is dated 27th June 2007 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** (the “**Revolving Credit Facility Agent**”); and
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Revolving Credit Facility Lenders.

RECITALS:

- (A) The Company proposes to further expand the Projects.
- (B) The Secured Parties have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents and the Lenders have agreed to increase the total size of the Facilities originally provided thereunder in connection with the Diamond Expansion 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

- (a) Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.
- (b) The principles of construction and rules of interpretation set out or referred to in the Schedule shall have effect as if set out in this Agreement.

1.2 Clauses

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

2. AMENDMENT

With effect from the Effective Date, the Revolving Credit Facility Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Revolving Credit Facility Agreement*).

3. CONTINUITY AND FURTHER ASSURANCE

3.1 Continuing obligations

The provisions of the Revolving Credit Facility Agreement shall, save as amended by this Agreement, continue in full force and effect.

3.2 Further assurance

The Company shall, upon the written request of the Revolving Credit Facility Agent and at its own expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

4. MISCELLANEOUS

4.1 Incorporation of terms

The provisions of clause 1.3 (*Third Party Rights*), clause 1.4 (*Non-recourse Liability*) and clause 17 (*Jurisdiction*) of the Schedule shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "Agreement" are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

4.2 Counterparts

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

5. GOVERNING LAW

This Agreement is governed by English law.

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

SIGNATURES

The Company

WYNN RESORTS (MACAU) S.A.

By: /s/ MATTHEW MADDIX

Address: 335-341 Alameda Dr. Carlos d'Assumpção
9th Floor
Hotline Center
Macau

Telephone: (853) 2888 9966

Fax: (853) 2832 9966

Attention: Chief Financial Officer

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
USA

Tel: (1) 702 770 2112

Fax: (1) 702 770 1518

Attention: General Counsel

The Revolving Credit Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH

By: /s/ SUNNY LUI SUN PENG

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

The Revolving Credit Facility Lender

SOCIÉTÉ GÉNÉRALE, NEW YORK BRANCH

By: /s/ PATRICIA WRIGHT

Address: 1221 Avenue of the Americas, 10th Floor
New York
NY 10020

Tel: (1) 212 278 5448

Fax: (1) 212 278 7614

Attention: Jerry Parisi

SCHEDULE
AMENDED REVOLVING CREDIT FACILITY AGREEMENT

DATED 14 SEPTEMBER 2004

WYNN RESORTS (MACAU) S.A.
as Company

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Revolving Credit Facility Agent

and

THE REVOLVING CREDIT FACILITY LENDERS
referred to herein

REVOLVING CREDIT FACILITY AGREEMENT
(As amended by the Revolving Credit Facility Agreement
Amendment Agreement dated 14 September 2005 and the Revolving Credit
Facility Second Amendment Agreement dated June 27, 2007)

CONTENTS

Clause	Page
1. Definitions And Interpretation	26
2. Common Terms Agreement	33
3. The Revolving Credit Facility	33
4. Purpose	33
5. Conditions Of Utilisation	34
6. Availability Of The Revolving Credit Facilities	35
7. Repayment	35
8. Cancellation	36
9. Interest	36
10. Interest Periods	36
11. Notification	36
12. Commitment Fee	37
13. Changes To The Parties	37
14. Payments	38
15. Decision Making Amongst Revolving Credit Facility Lenders	39
16. Counterparts	40
17. Governing Law	40
18. Jurisdiction	40
Schedule 1 the Revolving Credit Facility Lenders	41
Schedule 2 Form Of Advance Request For A Revolving Credit Facility Advance	42

BETWEEN:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** (the “**Revolving Credit Facility Agent**”); and
- (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Original Revolving Credit Facility Lenders*) as lenders (the “**Original Revolving Credit Facility Lenders**”).

WHEREAS:

The Revolving Credit Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the further expansion of the Projects upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless otherwise defined herein, all terms defined in the Common Terms Agreement shall have the same meaning herein and in addition:

“**Advance Request**” means a request for 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, Available Tranche B Commitment, Available Tranche C Commitment and Available Tranche D 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, the Available Tranche B Facility, the Available Tranche C Facility and the Available Tranche D Facility.

“**Available Tranche A Commitment**” means, in relation to a Revolving Credit Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche A Commitment” in Schedule 1 (*The Revolving Credit Facility Lenders*) **less:**

- (a) the aggregate amount of its participation in any outstanding Tranche A 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, the amount set out opposite its name under the column entitled “Tranche B Commitment” in Schedule 1 (*The Revolving Credit Facility Lenders*) **less**:

- (a) the aggregate amount of its participation in any outstanding Tranche B 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 C Commitment” means, in relation to a Revolving Credit Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche C Commitment” in Schedule 1 (*The Revolving Credit Facility Lenders*) **less**:

- (a) the aggregate amount of its participation in any outstanding Tranche C Advances (other than, in relation to any proposed Tranche C Advance, such Revolving Credit Facility Lender’s participation in any Tranche C Advances that are due to be repaid or prepaid on or before the proposed Advance Date); and
- (b) in relation to any proposed Tranche C Advance, the aggregate amount of its participation in any Tranche C Advances that are due to be made on or before the proposed Advance Date.

“Available Tranche D Commitment” means, in relation to a Revolving Credit Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche D Commitment” in Schedule 1 (*The Revolving Credit Facility Lenders*) **less**:

- (a) the aggregate amount of its participation in any outstanding Tranche D Advances (other than, in relation to any proposed Tranche D Advance, such Revolving Credit Facility Lender’s participation in any Tranche D Advances that are due to be repaid or prepaid on or before the proposed Advance Date); and
- (b) in relation to any proposed Tranche D Advance, the aggregate amount of its participation in any Tranche D 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.

“**Available Tranche C Facility**” means, at any time, the aggregate amount of the Available Tranche C Commitments of all the Revolving Credit Facility Lenders at such time.

“**Available Tranche D Facility**” means, at any time, the aggregate amount of the Available Tranche D Commitments of all the 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 Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project 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 and the Common Terms Agreement Second Amendment Agreement.

“**HIBOR**” means, in relation to any Tranche B Advance or Tranche D Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for HK dollars or 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.

“**Hotel Revolving Credit Facility**” means the Tranche C Facility or the Tranche D Facility and “**Hotel Revolving Credit Facilities**” means each of them.

“**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 or Tranche C Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for US dollars or for the Interest Period for that 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.

“**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, 1.75% per annum but, if the Quarterly Date falling on the last day of the first full Fiscal Quarter of the Company following the Diamond Opening Date has occurred, the Leverage Ratio as at the most recent Quarterly Date is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company’s financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the Margin) no Default has occurred and is continuing, the Margin will be the percentage per annum specified for that range:

<u>Leverage Ratio</u>	<u>Margin</u>
Less than 3.0	1.25%
Greater than or equal to 3.0 but less than 4.0	1.50%
Greater than or equal to 4.0 but less than 4.5	1.75%
4.5 or above	2.00%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions specified above (or, where such Business Day falls less than five Business Days before the end of the then current Interest Period, from the commencement of the next Interest Period).

“**Project Revolving Credit Facility**” means the Tranche A Facility or the Tranche B Facility and “**Project Revolving Credit Facilities**” means each of them.

“**Reference Banks**” means, in relation to:

- (a) LIBOR, the principal London offices of Deutsche Bank AG, Société Générale and Citibank, N.A.; and
- (b) HIBOR, the principal Hong Kong offices of Deutsche Bank AG, Société Générale and Citibank, N.A.,

or such other bank or banks designated from time to time by the 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, the Tranche B Facility, the Tranche C Facility or the Tranche D Facility.

“**Revolving Credit Facility Advance**” means, as the context may require, a Tranche A Advance, a Tranche B Advance, a Tranche C Advance or a Tranche D Advance and

“Revolving Credit Facility Advances” shall mean each Tranche A Advance, Tranche B Advance, Tranche C Advance and Tranche D Advance or any of them.

“Revolving Credit Facility Lender” means a Tranche A Facility Lender, a Tranche B Facility Lender, a Tranche C Facility Lender or a Tranche D Facility Lender.

“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 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 British Bankers’ Association Interest Settlement Rate for US dollars for the relevant period, displayed on the appropriate page (being currently “LIBOR01”) of the Reuters Monitor Money Rates Service screen; and
- (b) HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the 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 fifth anniversary of the Second Amendment Signing 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 (*Grant of the Project Revolving Credit Facilities*).

“**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; 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 (*Grant of the Project Revolving Credit Facilities*).

“**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; or
- (b) has become party hereto as a Tranche B Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

“**Tranche C Advance**” means an advance made or to be made by the Tranche C Facility Lenders under the Tranche C Facility or the principal amount outstanding for the time being of that advance including a Rollover Advance.

“**Tranche C Facility**” means the US dollar revolving credit facility granted to the Company under Clause 3.2.1 (*Grant of the Hotel Revolving Credit Facilities*).

“**Tranche C 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 C Facility Lender; or
- (b) has become party hereto as a Tranche C Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

“**Tranche D Advance**” means an advance made or to be made by the Tranche D Facility Lenders under the Tranche D Facility or the principal amount outstanding for the time being of that advance including a Rollover Advance.

“**Tranche D Facility**” means the HK dollar revolving credit facility granted to the Company under Clause 3.2.2 (*Grant of the Hotel Revolving Credit Facilities*).

“**Tranche D 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 D Facility Lender; or
- (b) has become party hereto as a Tranche D 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 enjoy the benefit of any term of this Agreement.
- 1.3.3 Save as provided by the Common Terms Agreement, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

1.4 **Non-recourse Liability**

Notwithstanding any provision in the Senior Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Revolving Credit Facility Lenders for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors and not against any assets or property of any Operative, save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr. Wong Chi Seng, his liability shall be limited to his shares in the Company.

2. **COMMON TERMS AGREEMENT**

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

3. **THE REVOLVING CREDIT FACILITIES**

3.1 **Grant of the Project Revolving Credit 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 revolving credit facility in an aggregate amount of USD258,000,000.

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 revolving credit facility in an aggregate amount of HKD4,516,200,000.

3.2 **Grant of the Hotel Revolving Credit Facilities**

3.2.1 ***Tranche C Facility***

The Tranche C 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 USD13,000,000.

3.2.2 ***Tranche D Facility***

The Tranche D 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 HKD1,170,000,000.

4. **PURPOSE**

The Company shall apply all amounts borrowed by it under:

- (a) the Project Revolving Credit Facilities to pay or refinance payment of Project Costs incurred or to be incurred in connection with the Projects or for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements); and
- (b) the Hotel Revolving Credit Facilities to pay or refinance payment of Hotel Project Costs incurred or to be incurred in connection with the Hotel Project or otherwise for purposes unconnected with the operation of casino games of chance or other forms of gaming.

5. CONDITIONS OF UTILISATION

5.1 Conditions precedent

The provisions of Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

5.2 Further conditions precedent

The obligation of each Revolving Credit Facility Lender to participate in each 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 due pursuant to paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement on or before the proposed Advance Date; and
- (d) the Company shall have paid or arranged for payment out of the requested Revolving Credit Facility Advance of all fees, expenses and other charges then due and payable by it under the Revolving Credit Facility Finance Documents.

5.3 Maximum number of Loans

The Company may not deliver an Advance Request for a Revolving Credit Facility Advance if, as a result of the proposed Revolving Credit Facility Advance, more than ten Revolving Credit Facility Advances would be outstanding.

6. AVAILABILITY OF THE REVOLVING CREDIT FACILITIES

6.1 Drawdown of Advances

The provisions of Clause 3 (*Drawdown of Advances*) and Clause 4.3 (*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 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.

6.2.2 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.

6.2.3 If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Tranche C Facility Lender will participate through its Facility Office in each Tranche C Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche C Commitment to the Available Tranche C Facility immediately prior to the making of that Tranche C Advance.

6.2.4 If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Tranche D Facility Lender will participate through its Facility Office in each Tranche D Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche D Commitment to the Available Tranche D Facility immediately prior to the making of that Tranche D Advance.

7. REPAYMENT

- (a) The Company shall repay each Revolving Credit Facility Advance on the last day of its Interest Period.
- (b) 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.
- (c) Any amount of any Revolving Credit Facility Advance still outstanding on the Termination Date shall be repaid on the Termination 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 a Tranche C Advance) or HIBOR (in the case of a Tranche B Advance or a Tranche D 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:

- (a) up to and including the Quarterly Date falling on the last day of the first full Fiscal Quarter of the Company following the Diamond Opening Date, at the rate of 0.50% per annum; and
- (b) thereafter, if the Leverage Ratio as at the most recent Quarterly Date is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the rate set out below) no Default has occurred and is continuing, at the percentage rate per annum specified for that range:

<u>Leverage Ratio</u>	<u>Rate (% per annum)</u>
4.0 or above	0.50
Less than 4.0	0.375

in each case, on that Revolving Credit Facility Lender's daily Available Commitment from the Effective Date to the end of the Revolving Credit Facility Availability Period.

12.2 The accrued commitment fee is payable (in US dollars in respect of accrued commitment fee payable on a Revolving Credit Facility Lender's Available Tranche A Commitment or Available Tranche C Commitment and in HK dollars in respect of accrued commitment fee payable on a Revolving Credit Facility Lender's Available Tranche B Commitment or Available Tranche D Commitment) 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 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 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 shall be governed by English law.

18. **JURISDICTION**

18.1 **Jurisdiction of English courts**

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).

18.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 (*Jurisdiction of English Courts*) is for the benefit of the Revolving Credit Facility Lenders only. As a result, no Revolving Credit Facility Lender shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Revolving Credit Facility Finance Documents, the Revolving Credit Facility Lenders may take concurrent proceedings in any number of jurisdictions.

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.

SCHEDULE 1
THE REVOLVING CREDIT FACILITY LENDERS

Revolving Credit Facility Lender	Tranche A Commitment (USD)	Tranche B Commitment (HKD)	Tranche C Commitment (USD)	Tranche D Commitment (HKD)
Société Générale, New York Branch	258,000,000	4,516,200,000	13,000,000	1,170,000,000
Total	258,000,000	4,516,200,000	13,000,000	1,170,000,000

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 14 September 2004 (the "Agreement")

Advance Request No. []

1. We refer to the Agreement and the common terms agreement (the "**Common Terms Agreement**") dated 14 September 2004 and made between, among others, Wynn Resorts (Macau) S.A. (the "**Company**"), the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent. Terms defined in the Common Terms Agreement shall have the same meaning herein and the principles of construction and rules of interpretation set out therein shall also apply.
2. This is an Advance Request 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/Tranche C/Tranche D] Facility
Amount: [USD][HKD][]
To be applied towards: []
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 above purpose and 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 that no part of the above Revolving Credit Facility Advance shall be applied otherwise than as mentioned in paragraph 4 above; [and]
 - (c) since the CP Satisfaction Date, no Material Adverse Effect has occurred and is continuing nor could reasonably be expected to occur[.]]; and
 - (d) the US dollar equivalent of the amount of the above Revolving Credit Facility Advance, when aggregated with the aggregate US dollar equivalent amount of Advances under the Hotel Facility and the US dollar equivalent amounts of all other Revolving Credit Facility Advances under the Hotel Revolving Credit Facilities which are outstanding or due to be made on or before the proposed Advance Date referred to above (other than any due to be repaid or prepaid on or before such Advance Date) is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming incurred and paid, or which will be incurred and paid, by the Company.]¹
6. We attach signed but undated receipts for the Revolving Credit Facility Advance requested above and hereby authorise the Revolving Facility Lenders to date such receipts on the date such Revolving Credit Facility Advances are made.²
7. The proceeds of the above Revolving Credit Facility Advance should be credited to [].

Yours faithfully,

Name:
³Responsible Officer
for and on behalf of
Wynn Resorts (Macau) S.A.

Attachments: Receipts for the Revolving Credit Facility Advance

¹ Include where the Revolving Credit Facility Advance requested is a Revolving Credit Facility Advance under a Hotel Revolving Credit Facility.
² Each receipt must be numbered in series, the number corresponding to the number in the heading of the relevant Advance Request.
³ Each Advance Request must be signed by an officer of the Company whose specimen signature has been delivered to the Intercreditor Agent pursuant to Clause 3.2.1 of the Common Terms Agreement.

DATED 27 JUNE 2007

WYNN RESORTS (MACAU) S.A.
the Company

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

BANC OF AMERICA SECURITIES ASIA LIMITED
DEUTSCHE BANK AG, HONG KONG BRANCH
SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Global Coordinating Lead Arrangers

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Outgoing Global Coordinating Lead Arranger

SG AMERICAS SECURITIES, LLC
as Incoming Global Coordinating Lead Arranger

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Hotel Facility Agent and Project Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Revolving Credit Facility Agent

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Intercreditor Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Security Agent

COMMON TERMS AGREEMENT
SECOND AMENDMENT AGREEMENT

CONTENTS

<u>Clause</u>	<u>Page</u>
1. DEFINITIONS AND INTERPRETATION	2
2. AMENDMENT	4
3. REPRESENTATIONS	5
4. RELEASE OF SECURITY	5
5. CHANGE OF AGENTS	6
6. TERM LOAN FACILITIES ADVANCE	6
7. CONTINUITY AND FURTHER ASSURANCE	7
8. MISCELLANEOUS	7
9. GOVERNING LAW	7
SIGNATURES	8
SCHEDULE 1 Conditions Precedent	22
1. Due establishment, authority and certification	22
2. Senior Finance Documents	22
3. Advisers' Reports	24
4. Legal opinions	24
5. Fees and expenses	25
6. Security	25
7. Other documents and evidence	25
SCHEDULE 2 Amended Common Terms Agreement	27

THIS AGREEMENT is dated 27th June 2007 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Hotel Facility Lenders;
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Project Facility Lenders;
- (4) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Revolving Credit Facility Lenders;
- (5) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Hedging Counterparties;
- (6) **BANC OF AMERICA SECURITIES ASIA LIMITED, DEUTSCHE BANK AG, HONG KONG BRANCH** and **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in their capacities as Global Coordinating Lead Arrangers;
- (7) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as the outgoing Global Coordinating Lead Arranger (the “**Outgoing Global Coordinating Lead Arranger**”);
- (8) **SG AMERICAS SECURITIES, LLC** in its capacity as the incoming Global Coordinating Lead Arranger (the “**Incoming Global Coordinating Lead Arranger**”);
- (9) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Hotel Facility Agent;
- (10) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Project Facility Agent;
- (11) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Revolving Credit Facility Agent;
- (12) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Intercreditor Agent; and
- (13) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Security Agent.

RECITALS:

- (A) The Company proposes to further expand the Projects.
- (B) The Secured Parties have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents and the Lenders have agreed to increase the total size of the Facilities originally provided thereunder in connection with the Diamond Expansion 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 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**

(a) In this Agreement:

“**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; and

“**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.

(b) 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 the Schedule, the Deed of Appointment and Priority has the same meaning in this Agreement.

(c) 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:

(a) the Hotel Facility Agreement Second Amendment Agreement dated on or about the date hereof between the Company, the Hotel Facility Agent and the Hotel Facility Lenders as a Senior Finance Document (the “**Hotel Facility Agreement Second Amendment Agreement**”);

(b) the Project Facility Agreement Second Amendment Agreement dated on or about the date hereof between the Company, the Project Facility Agent and the Project Facility Lenders as a Senior Finance Document (the “**Project Facility Agreement Second Amendment Agreement**”);

(c) the Revolving Credit Facility Agreement Second Amendment Agreement dated on or about the date hereof between the Company, the Revolving Credit Facility Agent and the Revolving Credit Facility Lenders as a Senior Finance Document (the “**Revolving Credit Facility Agreement Second Amendment Agreement**”);

(d) this Agreement as a Senior Finance Document;

- (e) the Deed of Appointment and Priority Second Deed of Amendment dated on or about the date hereof between the Original First Ranking Lenders, the Hedging Counterparties, the Second Ranking Finance Party, the Third Ranking Finance Party, the Company, the Security Agent, the Intercreditor Agent, the Hotel Facility Agent, the Project Facility Agent, the Revolving Credit Facility Agent, the GCLAs and the POA Agent as a Security Document (the “**Deed of Appointment and Priority Second Deed of Amendment**”);
- (f) the Sponsors’ Subordination Deed Deed of Release, Amendment and Acknowledgment of Security dated on or about the date hereof between, among others, the Company, Wynn Resorts, Wynn Resorts Holdings, LLC, Wynn Asia, Wynn International, Wynn Holdings, Wynn HK and the Security Agent as a Security Document (the “**Sponsors’ Subordination Deed Deed of Release, Amendment and Acknowledgment of Security**”);
- (g) the Debenture Deed of Amendment and Release dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Debenture Deed of Amendment and Release**”);
- (h) the Wynn Pledgors’ Guarantee Deed of Amendment and Acknowledgment dated on or about the date hereof between Wynn Asia, Wynn International, Wynn Holdings, Wynn HK and the Security Agent as a Security Document (the “**Wynn Pledgors’ Guarantee Deed of Amendment and Acknowledgment**”);
- (i) the Wynn International Share Charge Deed of Amendment and Acknowledgment of Security dated on or about the date hereof between Wynn Asia, the Company and the Security Agent as a Security Document (the “**Wynn International Share Charge Deed of Amendment and Acknowledgment of Security**”);
- (j) the Wynn HK Share Charge Deed of Amendment and Acknowledgment of Security dated on or about the date hereof between Wynn Holdings, the Company and the Security Agent as a Security Document (the “**Wynn HK Share Charge Deed of Amendment and Acknowledgment of Security**”);
- (k) the Charge over HK Accounts Deed of Acknowledgment dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Charge over HK Accounts Deed of Acknowledgment**”);
- (l) the US Operating Account Control Agreement Confirmation Agreement dated on or about the date hereof between the Company, the Security Agent and Bank of America, N.A. as a Security Document (the “**US Operating Account Control Agreement Confirmation Agreement**”);

- (m) the Amendment to Mortgage dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Amendment to Mortgage**”);
- (n) the irrevocable power of attorney dated on or about the date hereof granted by the Company in favour of the Security Agent as a Security Document (the “**New Power of Attorney**”);
- (o) the confirmation of livranças covering letter dated on or about the date hereof issued by the Company in favour of the Security Agent as a Security Document (the “**Confirmation of Livranças Covering Letter**”);
- (p) the Amendment to Land Security Assignment dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Amendment to Land Security Assignment**”);
- (q) the Amendment to Assignment of Rights dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Amendment to Assignment of Rights**”);
- (r) the Amendment to Pledge over Gaming Equipment and Utensils dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Amendment to Pledge over Gaming Equipment and Utensils**”);
- (s) the Amendment to Pledge over Onshore Accounts dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Amendment to Pledge over Onshore Accounts**”);
- (t) the Amendment to Assignment of Insurances dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Amendment to Assignment of Insurances**”);
- (u) the Amendment to Floating Charge dated on or about the date hereof between the Company and the Security Agent as a Security Document (the “**Amendment to Floating Charge**”);
- (v) the Amendment to Wong Share Pledge dated on or about the date hereof between Mr. Wong Chi Seng, the Company and the Security Agent as a Security Document (the “**Amendment to Wong Share Pledge**”); and
- (w) the Amendment to Company Share Pledge dated on or about the date hereof between Wynn HK, Wynn International, the Company and the Security Agent as a Security Document (the “**Amendment to Company Share Pledge**”).

2. **AMENDMENT**

2.1 With effect from the later of:

- (a) the date falling 2 Business Days (or such earlier date as may be agreed by the Intercreditor Agent, acting in its sole discretion) from the date upon which the Intercreditor Agent confirms to the Lenders and the Company that it has received each of the documents listed in Schedule 1 (*Conditions Precedent*) (or waived receipt of, as the case may be) in a form and substance satisfactory to the Intercreditor Agent; and
- (b) the date on which all those things specified as being required to be done on or prior to the Effective Date in the completion memorandum in the Agreed Form (the "**Completion Memorandum**") have been done in accordance with the Completion Memorandum,

(such date the "**Effective Date**"), the 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*). Such amendment and all other steps specified in the Completion Memorandum shall, upon the occurrence of the Effective Date, be deemed to have occurred on the date and in the order specified in the Completion Memorandum.

- 2.2 On the Effective Date, the Outgoing Global Coordinating Lead Arranger, in its capacity as a Global Coordinating Lead Arranger, shall be discharged from any further obligations towards the Intercreditor Agent and the other Parties under the 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 Effective Date) and, as from that date, the Incoming Global Coordinating Lead Arranger shall assume the same obligations, and become entitled to the same rights, as if it had been an original Global Coordinating Lead Arranger and Party to the Common Terms Agreement.

3. **REPRESENTATIONS**

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

4. **RELEASE OF SECURITY**

Following the Effective Date, the Security Agent shall execute and deliver to the Company such documents in the Agreed Form as may be required to effect the release of:

- (a) the IP License Direct Agreement between the Licensor, the Company and the Security Agent dated 14 September 2005;

- (b) the Capital Contributions Account Control Agreement between the Company, the Security Agent and Bank of America, N.A. dated 14 September 2004;
- (c) the Bank Account Control Agreement between Wynn Asia, the Security Agent and Bank of America, N.A. dated 14 September 2004; and
- (d) the Pledge over Intellectual Property Rights between the Company and the Security Agent dated 14 September 2004,

and is authorised and instructed by the Intercreditor Agent, and the Security Agent and the Intercreditor Agent are authorised and instructed by the Lenders, to do so accordingly.

5. **CHANGE OF AGENTS**

On and with effect from the fifth Business Day after the Effective Date, Société Générale Asia Limited shall resign as Hotel Facility Agent, Project Facility Agent and Intercreditor Agent and Société Générale, Hong Kong Branch shall be appointed as its successor and, notwithstanding the notice period specified in Clause 23.12.1, the provisions of Clause 23.12 (*Resignation*) of the Schedule shall apply accordingly.

6. **TERM LOAN FACILITIES ADVANCE**

Subject to receipt by the Intercreditor Agent and the Hotel Facility Agent and the Project Facility Agent of a request in the Agreed Form not less than 2 Business Days prior to the proposed Advance Date for an Advance under the Term Loan Facilities to be made on or following the Effective Date, the requirements specified in Clause 3.1 (*Drawdown conditions*) of the Schedule (and Clause 11.1 (*Advances*) of each of the Hotel Facility Agreement and the Project Facility Agreement) shall, with effect from the Effective Date, be deemed to have been satisfied in respect of such Advance as if such request comprised an Advance Request and had been delivered (and notified) in accordance with the provisions thereof and each of the other provisions of Clause 3 (*Drawdown of Advances*) of the Schedule and the other Senior Finance Documents shall apply accordingly (save that:

- (a) neither Clause 3.2.3(d) nor Clause 3.2.4(b) shall apply to require the proceeds thereof to be applied towards Project Costs falling due, or expected to fall due, within 30 days of the proposed Advance Date; and
- (b) Clause 2.2 (*Conditions Precedent to each Advance*) shall not apply to the extent it requires satisfaction of the conditions set out in paragraph 3 (*Sufficiency of Funds; Project Schedule prior to the Expansion Opening Date*), 4(a)(ii) and (b) (*Advance Request and Certificate*) or 5 (*Adviser's Certificates*) of Part B of Schedule 2 of the amended Common Terms Agreement set out as Schedule 2 (*Amended Common Terms Agreement*) to this Agreement).

7. CONTINUITY AND FURTHER ASSURANCE

7.1 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.

7.2 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.

8. MISCELLANEOUS

8.1 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 to 29.5 (*Notices*), Clause 31 (*Partial Invalidity*), Clause 32 (*Remedies and Waivers*) and Clause 38 (*Jurisdiction*) of the Schedule shall be incorporated into this Agreement as if set out in full herein and as if references in those clauses to "Agreement" are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

8.2 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.

9. GOVERNING LAW

This Agreement is governed by English law.

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

SIGNATURES

The Company

WYNN RESORTS (MACAU) S.A.

By: /s/ MATTHEW MADDOX

Address: 335-341 Alameda Dr. Carlos d'Assumpção
9th Floor
Hotline Center
Macau

Tel: (853) 2888 9966

Fax: (853) 2832 9966

Attention: Chief Financial Officer

Copy to: Wynn Resorts, Limited
3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
USA

Tel: (1) 702 770 2112

Fax: (1) 702 770 1518

Attention: General Counsel

The Lenders

(As Hotel Facility Lender, Project Facility Lender and Revolving Credit Facility Lender)

SOCIÉTÉ GÉNÉRALE, NEW YORK BRANCH

By: /s/ PATRICIA WRIGHT

Address: 1221 Avenue of the Americas, 10th Floor
New York
NY 10020

Tel: (1) 212 278 5448

Fax: (1) 212 278 7614

Attention: Jerry Parisi

The Hedging Counterparties

BANC OF AMERICA SECURITIES ASIA LIMITED

By: /s/ KEVIN SALERNO

Address: 42/F Two International Finance Centre
8 Finance Street
Central
Hong Kong

Tel: (852) 2847 5266

Fax: (852) 2847 5886

Attention: Brian Ho

With a copy to:

Tel: (852) 2847 6778 /(852) 2847 6760

Fax: (852) 2810 0821 /(852) 2847 6767

Attention: Kevin Salerno / Jackson Lum

DEUTSCHE BANK AG

By: /s/ DANIEL MAMADOU

Address: 55/F Cheung Kong Centre
2 Queen's Road Central
Central
Hong Kong

Tel: (852) 2203 8551 / (852) 2203 8473

Fax: (852) 2203 7262 / (852) 2203 7269

Attention: Jessie Cheung / Michael Leung

SOCIÉTÉ GÉNÉRALE

By: /s/ PATRICIA WRIGHT

Address: 1221 Avenue of the Americas, 10th Floor
New York
NY 10020

Tel: (1) 212 278 5448

Fax: (1) 212 278 7614

Attention: Jerry Parisi

The Global Coordinating Lead Arrangers

BANC OF AMERICA SECURITIES ASIA LIMITED

By: /s/ KEVIN SALERNO

Address: 42/F Two International Finance Centre
8 Finance Street
Central
Hong Kong

Tel: (852) 2847 6778

Fax: (852) 2810 0821

Attention: Kevin Salerno

DEUTSCHE BANK AG, HONG KONG BRANCH

By: /s/ DOUGLAS MORTON
/s/ NICK CODLING

Address: 60 Wall Street
New York
NY 10005
USA

Tel: (1) 212 250 2205 / (1) 212 250 3809

Fax: (1) 212 797 4655 / (1) 212 797 4495

Attention: Kevin Sullivan / Amish Barot

SOCIÉTÉ GÉNÉRALE ASIA LIMITED

By: /s/ SUNNY LUI SUN PENG
/s/ KENNETH CHOI

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

The Outgoing Global Coordinating Lead Arranger

SOCIÉTÉ GÉNÉRALE ASIA LIMITED

By: /s/ SUNNY LUI SUN PENG

/s/ KENNETH CHOI

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

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Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

The Incoming Global Coordinating Lead Arranger

SG AMERICAS SECURITIES, LLC

By: /s/ JAN B. LOCHTENBERG

Address: 1221 Avenue of the Americas, 10th Floor
New York
NY 10020

Tel: (1) 212 278 5448

Fax: (1) 212 278 7614

Attention: Jerry Parisi

The Hotel Facility Agent and the Project Facility Agent

SOCIÉTÉ GÉNÉRALE ASIA LIMITED

By: /s/ SUNNY LUI SUN PENG

/s/ KENNETH CHOI

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

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Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

The Revolving Credit Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH

By: /s/ SUNNY LUI SUN PENG

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

The Intercreditor Agent

SOCIÉTÉ GÉNÉRALE ASIA LIMITED

By: /s/ SUNNY LUI SUN PENG

/s/ KENNETH CHOI

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

The Security Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH

By: /s/ SUNNY LUI SUN PENG

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

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 Responsible Officer of that Person and which:

- (i) either (A) attaches a copy of that Person's Governing Documents or (B) certifies that the copy of that Person's Governing Documents in the Intercreditor Agent's possession (which was previously delivered to the Intercreditor Agent on or about 14 September 2005) remains correct, complete and in full force and effect as at a date no earlier than the Second Amendment Signing Date;
- (ii) attaches a board resolution or such other equivalent corporate authorisation approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign such Transaction Documents and any document to be delivered by that Person pursuant to any Transaction Documents; and
- (iii) 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 a duly certified copy of the Third Amendment to the Intellectual Property Licence Agreement dated on or about the date of this Agreement between the Licensor and the Company and an original of each of the following Senior Finance Documents, in each case duly executed by the parties thereto:
 - (i) this Agreement;
 - (ii) the Hotel Facility Agreement Second Amendment Agreement;
 - (iii) the Project Facility Agreement Second Amendment Agreement;
 - (iv) the Revolving Credit Facility Agreement Second Amendment Agreement;
 - (v) the Deed of Appointment and Priority Second Deed of Amendment;
 - (vi) the Sponsors' Subordination Deed of Release, Amendment and Acknowledgment of Security;
 - (vii) the Debenture Deed of Amendment and Release;

- (viii) the Wynn Pledgors' Guarantee Deed of Amendment and Acknowledgment;
 - (ix) the Wynn International Share Charge Deed of Amendment and Acknowledgment of Security;
 - (x) the Wynn HK Share Charge Deed of Amendment and Acknowledgment of Security;
 - (xi) the Charge over HK Accounts Deed of Acknowledgment;
 - (xii) the US Operating Account Control Agreement Confirmation Agreement;
 - (xiii) the Amendment to Mortgage;
 - (xiv) the New Power of Attorney;
 - (xv) the Confirmation of Livranças Covering Letter;
 - (xvi) the Amendment to Land Security Assignment;
 - (xvii) the Amendment to Assignment of Rights;
 - (xviii) the Amendment to Pledge over Gaming Equipment and Utensils;
 - (xix) the Amendment to Pledge over Onshore Accounts;
 - (xx) the Amendment to Assignment of Insurances;
 - (xxi) the Amendment to Floating Charge;
 - (xxii) the Amendment to Wong Share Pledge;
 - (xxiii) the Amendment to Company Share Pledge; and
 - (xxiv) any other document entered into which the Intercreditor Agent and the Company agree prior to the Second Amendment Signing Date to designate as a Senior Finance Document.
- (b) (i) Each Senior Finance Document referred to in this paragraph 2 has been duly authorised, executed and delivered by such of the Obligors and the other Major Project Participants as are party thereto and duly filed, notified, recorded, stamped and (save in respect of any registration required in respect of the Sponsor's Subordination Deed Deed of Release, Amendment and Acknowledgment of Security, Debenture Deed of Amendment and Release, Wynn International Share Charge Deed of Amendment and Acknowledgment of Security, Wynn HK Share Charge Deed of Amendment and Acknowledgment of Security, Charge over HK Accounts Deed of Acknowledgment, US Operating Account Control Agreement Confirmation Agreement, Amendment to Mortgage, Amendment to Land Security Assignment, Amendment to Assignment

of Rights, Amendment to Pledge over Gaming Equipment and Utensils, Amendment to Pledge over Onshore Accounts, Amendment to Assignment of Insurances, Amendment to Floating Charge, Amendment to Wong Share Pledge and Amendment to Company Share Pledge at Companies House in England and Wales, the Hong Kong Companies Registry, the Financial Supervision Commission of the Isle of Man, the Conservatória dos Registos Comercial e de Bens Móveis in Macau SAR, the Conservatória do Registo Predial in Macau SAR and the applicable Uniform Commercial Code filing office for local/county, state and federal Uniform Commercial Code filings, as applicable, based on the Senior Finance Document subject to the filing) registered as necessary;

- (ii) all conditions precedent to the effectiveness thereof (other than any such conditions relating to the occurrence of the Effective Date) have been satisfied or waived in accordance with their respective terms and each such Senior Finance Document (save as provided in this subparagraph (b)) is in full force and effect accordingly; and
- (iii) none of such of the Obligor or the other Major Project Participants as is party to any Senior Finance Document is or, but for the passage of time and/or giving of notice will be, in breach of any obligation thereunder.

3. **Advisers' Reports**

Receipt by the Intercreditor Agent of the following reports and other documents and, in the case of each report, confirmed by the relevant adviser to be the final report prior to the Second Amendment Signing Date:

- (a) the revised Technical Adviser's report in relation to the Projects;
- (b) the revised Insurance Adviser's report in relation to the Insurances;
- (c) a project appraisal report from Hospitality Real Estate Counselors, Inc.; and
- (d) the revised Financial Model in relation to the Projects.

4. **Legal opinions**

Receipt by the Intercreditor Agent of legal opinions from:

- (a) Mr Henrique Saldanha, Macanese legal adviser to the Senior Secured Creditors;
- (b) Mr Alexandre Correia da Silva, Macanese legal adviser to the Company;
- (c) Lionel Sawyer & Collins, Nevada legal adviser to the Senior Secured Creditors;
- (d) Mann and Partners, Isle of Man legal adviser to the Senior Secured Creditors;

- (e) Clifford Chance, Hong Kong SAR legal advisers to the Senior Secured Creditors; and
 - (f) Clifford Chance, English legal advisers to the Senior Secured Creditors,
- or, such other lawyers or law firms as may be reasonably acceptable to the Intercreditor Agent.

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 Schedule 1; and
- (b) all fees, costs and expenses due to the Senior Secured Creditors (including all amounts payable pursuant to any Ancillary Finance Document) and their advisers under the Senior Finance Documents on or before the Effective Date,

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

6. **Security**

Receipt by the Intercreditor Agent of evidence that each Security Document has been duly filed, notified, recorded, stamped and (save as provided in paragraph 2(b)(i) 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. **Other documents and evidence**

- (a) An Advance Request in respect of the Hotel Facility and the Project Facility in the Agreed Form, together with such other documents as are required pursuant to the Common Terms Agreement Second Amendment Agreement to be in Agreed Form.
- (b) 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.
- (c) Receipt by the Intercreditor Agent of evidence that the transfers and acquisitions referred to in the Pre-Amendment Global Transfer Agreement and the Post-Amendment Global Transfer Agreement have or will be completed on or prior to the Effective Date.

- (d) 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) 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.

SCHEDULE 2
AMENDED COMMON TERMS AGREEMENT

DATED 14 SEPTEMBER 2004

WYNN RESORTS (MACAU) S.A.
the Company

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

BANC OF AMERICA SECURITIES ASIA LIMITED
DEUTSCHE BANK AG, HONG KONG BRANCH
SG AMERICAS SECURITIES, LLC
as Global Coordinating Lead Arrangers

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Hotel Facility Agent and Project Facility Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Revolving Credit Facility Agent

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Intercreditor Agent

SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH
as Security Agent

COMMON TERMS AGREEMENT
(As amended by the Common Terms Agreement Amendment
Agreement dated 14 September 2005 and
the Common Terms Agreement Second Amendment Agreement dated June 27, 2007)

CONTENTS

Clause	Page
1. Definitions And Interpretation	31
2. Conditions Precedent	83
3. Drawdown Of Advances	87
4. Availability Periods	90
5. Purpose	90
6. Pro Rata Drawings	91
7. [Not Used]	91
8. Repayments, Prepayments And Cancellation	91
9. Interest, Interest Periods And Default Interest	97
10. Changes To The Calculation Of Interest	99
11. Tax Gross Up And Indemnities	101
12. Increased Costs	103
13. Currency And Other Indemnities	104
14. Illegality	106
15. Mitigation By The Senior Secured Creditors	106
16. Fees, Costs And Expenses	107
17. Representations And Warranties	107
18. Covenants	108
19. Events Of Default	108
20. Application Of Enforcement Proceeds	109
21. Changes To The Parties	109
22. Hedging Counterparties	114
23. Agents And Global Coordinating Lead Arrangers	115
24. Conduct Of Business By The Senior Secured Creditors	123
25. Sharing Among The Senior Secured Creditors	123
26. Payment Mechanics	125
27. Set-Off	127
28. Non-Recourse Liability	128
29. Notices	128
30. Calculations And Certificates	131

31.	Partial Invalidity	132
32.	Remedies And Waivers	132
33.	Intercreditor Arrangements	132
34.	Amendments And Waivers	136
35.	Counterparts	136
36.	Language	136
37.	Governing Law	136
38.	Jurisdiction	137
39.	Confidentiality	137
40.	Gaming Authorities	138
SCHEDULE 1	The Lenders	129
SCHEDULE 2	Conditions Precedent	131
SCHEDULE 3	Form of Advance Request	159
SCHEDULE 4	Representations and Warranties	163
SCHEDULE 5	Covenants	177
SCHEDULE 6	Accounts	216
SCHEDULE 7	Insurance	233
SCHEDULE 8	Hedging Arrangements	279
SCHEDULE 9	Mandatory Prepayment	283
SCHEDULE 10	Events of Default	296
SCHEDULE 11	Transfers and Accession	294
SCHEDULE 12	Permits	303
SCHEDULE 13	Form of Project Budget	305
SCHEDULE 14	Form of Additional Lender’s Accession Deed	310
SCHEDULE 15	Form of Compliance Certificate	311
SCHEDULE 16	Concession Contract Inventory of Properties	312
SCHEDULE 17	Payment Waterfall	315

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 Hotel Facility Lenders;
- (3) **THE FINANCIAL INSTITUTIONS** defined below as Project Facility Lenders;
- (4) **THE FINANCIAL INSTITUTIONS** defined below as Revolving Credit Facility Lenders;
- (5) **THE FINANCIAL INSTITUTIONS** defined below as Hedging Counterparties;
- (6) **BANC OF AMERICA SECURITIES ASIA LIMITED, DEUTSCHE BANK AG, HONG KONG BRANCH** and **SG AMERICAS SECURITIES, LLC** in their capacities as global coordinating lead arrangers of the Facilities (the “**Global Coordinating Lead Arrangers**” or “**GCLAs**”);
- (7) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Hotel Facility Agent;
- (8) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Project Facility Agent;
- (9) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Revolving Credit Facility Agent;
- (10) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** in its capacity as Intercreditor Agent; and
- (11) **SOCIÉTÉ GÉNÉRALE, HONG KONG BRANCH** in its capacity as Security Agent.

WHEREAS:

- (A) The Senior Secured Creditors have agreed, subject to the terms and conditions contained in the Senior Finance Documents, to make available to the Company certain loan facilities for the purpose of the Projects and 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 bank notified by the Company to the Security Agent which is confirmed by the Security Agent (acting reasonably) as acceptable.

“**Account**” means an account:

- (i) held in Macau, Hong Kong, the United States or any other jurisdiction, and on terms, reasonably acceptable to the Security Agent, by a member of the Restricted Group with an Acceptable Bank; and
- (ii) 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 Lender Agent**” means:

- (a) the bank or financial institution appointed as facility agent for the Additional Lenders under the 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) its successor appointed in accordance with this Agreement.

“**Additional Lender Facility**” means the revolving credit facility provided by the Additional Lenders to the Company.

“**Additional Lender Facility Agreement**” means the agreement between the Additional Lenders, the Additional Lender Agent and the Company for the provision of the Additional Lender Facility.

“**Additional Lender Facility Availability Period**” means, in relation to the Additional Lender Facility, the period specified in respect thereof in Clause 4.4 (*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 the Additional Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the 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.

“**Advisers**” means the Technical Adviser, the Insurance Adviser and the Tax Adviser.

“**Affiliate**” as applied to any Person, means any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by,” and “under common control with”) as applied to any Person means the power, directly or indirectly, to (a) vote 10% or more of the shares or other securities having ordinary voting power for the election of the Board of Directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise (*provided* that Mr Wong Chi Seng shall not, by virtue of fulfilling either of these requirements alone as a result of the shares held by him in the Company as at the Signing Date or as a result of his role as executive director of the Company, be an Affiliate of the Company).

“**Affiliate Agreement**” means any agreement entered into by 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.

“**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.

“**A. M. Best**” means A.M. Best Company or its successor company.

“**Ancillary Finance Documents**” means:

- (a) the Fee Letters; and
- (b) the Underwriting Agreement.

“**Anti-Terrorism Law**” means each of:

- (a) Executive Order No. 13224 of September 23, 2001—Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism (the Executive Order);
- (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (commonly known as the USA Patriot Act);
- (c) the Money Laundering Control Act of 1986, Public Law 99-570;
- (d) the International Emergency Economic Powers Act, 50 U.S.C. App. §§ 1701 et seq, the Trading with the Enemy Act, 50 U.S.C. App. §§ 1 et seq, any Executive Order or regulation promulgated thereunder and administered by the Office of Foreign Assets Control (“**OFAC**”) of the U.S. Department of the Treasury; and
- (e) any similar law enacted in the United States of America subsequent to the date of this Agreement.

“**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, whether pursuant to the terms of the IP Agreement or otherwise, subsequent to the Third Amendment to Intellectual Property License Agreement referred to in the definition thereof in this Clause 1.1.

“**Asset Sale**” means any Disposition of Property other than:

- (a) the granting of any Lien permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*);
- (b) any Disposition permitted by paragraph 5 of Part B of Schedule 5 (*Covenants*) (*provided* that, in the case of paragraph 5(a) of Part B of Schedule 5 (*Covenants*), Dispositions of Property thereunder shall be considered “Asset Sales” to the extent of any proceeds thereof not applied to the replacement of Property pursuant to paragraph 5(a)(ii) of Part B of Schedule 5 (*Covenants*)).

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

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

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

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

“**Availability Period**” means, as the case may be, the Hotel Facility Availability Period, the Project Facility Availability Period, the Additional Lender Facility Availability Period or the Revolving Credit Facility Availability Period.

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

“**Board of Directors**” means:

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

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

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

exceeds:

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

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

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

“**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 Expenditures;

(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).

“**Certificate of Substantial Completion**” means, in relation to the Projects, any “Original Project Certificate of Substantial Completion” or “Expansion Project Certificate of Substantial Completion”, each as defined in the Construction Contract.

“**Change of Control**” means the occurrence of any of the following:

- (a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of any Wynn Obligor to any Person (except as may be permitted by this Agreement or any Security Document);
- (b) the adoption of a plan relating to the liquidation or dissolution of any Wynn Obligor or any successor thereto; or
- (c) a Wynn Event.

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

“**Charges over Accounts**” means the Pledge over Onshore Accounts, the Charge over HK Accounts, the US Operating Account Control Agreement and the documents granting the Liens referred to in the definition of “Account” in this Clause 1.1.

“**Claim Proceeds**” means the proceeds of a claim (a “**Recovery Claim**”) against any party to a Project Document or any of such party’s Affiliates (or any employee, officer or adviser) in relation to the Project Documents 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 parties hereto, 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 Second Amendment Agreement**” means the agreement so entitled dated 2007 between the parties hereto.

“**Commonly Controlled Entity**” means an entity, whether or not incorporated, which is under common control with any Wynn 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.

“**Company’s CP Satisfaction Date Certificate**” has the meaning given in paragraph 6 of Part A of Schedule 2 (*Conditions Precedent*).

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

“**Completion Memorandum**” has the meaning given in the Common Terms Agreement Second Amendment Agreement.

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

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

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

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

“**Construction Contract**” means the amended and restated construction contract dated 14 September 2005 between the Prime Contractor and the Company for the construction of the Original Project and the Expansion.

“**Construction Contract Direct Agreement**” means the Amended and Restated Construction Contract Direct Agreement dated 14 September 2005 between the Prime Contractor, the Company and the Security Agent in the Agreed Form.

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

“**Construction Period Insurances**” means the insurances identified as such in Appendix 1 (*Construction Period Insurances*) to Schedule 7 (*Insurance*) and effected in accordance with the terms of Schedule 7 (*Insurance*).

“**Contractors**” means any architects, consultants, designers, contractors, suppliers or any other Persons party to a Major Project Document and engaged by the Company or any other member of the Restricted Group in connection with the design, engineering, development, construction, installation, maintenance or operation of either Project (including the Prime Contractor).

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

“**Controlled Group**” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Company, are treated as a single employer under section 414(b) or 414(c) of the Internal Revenue Code of 1986 of the United States of America, as amended.

“**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 the agreement to be entered into between the Company and Wynn Resorts regarding the payment of the Company’s portion of any Corporate Administrative Fees.

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

“**Current Assets**” means, at any date, all amounts (other than cash) which would, in conformity with applicable GAAP, be set forth opposite the caption “total current assets” (or any like caption) on a balance sheet of the 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.

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

“Diamond Completion Date” means the date of completion of the Diamond Expansion as notified to the Intercreditor Agent by the Company.

“Diamond Construction Contract” means the contract for the design, engineering and construction of the Diamond Expansion to be entered into by the Company and the Prime Contractor (or any of its Affiliates).

“Diamond Expansion” means that part of the Projects which, as of the Second Amendment Signing Date, is being constructed on the site of the above-ground parking garage comprised in the Original Project and is contemplated to include the 40 floor Wynn Diamond suites, a parking facility, restaurants, retail space and gaming areas.

“Diamond Opening Date” means the date upon which all Licenças de Ocupação required pursuant to applicable Legal Requirements in respect of the Diamond Expansion have been issued by the Macau SAR and the Diamond Expansion is fully open for business to the general public.

“Direct Agreements” means each of the following documents:

- (a) the Gaming Concession Consent Agreement;
- (b) the Land Concession Consent Agreement;
- (c) the Construction Contract Direct Agreement;
- (d) the PASA Direct Agreement;
- (e) the Account Bank Notices and Acknowledgements; and
- (f) the Insurer Notices and Acknowledgements.

“Direct Insurances” means a contract or policy of insurance of any kind from time to time taken out or effected by, on behalf of or in favour of the Company 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 Schedule 7 (*Insurance*).

“Direct Insurer” means the insurer(s) with whom a Direct Insurance is placed from time to time in accordance with Schedule 7 (*Insurance*).

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

“Disqualified Stock” means any Capital Stock or other ownership or profit interest of any Obligor that any Obligor is or, upon the passage of time or the occurrence of any event, may become obligated to redeem, purchase, retire, defease or otherwise make any payment in respect thereof for consideration other than Capital Stock (other than Disqualified Stock).

“EBITDA” means, in relation to 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); and
- (f) any extraordinary expenses or losses,

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

- (g) interest income;
- (h) an amount equal to the aggregate net non-cash gain on the Disposition of Property during such period (other than sales of inventory in the ordinary course of business);
- (i) any extraordinary income or gains; and
- (j) any upfront premium or similar income or gains derived from, or in connection with the grant of, any Subconcession,

all (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) 50% of the Excess Cash Flow if the Leverage Ratio as of the last day of such period is greater than 4:1; or
- (b) zero if the Leverage Ratio as of the last day of such period is 4:1 or less.

“**Effective Date**” has the meaning given in the Common Terms Agreement Second Amendment Agreement.

“**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, including either Project, 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 or any other applicable jurisdiction with regard to:

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

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

“Equator Principles” means the voluntary set of guidelines for determining, assessing and managing environmental and social risk in project financing promoted and published by the International Finance Corporation and first adopted by other financial institutions on or about 4 June 2003.

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

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

“**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 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 as soon as possible (but in any event within 3 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 in the Macau SAR other than the Projects and, save as contemplated by any Resort Management Agreement therefor in the case of the Company, 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 either of the Projects.

“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, including either of the Projects.

“Expansion” means that part of the Projects comprised in the “Expansion Project Casino” as defined in the Construction Contract as at the date hereof, but excluding the Diamond Expansion.

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

“Facility” means any of:

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

“Facility Agents” means the Hotel Facility Agent, the Project Facility Agent, the Revolving Credit Facility Agent and the Additional Lender Agent.

“Facility Agreements” means:

- (a) the Hotel Facility Agreement;
- (b) the Project Facility Agreement;
- (c) the Revolving Credit Facility Agreement; and
- (d) the 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.

"Final Repayment Date", in relation to each of the Hotel Facility and the Project Facility, means the seventh anniversary of the Second Amendment Signing Date.

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

"Financial Indebtedness" means, in relation to any Person at any date, without duplication:

- (a) all indebtedness of such Person for borrowed money;
- (b) all obligations of such Person for the purchase price of Property or services to the extent the payment of such obligations is deferred for a period in excess of 90 days (other than trade payables incurred in the ordinary course of such Person's business);
- (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments;
- (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (unless the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property);
- (e) all Capital Lease Obligations (to the extent treated as finance or capital lease obligations in accordance with applicable GAAP) or Synthetic Lease Obligations of such Person;
- (f) any indebtedness of such Person for or in respect of receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis or on a basis where recourse is limited solely to warranty claims relating to title or objective characteristics of the relevant receivables);
- (g) any indebtedness of such Person in respect of any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) all indebtedness of such Person, contingent or otherwise, as an account party under acceptance, letter of credit, completion guaranties, performance bonds or similar facilities;

- (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Capital Stock of such Person;
- (j) all obligations of such Person in respect of Swap Agreements or any other derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;
- (k) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in paragraphs (a) through (j) above;
- (l) all obligations of the kind referred to in paragraphs (a) through (k) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on Property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation; and
- (m) the liquidation value of any preferred Capital Stock of such Person or its Subsidiaries held by any Person other than such Person and its Wholly Owned Subsidiaries.

“**Financial Model**” means the computer model, stored on computer disc(s), and consisting of algorithms as set out on the print-out from such disc(s), each to be initialled at the Second Amendment Signing Date by the Intercreditor Agent and the Company solely for the purposes of identification.

“**Financing Costs**” means:

- (a) interest, fees, commissions, costs and expenses payable by the Company under the Senior Finance Documents;
- (b) interest, fees, commissions, costs and expenses payable by the Company under the Performance Bond Facility;
- (c) amounts payable by the Company under Clause 10 (*Changes to the Calculation of Interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) and Clause 13 (*Currency and Other Indemnities*);
- (d) 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) net amounts payable by the Company under any Hedging Agreement; and
- (f) any value added or other taxes payable by the Company or any other member of the Restricted Group in respect of paragraphs (a) through (e) 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.

“**First Repayment Date**” means, in relation to each of the Term Loan Facilities, the date falling 51 months from the Second Amendment Signing Date.

“**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.

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

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

- (a) the lists of documents comprising Senior Finance Documents and Security Documents set out in the definitions thereof and the definitions of Required Lenders and Fundamental Term in Clause 1.1;
- (b) the provisions setting out the date for, or the amount of, or the currency of, any payment of principal or interest under a Senior Finance Document or any interest rate hedging payment to a Hedging Counterparty;
- (c) Clause 2.1 (*Conditions Precedent to the CP Satisfaction Date*) (save in relation to the identity of the opinion providers as set forth in paragraph 14 of Part A of Schedule 2 (*Conditions Precedent*) and paragraph 30 of Part A of Schedule 2 (*Conditions Precedent*));
- (d) the provisions setting out the amount of a Lender’s Available Commitment under a Facility (otherwise than by a transfer in accordance with the terms of this Agreement) or the duration of its availability or any additional obligation on a Lender to lend money or provide any other form of credit;
- (e) a term which expressly requires the consent of each Lender or Senior Secured Creditor;
- (f) the provisions dealing with the conditions under which assets may be released from the Security or the priority or ranking thereof;
- (g) the provisions dealing with the order of distribution on partial payment by the Company or the proceeds of Security;
- (h) paragraph 2.1(e) of Part B of Schedule 5 (*Covenants*), paragraph 2.1(f) of Part B of Schedule 5 (*Covenants*), the provisions setting out the priority and

ranking of the Secured Obligations (and any other provisions which, if amended, would have the effect of changing the priority or ranking thereof) and the provisions dealing with the designation of a document as a Senior Finance Document (to the extent it involves any sharing in the Security or the granting, creating or sharing in any other Lien over the Project Security and is not a document necessary for the purposes of incurring the Financial Indebtedness referred to in paragraphs 2.1(e) or 2.1(f) of Part B of Schedule 5 (*Covenants*)) and any provision which, if amended, would have the effect of permitting such a designation;

- (i) Clause 25 (*Sharing Among the Senior Secured Creditors*); and
- (j) Clause 33 (*Intercreditor Arrangements*).

Notwithstanding the above, unanimity among the Lenders and Hedging Counterparties shall not be required with respect to any changes, additions, deletions, modifications or supplements (herein “changes”) comprised in any amendment to the Deed of Appointment and Priority made in accordance with clause 24.1(c) (*Required Consents*) thereof with respect to subparagraphs (a), (e), (f), (g), (h) and (j) above and any Decision related to such changes shall be effected pursuant to subparagraph (a) of the definition of Required Lenders (and as if a Hedging Voting Right Event had occurred and was continuing in relation to each Hedging Counterparty) provided that, in each case, the Senior Secured Creditors’ rights, benefits and interests in respect of the First Ranking Liabilities (as defined in the Deed of Appointment and Priority) and the Security, the enforcement thereof and the priority and ranking of their claims in respect thereof and the subordination thereto of all other claims, remain unaffected by any such changes.

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

“**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 suffered to exist pursuant to paragraph 2.1(e) of Part B of Schedule 5 as, when aggregated with all other amounts of Financial Indebtedness permitted to be created, incurred, assumed or suffered to exist pursuant to paragraph 2.1(e), does not exceed USD500,000,000 or its equivalent.

“**GAAP**” means, in respect of the Company and the other members of the Restricted Group, the International Accounting Standards issued by the International Accounting Standards Board or its successor and, in respect of any Wynn Obligor, generally accepted accounting principles in the United States of America as in effect from time to time.

“**Gaming Concession Consent Agreement**” means the Agreement Relating to Security (with the Exclusion of Land Concession and Immovable Property) dated on or about

the date of this Agreement between the Government of the Macau SAR, the Company and the Security Agent and the Supplement in respect thereof dated 14 September 2005.

“Global Coordinating Lead Arrangers” or **“GCLAs”** means Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Société Générale Asia Limited acting as such under the Senior Finance Documents.

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

“Governmental Authority” means, as to any Person, the government of the Macau SAR, any other national, state, provincial or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, in each case having jurisdiction over such Person, or any arbitrator with authority to bind such Person at law.

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

“Guaranteed Date of Substantial Completion” means, in respect of the Original Project, the “Guaranteed Date of Original Project Substantial Completion” and, in respect of the Expansion, the “Guaranteed Date of Expansion Project Substantial Completion”, each as defined in the Construction Contract.

“Guarantee Obligation” means any guarantee, indemnity, letter of credit or other legally binding assurance against 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).

"Hazardous Substance" means radioactive materials, asbestos and other substances defined as "hazardous" or of a similar nature under any Environmental Law.

"Hedging Agreements" means any agreement entered into by the Company in accordance with the Hedging Arrangements.

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

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

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

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

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

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

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

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

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

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

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

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

"Hotel Facility" means the term loan facilities provided pursuant to the Hotel Facility Agreement.

“**Hotel Facility Agent**” means Société Générale Asia Limited as facility agent for the Hotel Facility Lenders or its successor appointed in accordance with this Agreement.

“**Hotel Facility Agreement**” means the agreement so entitled between the Company, the Hotel Facility Agent and the Hotel Facility Lenders.

“**Hotel Facility Availability Period**” means the period specified in Clause 4.1 (*Hotel Facility Availability Period*).

“**Hotel Facility HKD Disbursement Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Hotel Facility Lender**” means a lender identified as such in Part A of Schedule 1 (*Hotel Facility Lenders*) or a Transferee in respect of the Hotel Facility.

“**Hotel Facility USD Disbursement Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Hotel Lending Group**” means the Hotel Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Hotel Facility Agreement.

“**Hotel Project**” means the design, development and construction in accordance with the Construction Contract and the Diamond Construction Contract of a luxury hotel resort, retail and entertainment complex on land leased to the Company under the Land Concession Contract and the ownership, operation and maintenance thereof by the Company but shall not include the design, development, construction, ownership, operation or maintenance by the Company of a casino pursuant to the Concession Contract nor the purchase of any associated gaming equipment or utensils.

“**Hotel Project Costs**” means such Project Costs as relate to the Hotel Project.

“**Hotel Revolving Credit Facility**” has the meaning given in the Revolving Credit Facility Agreement.

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

“**Information Memorandums**” means the information memorandum dated June 2004, the information memorandum dated June 2005 and the information memorandum dated April 2007 prepared by the Company in relation to the Projects for the purposes of the financing of any or all of the Facilities.

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

“**Insolvency of a Multiemployer Plan**” has the meaning given in section 4245(6) of ERISA.

“**Insurance**” means a Direct Insurance or a Reinsurance.

“Insurance Adviser” means, as the case may be:

- (a) JLT Risk Solutions Asia as the insurance adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letters dated 15 September 2003, 27 April 2005 and 10 May 2007;
- (b) the insurance adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date; or
- (c) the insurance adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of Projects.

“Insurance Broker’s Letter of Undertaking” means a letter of undertaking in substantially the form set out in Appendix 5 to Schedule 7 (*Insurance*) or in such other form as may be approved by the Intercreditor Agent acting in consultation with the Insurance Adviser, such approval not to be unreasonably withheld.

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

“Insurance Requirements” means all material terms of any insurance policy required pursuant to the Senior Finance Documents (including Schedule 7 (*Insurance*)).

“Insurer” means a Direct Insurer or a Reinsurer.

“Insurer Notices and Acknowledgements” means the notices and acknowledgements to be delivered to and executed by each Insurer and Reinsurer in accordance with the Assignment of Insurances and the Assignments of Reinsurances, respectively (including those referred to in paragraphs 2.3.2 and 2.4.2 of Schedule 7 (*Insurance*)).

“Intellectual Property” means the collective reference to all rights, priorities and privileges relating to intellectual property, including copyrights, patents, trademarks, service-marks, technology, know-how and processes, formulas, trade secrets or licenses (under which the applicable Person is licensor or licensee) relating to any of the foregoing and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intercreditor Agent” means Société Générale Asia Limited in its capacity as intercreditor agent for the Senior Secured Creditors or its successor appointed in accordance with this Agreement.

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

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

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

“Investment Income” means any interest, dividends or other income arising from or in respect of a Permitted Investment.

“Investment Proceeds” means any net proceeds received upon any disposal, realisation or redemption of a Permitted Investment, but excluding any Investment Income.

“Investments” has the meaning given to it in paragraph 8 of Part B of Schedule 5 (*Covenants*).

“IP Agreement” means the Intellectual Property License Agreement dated 1 January 2003 between the Licensor and the Company, as amended by the First Amendment to Intellectual Property License Agreement dated 1 April 2004, the Second Amendment to Intellectual Property License Agreement dated 7 March 2005 and the Third Amendment to Intellectual Property Licence Agreement dated on or about the date of the Common Terms Agreement Second Amendment Agreement.

“IP Fees” means “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 dated on or about the date of this Agreement between the Government of the Macau SAR, the Company and the Security Agent and the Supplement in respect thereof dated 14 September 2005.

“Land Security Assignment” means the assignment so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

“**Legal Requirements**” means all laws, statutes, orders, decrees, injunctions, licenses, permits, approvals, agreements and regulations of any Governmental Authority having jurisdiction over the matter in question.

“**Lender**” means a Hotel Facility Lender, a Project Facility Lender, a Revolving Credit Facility Lender or an Additional Lender.

“**Lending Group**” means the Hotel Lending Group, the Project Lending Group, the Revolving Lending Group and the 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.

“**Licensors**” has the meaning given in the IP Agreement

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

“**Line Item**” means each of the following line item categories:

- (a) Hard Construction Costs
 - (i) Construction and Building
 - (ii) Interior Furnishings and Equipment
 - (iii) Design Fees
 - (iv) Contractor’s Fees
 - (v) Construction Contingency
 - (vi) Owner’s Contingency
- (b) Pre-Opening Costs
 - (i) Payroll
 - (ii) Direct Expenses
 - (iii) Corporate Expenses
- (c) Owner Furniture, Fittings and Equipment
 - (i) Casino

- (ii) Hotel
- (iii) Food and Beverage
- (iv) Others
- (d) Land Cost
- (e) Pre-Opening Working Capital
- (f) Capitalised Interest and Commitment Fees
 - (i) Revolving Credit Facility
 - (ii) Performance Bond Facility
- (g) Tax, Fees and Expenses
- (h) Contingency.

“**Liquidated Damages**” means any liquidated damages paid pursuant to any obligation, default or breach under any Project Document to which a member of the Restricted Group is party (other than any Termination Proceeds), in each case net of costs and expenses incurred by such member of the Restricted Group or its agent pursuant to arm’s length transactions in connection with adjustment or settlement thereof and taxes paid with respect thereto.

“**Livrança Covering Letter**” means the letter from the Company to the Security Agent dated on or about the date of this Agreement in relation to the Livranças.

“**Livranças**” means the promissory notes dated on or about the date of this Agreement issued by the Company 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.

“**Loss Proceeds**” means all amounts and proceeds (including monetary instruments) in respect of any Event of Loss, including proceeds of any insurance policy required to be maintained by the Company or any other member of the Restricted Group under this Agreement, less any costs and expenses incurred by the Company or such member of the Restricted Group or its agents in collecting such amounts and proceeds.

“**Macau Gaming Laws**” means Law No. 16/2001 and Administrative Regulation No. 26/2001, as amended from time to time, and other laws promulgated by any Governmental Authority of the Macau SAR and applying to gaming operations in the Macau SAR.

“**Macau SAR**” means the Macau Special Administrative Region.

“**Major Project Document**” means any of:

- (a) the Concession Contract;

- (b) the Land Concession Contract;
- (c) the Construction Contract;
- (d) the Diamond Construction Contract;
- (e) the Prime Contractor's Completion Guarantee;
- (f) the Prime Contractor's Performance Bond;
- (g) the Project Administration Services Agreement;
- (h) the IP Agreement;
- (i) the Performance Bond Facility Agreement;
- (j) the Concession Contract Performance Bond;
- (k) any Resort Management Agreement; and
- (l) any other Project Document with a total contract price payable (or expected aggregate amount to be paid in the case of "cost plus" contracts) by any member of the Restricted Group or which may otherwise involve liabilities, actual or contingent, of any member of the Restricted Group in each case in an amount in excess of USD25,000,000 or its equivalent.

"Major Project Participants" means:

- (a) each Obligor;
- (b) the Macau SAR;
- (c) the Prime Contractor (for so long as it has any actual or contingent liabilities under the Construction Contract);
- (d) Leighton Holdings Limited and China Overseas Holdings Limited (for so long as, in each case, it has any actual or contingent liabilities under the Prime Contractor's Completion Guarantee);
- (e) the PASA Agent (for so long as it has any actual or contingent liabilities under the PASA); and
- (f) each other Person who is party to a Major Project Document (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 the

Company, the Restricted Group and the Wynn Obligor, taken as a whole, or that calls into question in any material respect the Projections or any of the material assumptions on which the Projections were prepared;

- (b) the Original Project or the Expansion;
- (c) the ability of the Company to achieve Substantial Completion in respect of the Original Project on or prior to the Guaranteed Date of Substantial Completion therefor;
- (d) the validity or enforceability of any Senior Finance Document;
- (e) the validity, enforceability or priority of any the Liens purported to be created under any of the Security Documents; or
- (f) the rights and remedies of any Secured Creditor under any Senior Finance Document.

“**Monthly Construction Period Report**” has the meaning given in paragraph 2(b) of Part A of Schedule 5 (*Covenants*).

“**Monthly Construction Progress Report**” means each of the monthly reports prepared by the Prime Contractor under section 7.5 of the Construction Contract.

“**Moody’s**” means Moody’s Investors Service, Inc or its successor.

“**MOP Operating Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Mortgage**” means the mortgage so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

“**Mr Okada**” means Mr. Kazuo Okada (who, as of the Second Amendment Signing Date, is the Vice Chairman of the board of directors of Wynn Resorts).

“**Mr Wynn**” means Mr Stephen A. Wynn.

“**Multiemployer Plan**” means a Plan that is a multiemployer plan as defined in section 3(37) or 4001(a)(3) of ERISA.

“**Net Cash Proceeds**” means:

- (a) in connection with any Asset Sale, the proceeds thereof in the form of cash (including any such proceeds received by way of deferred payment of principal pursuant to a note or instalment receivable or purchase price adjustment receivable or otherwise, but only as and when received) of such Asset Sale, net of attorneys’ fees, accountants’ fees, investment banking fees, amounts required to be applied to the repayment of Financial Indebtedness secured by a Lien expressly permitted hereunder on any asset which is the subject of such Asset Sale (other than any Lien pursuant to a Security Document) and other fees and expenses, in each case, to the extent actually

- incurred in connection with such Asset Sale and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any tax credits or deductions and any tax sharing arrangements, in each case reducing the amount of taxes so paid or estimated to be payable); and
- (b) in connection with any issuance or sale of debt securities or instruments or the incurrence of loans, the cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other fees and expenses, in each case, to the extent actually incurred by the Company 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.

"Notice to Proceed" has the meaning given to such term in the Construction Contract.

"Notional Amount", in relation to a Hedging Agreement, has the meaning referred to in paragraph 9 of Schedule 8 (*Hedging Arrangements*).

"Novation Certificate" means a novation certificate in substantially the form set out in Part B of Schedule 11 (*Transfers and Accession*).

"Obligations" means:

- (a) all loans, advances, debts, liabilities and obligations howsoever arising, owed by the Company or any other Obligor under the Senior Finance Documents to any Senior Secured Creditors of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Senior Finance Documents or any of the other Transaction Documents, including all interest (including interest accruing after the maturity of any Advance and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Obligor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, premiums, if any, and any charges, expenses, attorneys' fees and accountants' fees, in each case chargeable to any Obligor

- in connection with its dealings with such Obligor and payable by such Obligor thereunder;
- (b) any and all sums advanced by any Agent or any Lender in order to preserve the Project Security or preserve any Senior Secured Creditor's security interest in the Project Security as permitted by the Senior Finance Documents; and
 - (c) in the event of any proceeding for the collection or enforcement of the Obligations after issuance of an Enforcement Notice, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realising on the Project Security, or of any exercise by any Senior Secured Creditor of its rights under the Security Documents, together with attorneys' fees and court costs, in each case as permitted by the Senior Finance Documents.

"Obligors" means the Company, the other members of the Restricted Group, the Wynn Obligors, Wynn Resorts (solely with respect to its obligations under the Corporate Administrative Fees Agreement and the Sponsors' Subordination Deed), the Licensor (solely with respect to its obligations under the IP Agreement and the Sponsors' Subordination Deed), any assignee or transferee of the Licensor under the IP Agreement and any party to a Senior Finance Document referred to in paragraph (f) of the definition of Senior Finance Document (other than a Secured Party or a Person who is solely party to an acknowledgement of Security).

"Opening Conditions" means, collectively, the following in respect of the Original Project:

- (a) the Intercreditor Agent shall have received from the Company a certificate, substantially in the form set out in Part A of Schedule 19 (*Forms of Opening Conditions Certificates*), pursuant to which the Company certifies that:
 - (i) furnishings, fixtures and equipment necessary to use and occupy the various portions of each Project comprised in the Original Project for their intended uses shall have been installed and shall be operational;
 - (ii) the Project Certificates of Occupancy for the Original Project shall have been issued, each area of the Original Project in which any operation of casino games of chance or other forms of gaming will be carried out shall have been classified as a casino or gaming zone in accordance with Article 9 of the Concession Contract and (other than any Permit made or issued by or with a Governmental Authority the failure of which to obtain could not reasonably be expected to affect the operations of the Original Project in any material respect) each other Permit made or issued by or with a Governmental Authority required under applicable Legal Requirements to be obtained prior to the Opening Date for the Original Project shall have been obtained;

- (iii) the Original Project (other than the premises to be occupied by individual retail and restaurant tenants) shall be fully open for business to the general public and at least, notwithstanding the foregoing, in the case of the Original Project, 80% of each of the projected 380 slot machines and 200 gaming tables shall be operating, 80% of all rooms shall be ready for occupancy, at least 80% of restaurant outlets shall be open for business and at least 80% of the floor space comprised in the Original Project and designated in the Plans and Specifications for retail tenants has been occupied (save for facilities which by their nature are not open to the general public in the ordinary course of business but are operating);
 - (iv) any remaining work (including, in the case of the Original Project, any work on the Expansion) shall be such that it will not materially affect the operation of the Original Project;
 - (v) the failure to complete the remaining work would not materially affect the operation of the Original Project; and
 - (vi) the Company shall have available a fully trained staff to operate the Original Project; and
- (b) the Intercreditor Agent shall have received from the Technical Adviser a certificate, substantially in the form set out in Part B of Schedule 19 (*Forms of Opening Conditions Certificates*) in respect of the Original Project.

“**Opening Date**” means, in relation to the Original Project, the date on which all the Project Certificates of Occupancy required for the Original Project have been issued.

“**Operation Period Insurances**” means the insurances listed in Appendix 2 to Schedule 7 (*Insurance*) and effected in accordance with the terms of Schedule 7 (*Insurance*).

“**Operatives**” means a shareholder, officer, employee, servant, controlling Person, executive, director, agent, authorised representative or Affiliate of any of the Obligors.

“**Original Project**” means that part of the Projects the construction of which was contemplated by the original Construction Contract entered into by the Company and the Prime Contractor and dated 10 May 2004 as amended by the change order and amendment thereto dated 14 September 2004.

“**PASA Agent**” means Wynn Design & Development, LLC.

“**PASA Direct Agreement**” means the agreement so entitled between the PASA Agent, the Company and the Security Agent in the Agreed Form.

“**Patacas**” or “**MOP**” denotes the lawful currency of the Macau SAR.

“**Payment and Performance Bond**” means any payment and performance bond delivered under any Major Project Document in favour of the Company and supporting

the Contractor's obligations under any such Major Project Document (including the Prime Contractor's Completion Guarantees and the Prime Contractor's Performance Bonds).

"**PBGC**" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"**Performance Bond Facility**" means a facility extended to the Company by the Performance Bond Provider in accordance with the terms of the Performance Bond Facility Agreement for the issuance of the Concession Contract Performance Bond and subordinated to amounts owed to the Senior Secured Creditors under the Senior Finance Documents in accordance with the Deed of Appointment and Priority.

"**Performance Bond Facility Agreement**" means the agreement dated 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 the Projects as contemplated under the Transaction Documents, including those listed in Schedule 12 (*Permits*).

"**Permitted Businesses**" means the Projects, including:

- (a) in the case of the Company only, the operation of casino games of chance or other forms of gaming in one or more locations in the Macau SAR in connection with the Projects 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;
- (b) the development, construction, ownership and operation of a hotel resort and casino as contemplated in the Concession Contract; and
- (c) food and beverage, spa, entertainment production, convention, retail, foreign exchange, 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, ownership or operation of such hotel resort and casino,

and, in the case of the Company and other members of the Restricted Group, the holding of shares and other interests permitted hereunder in Excluded Subsidiaries.

“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 or P-1 from S&P or Moody’s respectively and in each case maturing within nine months after the date of acquisition; and
- (f) money market 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.

“Permitted Liens” means the collective reference to:

- (a) in the case of any Property other than any Pledged Stock, Liens permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto (but only of the priority and to the extent of coverage expressly set forth in paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto); and
- (b) in the case of any Property consisting of Pledged Stock, non-consensual Liens permitted by paragraph 3 of Part B of Schedule 5 (*Covenants*) hereto to the extent arising by operation of law.

“**Person**” means any natural person, corporation, partnership, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

“**Plan**” means, at a particular time, any employee benefit plan that is subject to the requirements of section 412 of the Code or that is a Single Employer Plan and which any Loan Party or any Commonly Controlled Entity maintains, administers, contributes to or is required to contribute to or under which any Loan Party or any Commonly Controlled Entity could reasonably be expected to incur any liability.

“**Plans and Specifications**” means the plans, specifications, design documents, schematic drawings and related items for the design, architecture and construction of the Projects provided to the Technical Adviser in accordance with paragraph 28 of Part A of Schedule 2 (*Conditions Precedent*) as may be amended in accordance with any variation permitted pursuant to paragraph 15 of Part B of Schedule 5 (*Covenants*).

“**Pledge over Gaming Equipment and Utensils**” means the pledge so entitled dated on or about the date of this Agreement between the Company and the Security Agent.

“**Pledge over 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 Wynn International Share Charge and the Wynn HK Share Charge.

“**Post-Amendment Global Transfer Agreement**” has the meaning given in the Common Terms Agreement Second Amendment Agreement.

“**Power of Attorney**” means the irrevocable power of attorney dated on or about the date of this Agreement granted by the Company in favour of the Security Agent in connection with the Mortgage.

“**Pre-Amendment Global Transfer Agreement**” has the meaning given in the Common Terms Agreement Second Amendment Agreement.

“**Prime Contractor**” means Leighton Contractors (Asia) Limited, China Construction Engineering (Macau) Company Limited and China State Construction Engineering (Hong Kong) Limited.

“**Prime Contractor’s Completion Guarantee**” means:

- (a) the Amended and Restated Parent Completion Guarantee dated 14 September 2005 given by Leighton Holdings Limited and China Overseas Holdings Limited to the Company in support of the Prime Contractor’s obligations under the Construction Contract; and
- (b) the completion guarantee, if any, given by Leighton Holdings Limited and China Overseas Holdings Limited to the Company in support of the Prime Contractor’s obligations under the Diamond Construction Contract.

“Prime Contractor’s Performance Bond” means:

- (a) the two Payment and Performance Bonds dated 14 September 2005 in an aggregate amount of not less than USD45,722,399 and delivered to the Company in support of the Prime Contractor’s obligations under the Construction Contract; and
- (b) the Payment and Performance Bond, if any, delivered to the Company in support of the Prime Contractor’s obligations under the Diamond Construction Contract.

“Proceedings” has the meaning given to it in paragraph 12(i) of Part A of Schedule 5 (*Covenants*) hereto.

“Project” means:

- (a) the Hotel Project; or
- (b) the design, development and construction in accordance with the Concession Contract, the Construction Contract and the Diamond Construction Contract of a casino on land leased to the Company under the Land Concession Contract, the ownership, operation and maintenance thereof by the Company and the purchase of associated gaming equipment and utensils,

and **“Projects”** means both of them.

“Project Administration Services Agreement” (or **“PASA”**) means the Amended and Restated Project Administration Services Agreement between the PASA Agent and the Company dated 14 September 2005.

“Project Certificates of Occupancy” means the Licenças de Ocupação issued by the Macau SAR pursuant to applicable Legal Requirements for the Original Project.

“Project Costs” means all costs incurred, or to be incurred, in respect of the Projects, comprising, without double counting:

- (a) all costs incurred under the Construction Contract and the Diamond Construction Contract;
- (b) interest, commissions or other Financing Costs payable under the Senior Finance Documents prior to the Diamond Opening Date;
- (c) commitment commission payable under the Performance Bond Facility prior to the Diamond Opening Date;
- (d) guarantee fees, legal fees and expenses, financial advisory fees and expenses, technical fees and expenses (including fees and expenses of the Technical Adviser and the Insurance Advisor), commitment fees, management fees and corporate overhead agency fees (including fees and expenses of the Agents), interest, taxes (including value added tax) and other out-of-pocket expenses

payable by the Company or any other member of the Restricted Group under any documents related to the financing and administration of the Projects prior to the Diamond Opening Date;

- (e) the costs of acquiring Permits for the Projects prior to the Diamond Opening Date;
- (f) costs incurred in settling insurance claims in connection with Events of Loss and collecting Loss Proceeds at any time prior to the Diamond Opening Date;
- (g) working capital costs incurred prior to the Diamond Opening Date; and
- (h) cash to collateralise commercial letters of credit to the extent that payment of any such cash amount to the vendor or materialman who is the beneficiary of such letter of credit would have constituted a "Project Cost".

"Project Documents" means:

- (a) the Concession Contract, the Land Concession Contract, the Construction Contract, the Prime Contractor's Completion Guarantee, the Prime Contractor's Performance Bond, the Project Administration Services Agreement, the IP Agreement and each Payment and Performance Bond issued to the Company or any other member of the Restricted Group; and
- (b) any other document or agreement entered into by the Company or any other member of the Restricted Group (other than the Senior Finance Documents),

each as the same may be amended from time to time in accordance with the terms and conditions of this Agreement and thereof.

"Project Facility" means the term loan facilities provided pursuant to the Project Facility Agreement.

"Project Facility Agent" means Société Générale Asia Limited as facility agent for the Project Facility Lenders or its successor appointed in accordance with this Agreement.

"Project Facility Agreement" means the agreement so entitled between the Company, the Project Facility Agent and the Project Facility Lenders.

"Project Facility Availability Period" means, in relation to the Project Facility, the period specified in respect thereof in Clause 4.2 (*Project Facility Availability Period*).

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

"Project Facility Lender" means a lender identified as such in Part B of Schedule 1 (*Project Facility Lenders*) or a Transferee in respect of the Project Facility.

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

“Project Lending Group” means the Project Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Project Facility Agreement.

“Project Revenues” means all income and receipts of the Restricted Group, including those derived from the ownership or operation of the Projects or the Permitted Businesses, including payments received under any Project Document, net payments, if any, received under Hedging Agreements, Liquidated Damages, Insurance Proceeds, Eminent Domain Proceeds, together with any receipts derived from the sale of any property pertaining to the Projects or the Permitted Businesses or incidental to the operation of the Projects or the Permitted Businesses, all as determined in conformity with cash accounting principles, and the proceeds of any condemnation awards relating to the Projects or the Permitted Businesses *provided always* that Project Revenues shall not include 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.

“Project Revolving Credit Facility” has the meaning given in the Revolving Credit Facility Agreement.

“Project Security” means any Property expressed to be subject to any Lien created or purported to be created under any of the Security Documents.

“Project Schedule” means the schedule referred to in paragraph 25 of Part A of Schedule 2 (*Conditions Precedent*).

“Project Works” means the design, development and construction of the Projects and any other works contemplated by the Construction Contract.

“Projections” has the meaning given in paragraph 2(c) of Part A of Schedule 5 (*Covenants*).

“Property” means any property or assets including without limitation any right or interest (whether legal or equitable) in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

“Quarterly Date” means:

- (a) with respect to the first Quarterly Date, the last day of the first full Fiscal Quarter falling after the Second Amendment Signing 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 6 of Schedule 8 (*Hedging Arrangements*).

“**Recovering Senior Secured Creditor**” has the meaning given in Clause 25.1 (*Payments to Senior Secured Creditors*).

“**Reference Banks**”, in relation to any Facility Agreement, has the meaning given in such Facility Agreement.

“**Reinsurance**” means any contract or policy of reinsurance from time to time required by paragraph 1.2 of Schedule 7 (*Insurance*) to be taken out or effected in respect of any Direct Insurance.

“**Reinsurance Broker’s Letter of Undertaking**” means a letter of undertaking in substantially the form set out in Appendix 6 to Schedule 7 (*Insurance*) or in such other form as may be approved by the Intercreditor Agent acting in consultation with the Insurance Adviser, such approval not to be unreasonably withheld.

“**Reinsurer**” means an international reinsurer of good standing and responsibility with whom a Reinsurance is placed from time to time in accordance with Schedule 7 (*Insurance*).

“**Related Party**” means:

- (a) any 80% (or more) owned Subsidiary, heir, estate, lineal descendent or immediate family member of each of Mr Wynn or Mr Okada; and
- (b) any trust, corporation, partnership or other entity, the beneficiaries, equity holders, partners, owners or Persons directly or indirectly beneficially holding an 80% or more controlling interest of which consist of Mr Wynn and/or such other Persons referred to in paragraph (a) above.

“**Release Date**” means the date on which the Intercreditor Agent notifies the Company that the following conditions have been satisfied:

- (a) receipt by the Intercreditor Agent of confirmation from each Agent 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.

“Relevant Party” means a Person (other than a Substantial Shareholder or, in respect only of his direct shareholding in the Company as at the Signing Date, Mr Wong Chi Seng) who, legally or beneficially, directly or indirectly, owns or holds any of the outstanding Capital Stock of the Company other than directly or indirectly through Wynn International.

“Relevant Party’s Undertaking” means the undertakings set out in paragraph 3 of schedule 4 of the term sheet referred to in the underwriting agreement between Wynn Resorts, the Company, Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Société Générale Asia Limited dated 23 June 2005.

“Reorganization” means, with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of section 4241 of ERISA.

“Repair Plan” has the meaning given in paragraph 5 of Schedule 9 (*Mandatory Prepayment*).

“Repayment Date” means, in relation to a Term Loan Facility:

- (a) the First Repayment Date for such Facility; and
- (b) each subsequent date falling three months thereafter.

“Reportable Event” means any of the events set forth in section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under regulations under ERISA.

“Required Lenders” means:

- (a) in relation to any Decision other than on a Fundamental Term, Lenders (and, after the occurrence and continuation of a Hedging Voting Right Event in relation to any Hedging Counterparty, that Hedging Counterparty) who:
 - (i) have notified the Intercreditor Agent of their vote in respect of such Decision within the time required by the Intercreditor Agent pursuant to this Agreement; and
 - (ii) hold, in aggregate, more than 50% of the Voting Entitlements of all such Senior Secured Creditors who have so notified their votes; and
- (b) in relation to a Decision on a Fundamental Term, all Lenders (and, after the occurrence of a Hedging Voting Rights Event in relation to a Hedging Counterparty that is continuing, that Hedging Counterparty).

“Resort Management Agreement” means any agreement entered into by the Company in accordance 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 accordance with the Concession Contract and all other applicable Legal Requirements of an Excluded Project.

“Responsible Officer” means, as to any Person in respect of any matter, the chief executive officer, president, managing director, chief financial officer, chief operating officer or treasurer of such Person duly authorised in respect of such matter, but in any event, with respect to financial matters, the chief financial officer or treasurer of such Person. Unless otherwise qualified, all references to a “Responsible Officer” shall refer to a Responsible Officer of the Company.

“Restricted Group” means the Group other than any Excluded Subsidiary.

“Restricted Party” means any person listed:

- (a) in the Annex to the Executive Order;
- (b) on the “Specially Designated Nationals and Blocked Persons” maintained by the OFAC; or
- (c) in any successor list to either of the foregoing.

“Restricted Payments” has the meaning given to it in paragraph 6 of Part B of Schedule 5 (*Covenants*) hereto.

“Retainage Amounts” means, at any given time, amounts which have accrued and are owing to a Contractor under the terms of a Project Document (other than the IP Agreement) for work or services already provided but which at such time (and in accordance with the terms of such Project Document) are being withheld from payment to the Contractor, until certain subsequent events (e.g. completion benchmarks) have been achieved under the Project Document.

“Revolving Credit Facilities” means each of the revolving loan facilities to be provided under the Revolving Credit Facility Agreements.

“Revolving Credit Facility Agent” means Société Générale, Hong Kong 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) the Additional Lender Facility Agreement.

“Revolving Credit Facility Availability Period” means the period specified in Clause 4.3 (*Revolving Credit Facility Availability Period*).

“Revolving Credit Facility Lender” means a lender identified as such in Part C of Schedule 1 (*Revolving Credit Facility Lenders*) or a Transferee in respect of the Revolving Credit Facility made available pursuant to the Revolving Credit Facility Agreement.

“Revolving Credit Facility Termination Date” means, in relation to the Revolving Credit Facilities, the fifth anniversary of the Second Amendment Signing Date.

“Revolving Lending Group” means the Revolving Credit Facility Lenders, acting as a lending group in accordance with, and subject to the decision making rules under, the Revolving Credit Facility Agreement.

“SEC” means the Securities and Exchange Commission (or successors thereto) of the United States of America.

“Second Amendment Signing Date” means the date of the Common Terms Agreement Second Amendment Agreement.

“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 Société Générale, Hong Kong Branch in its capacity as agent and security trustee for the Secured Parties or its successor appointed in accordance with the Deed of Appointment and Priority.

“Security Documents” means:

- (a) the Mortgage;
- (b) the Power of Attorney;
- (c) the Land Security Assignment;
- (d) the Assignment of Rights;
- (e) the Pledge over Gaming Equipment and Utensils;
- (f) the Pledge over Onshore Accounts;
- (g) the Assignment of Insurances;
- (h) the Assignment(s) of Reinsurances;
- (i) the Floating Charge;
- (j) the Livranças and the Livrança Covering Letter;
- (k) the Debenture;
- (l) the US Operating Account Control Agreement;
- (m) the Wynn Pledgors’ Guarantee;
- (n) the Wong Share Pledge and the Wong Consent;
- (o) the Company Share Pledge;

- (p) the Wynn International Share Charge;
- (q) the Wynn HK Share Charge;
- (r) the Sponsors' Subordination Deed;
- (s) the Deed of Appointment and Priority;
- (t) each Direct Agreement;
- (u) 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 (including, if and when entered into, the Charge over HK Accounts) and any documents entered into pursuant to any of the documents referred to in this definition, including any such document notifying or acknowledging the granting or creation of such security or creating or evidencing security over an Account; and
- (v) any document entered into pursuant to any further assurance provisions set out in any of the documents referred to in this definition which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document and any other document which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Security Document.

"Senior Debt" means, at any date, the sum of all outstanding Advances made under the Facilities as at such date.

"Senior Finance Documents" means:

- (a) each Facility Agreement;
- (b) this Agreement;
- (c) each Security Document;
- (d) the Ancillary Finance Documents;
- (e) each Hedging Agreement; and
- (f) any other document entered into which the Intercreditor Agent and the Company (both acting reasonably) agree to designate as a Senior Finance Document.

"Senior Secured Creditors" means the GCLAs, the Agents, the Security Agent, the Lenders and the Hedging Counterparties.

"Senior Secured Indebtedness" means all Financial Indebtedness (actual or contingent) of the Company to the Senior Secured Creditors under the Senior Finance Documents together with all other amounts payable by the Company to the Senior

Secured Creditors (or any of them) under or arising out of the Senior Finance Documents.

“**Shareholder Guarantees**” means the Wynn Pledgors’ Guarantee and the Wong Share Pledge.

“**Shareholder Loans**” means Financial Indebtedness advanced by one or more of the Shareholders, the Wynn Obligor or Affiliates of the Wynn Obligor to the Company that is subordinated in accordance with the terms provided by the Sponsors’ Subordination Deed.

“**Shareholders**” means Wynn HK, Wynn International and Mr Wong Chi Seng.

“**Shareholders’ Agreement**” means the amended and restated shareholders’ agreement entered into between the Shareholders and the Company dated 16 September 2004.

“**Sharing Payment**” has the meaning given in Clause 25.1 (*Payments to Senior Secured Creditors*).

“**Signing Date**” means the date of signing of this Agreement.

“**Single Employer Plan**” means any Plan that is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

“**Site**” means the land described in the Land Concession Contract.

“**Site Easements**” the easements appurtenant, easements in gross, licence agreements and other rights running for the benefit of the Company and/or appurtenant to the Site.

“**Site Facilities**” means

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

“**Solvent**” means, when used with respect to any Person, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature, and (e) such Person is not insolvent within the meaning of any applicable Legal Requirements. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured or unsecured or (B) right to an equitable remedy

for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, secured or unsecured.

“**Special Gaming Tax Account**” means the account so designated in Schedule 6 (*Accounts*).

“**Sponsors’ Subordination Deed**” means the deed so entitled dated on or about the date of this Agreement between the Wynn Obligor, the Company and the Security Agent.

“**Standard & Poor’s**” or “**S&P**” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or its successor

“**Subconcession**” means any subconcession for the operation of games of chance and other games in casinos in the Macau SAR granted by the Company under the Concession Contract with the approval of Macau SAR and in accordance with paragraph 17 of Part B of Schedule 5 (*Covenants*).

“**Subcontract**” means any subcontract or purchase order entered into with any Subcontractor.

“**Subcontractor**” means any direct or indirect subcontractor of any tier under any Project Document.

“**Subordinated Debt**” means Financial Indebtedness that is subordinated in accordance with the terms provided by the Sponsors’ Subordination Deed.

“**Subsidiary**” means as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

“**Substantial Completion**” means, in relation to the Original Project, “Original Project Substantial Completion” (as defined in the Construction Contract) in respect of the Original Project taken as a whole and, in relation to the Expansion, “Expansion Project Substantial Completion” (as defined in the Construction Contract) in respect of the Expansion taken as a whole.

“**Substantial Shareholder**” means any Person (other than in respect only of his direct shareholding in the Company as at the Signing Date, Mr Wong Chi Seng) who, legally or beneficially, directly or indirectly, owns or holds 5% or more of the outstanding Capital Stock of the Company other than directly or indirectly through Wynn International.

“**Substantial Shareholder’s Undertaking**” means the undertakings set out in paragraph 2 of schedule 4 of the term sheet referred to in the underwriting agreement between Wynn Resorts, the Company, Banc of America Securities Asia Limited, Deutsche Bank AG, Hong Kong Branch and Société Générale Asia Limited dated 23 June 2005 given by each Substantial Shareholder on or about 14 September 2005.

“**Swap Agreements**” means interest rate swaps, caps or collar agreements or similar arrangements providing for protection against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies.

“**Synthetic Lease Obligations**” means all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Financial Indebtedness of such Person (without regard to accounting treatment).

“**Taking**” means a taking or voluntary conveyance of all or part of any of the Project Security, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority affecting any of the Project Security or any portion thereof.

“**Tax**” means any tax (including, without limitation, value-added and income), levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“**Tax Adviser**” means Ernst & Young as the tax adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letter dated 10 June 2004.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means any deduction or withholding for or on account of Tax.

“**Tax Payment**” means an increased payment made by the Company to a Senior Secured Creditor under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

“**Technical Adviser**” means, as the case may be:

- (a) Mott Connell Ltd. as the technical adviser acting on behalf of all Senior Secured Creditors pursuant to the engagement letters dated 3 February 2004, 27 April 2005, 30 April 2007 and any subsequent engagement letter to be entered into;
- (b) the technical adviser acting on behalf of all Senior Secured Creditors according to the scope of work and fees agreed by the Senior Secured

- Creditors and approved by the Company (such approval not to be unreasonably withheld or delayed) before the CP Satisfaction Date; or
- (c) the technical adviser appointed by the Intercreditor Agent and, unless an Event of Default has occurred and is continuing, approved by the Company (such approval not to be unreasonably withheld or delayed) from time to time after the CP Satisfaction Date to act on behalf of the Senior Secured Creditors as and when required to advise the Senior Secured Creditors in respect of the Projects.

“**Technical Adviser’s Advance Certificate**” has the meaning given in paragraph 5 of sub-section I of Part B of Schedule 2 (*Conditions Precedent*).

“**Technical Adviser’s Monthly Report**” means a monthly status report, in form and substance acceptable to the Intercreditor Agent, delivered to the Intercreditor Agent on or before the fifteenth day of each calendar month up to and including the calendar month immediately following the Expansion Opening Date and describing in reasonable detail the progress of the construction of the Projects, including reviews and assessments of the Project Schedule and the Monthly Construction Period Report and each of its attachments delivered during the preceding calendar month.

“**Term Loan Facilities**” means each of the term loan facilities provided pursuant to the Term Loan Facilities Agreements.

“**Term Loan Facilities Agreements**” means the Hotel Facility Agreement and the Project Facility Agreement.

“**Term Loan Facility Lender**” means a Hotel Facility Lender or a Project Facility Lender.

“**Termination Event**” has the meaning given in paragraph 12 (*Notices*) of Part A of Schedule 5 (*Covenants*).

“**Termination Proceeds**” means compensation or other proceeds paid by the Macau SAR in relation to the termination or rescission of the Concession Contract.

“**Total Debt**” means, in relation to the Restricted Group at any time, the aggregate principal amount of all Financial Indebtedness of each member of the Restricted Group at such time 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) 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.

“**Underwriting Agreement**” means the underwriting agreement between the Company and the GCLAs dated 30 April 2007.

“**Unpaid Sum**” means any sum due and payable by an Obligor but unpaid under the Senior Finance Documents.

“**Upfront Premium Account**” means the account so designated in Schedule 6 (*Accounts*).

“**US Operating Account**” means the account so designated in Schedule 6 (*Accounts*).

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

“**USD**” or “**US dollars**” denotes the lawful currency of the United States of America.

“**USD Debt Service Account**” means the account so designated in Schedule 6 (*Accounts*).

“**USD Debt Service Reserve Account**” means the account so designated in Schedule 6 (*Accounts*).

“USD Operating Account” means the account so designated in Schedule 6 (*Accounts*).

“Voting Entitlement” means, in respect of a Decision:

- (a) in relation to a Lender, the sum of the US dollar equivalent amounts, as at the Decision Date for such Decision, of 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.

“Wholly Owned Subsidiary” means, as to any Person, any other Person all of the Capital Stock of which (other than directors’ qualifying shares required by any Legal Requirement) is beneficially owned by such Person directly and/or through other Wholly Owned Subsidiaries.

“Wong Consent” means the written consent dated 2 September 2004 given by Mrs Cheung Wai Hing in relation to the obligations of Mr Wong Chi Seng under and the Security granted pursuant to the Wong Share Pledge.

“Wong Option Agreement” means the option agreement between Mr Wong Chi Seng, Wynn International and the Company delivered on or about 14 September 2004.

“Wong Share Pledge” means the document so entitled dated on or about 14 September 2004 between Mr Wong Chi Seng and the Security Agent.

“Working Capital” means, at any date, an amount equal to Current Assets on such date minus Current Liabilities on such date.

“Wynn Asia” means Wynn Group Asia, Inc.

“Wynn Event” means:

- (a) the first day on which
 - (i) Mr Wynn and his Related Parties as a group control less than 20% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than size of equity interests (excluding, for purposes of calculating the outstanding Voting Stock of Wynn Resorts pursuant to this paragraph (a)(i), shares of Voting Stock issued in a primary

issuance by Wynn Resorts in one or more bona fide public offerings of additional Voting Stock of Wynn Resorts); or

- (ii) Mr Wynn and his Related Parties as a group (excluding Mr Okada and his Related Parties) control less than 10% of the outstanding Voting Stock of Wynn Resorts, measured by voting power rather than size of equity interests;
- (b) the first day prior to 31 December 2007 on which Mr Wynn does not act as either the Chairman of the Board of Directors of Wynn Resorts or the Chief Executive Officer of Wynn Resorts, other than:
- (i) as a result of death or disability; or
 - (ii) if the Board of Directors of Wynn Resorts, exercising their fiduciary duties in good faith, removes or fails to re-appoint Mr Wynn as Chairman of the Board of Directors of Wynn Resorts or Chief Executive Officer of Wynn Resorts;
- (c) the first day on which Wynn Resorts ceases to beneficially own, directly or indirectly, 51% of the outstanding Capital Stock of the Company (measured by both voting power and size of equity interests); or
- (d) 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 and the Security Agent.

“**Wynn Obligor**” means Wynn Holdings, Wynn Asia, Wynn International and Wynn HK.

“**Wynn Pledgors’ Guarantee**” means the guarantee so entitled dated on or about the date of this Agreement between Wynn Asia, Wynn Holdings, Wynn HK, Wynn International and the Security Agent.

“**Wynn Resorts**” means Wynn Resorts, Limited.

“**Wynn Resorts Group**” means Wynn Resorts and each of its Subsidiaries for the time being.

Principles of Construction

Any reference in this Agreement to:

“**continuing**”, in relation to a Default or an Event of Default, shall be construed as a reference to a Default or an Event of Default which has not been remedied or waived;

the “**equivalent**” of one currency (the “**original currency**”) in another currency (the “**conversion currency**”) shall (unless otherwise specified) be determined by the Intercreditor Agent or such Person nominated by the Intercreditor Agent for that purpose by reference to its spot rate of exchange in Hong Kong for the purchase of the conversion currency with the original currency at or about 11:00 a.m. on the date of the determination or if no such spot rate of exchange exists on that date, by such other method as the Intercreditor Agent (in consultation with the Company) shall reasonably determine;

“**including**” is without limitation;

a “**month**” is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that:

- (a) if any such numerically corresponding day is not a Business Day, such period shall end on the immediately succeeding Business Day to occur in that next succeeding calendar month or, if none, it shall end on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in that next succeeding calendar month, that period shall end on the last Business Day in that next succeeding calendar month,

(and references to “**months**” shall be construed accordingly);

“**repay**” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “**prepay**” (or, as the case may be, the corresponding derivative form thereof); and

a document being in “**substantially the Agreed Form**” or in substantially a specified form shall be construed as meaning such document being in the same form as the Agreed Form or the specified form save for the insertion of information left in blank or typographical errors.

Rules of Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include every gender;

- (c) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, confirmed, novated or replaced from time to time;
- (d) references to this Agreement are references to this Agreement and the Schedules;
- (e) references to clauses and Schedules are references to clauses of, and Schedules to, this Agreement;
- (f) headings are for convenience only and shall be ignored in construing this Agreement;
- (g) references to any party to this Agreement include references to its respective successors, permitted transferees and permitted assigns;
- (h) references to law shall be construed as references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, subordinate legislation, rule of common law and of equity and judgement;
- (i) references to any law are references to that law as amended, consolidated, supplemented or replaced from time to time;
- (j) references to any judgement include references to any order, injunction, decree, determination or award of any court or tribunal; and
- (k) a time of day is a reference to Hong Kong time unless otherwise stated.

1.4 **Conflict with a Senior Finance Document**

In the case of any conflict between:

- 1.4.1 the terms of this Agreement and the terms of any other Senior Finance Document (save for the Facility Agreements and the Deed of Appointment and Priority), the terms of this Agreement shall prevail;
- 1.4.2 the terms of this Agreement and the terms of any Facility Agreement, the terms of that Facility Agreement shall prevail (save in the case of Clause 33 (*Intercreditor Arrangements*) which shall prevail over the terms of the Facility Agreement);
- 1.4.3 the terms of this Agreement and the terms of the Deed of Appointment and Priority, the terms of the Deed of Appointment and Priority shall prevail; or
- 1.4.4 the terms of the Deed of Appointment and Priority and the terms of any Facility Agreement, the terms of the Deed of Appointment and Priority shall prevail.

1.5 **Third party rights**

- 1.5.1 The Contracts (Rights of Third Parties) Act 1999 applies to:

- (a) sub-clause 3.2.5 of Clause 3.2 (*Completion of an Advance Request*) but only for the benefit of the relevant officer of the Company;
 - (b) Clause 23.10 (*No Actions*) but only for the benefit of any director, officer or employee of any of the Agents or any of the GCLAs;
 - (c) paragraph 5 of Part A of Schedule 2 (*Conditions Precedent*) but only for the benefit of the relevant Responsible Officer;
 - (d) paragraph 1 of Part A of Schedule 5 (*Covenants*) but only for the benefit of the relevant Responsible Officers of the Company; and
 - (e) Clause 28 (*Non-Recourse Liability*) but only for the benefit of the Operatives,
- subject always to the terms of Clause 37 (*Governing Law*) and Clause 38 (*Jurisdiction*).

1.5.2 Except as provided in sub-clause 1.5.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1.5.3 Notwithstanding any term of any Senior Finance Document, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

1.6 **Advisers**

Where this Agreement contemplates the doing of any act or thing by an Adviser, the Intercreditor Agent shall use its reasonable endeavours to ensure that such act or thing is done by such Adviser in a timely manner.

2. **CONDITIONS PRECEDENT**

2.1 **Conditions Precedent to the CP Satisfaction Date**

2.1.1 The right of the Company to submit an Advance Request for the Initial Advance is subject to the Company having satisfied the conditions precedent set out in Part A of Schedule 2 (*Conditions Precedent*) in form and substance acceptable to the Intercreditor Agent.

2.1.2 In relation to each Facility, the Company shall be deemed to have satisfied:

- (a) the conditions precedent set out in
 - (i) paragraph 1(a) (in respect only of the Concession Contract, the Land Concession Contract, the Concession Contract Performance Bond and the IP Agreement);
 - (ii) paragraph 1(c) (in respect only of the Notice to Proceed);

- (iii) paragraph 2(a) (in respect only of the Power of Attorney, the Livranças and the Livrança Covering Letter);
- (iv) paragraph 2(b);
- (v) paragraph 2(c) (in respect only of the Power of Attorney, the Livranças and the Livrança Covering Letter);
- (vi) paragraph 3(a);
- (vii) paragraph 3(c);
- (viii) paragraph 3(d);
- (ix) paragraph 4;
- (x) paragraph 5(a)(i);
- (xi) paragraph 5(b)(i) (in respect only of: China Overseas Holdings Limited, China State Construction Engineering (Hong Kong) Limited, Leighton Contractors (Asia) Limited, Leighton Holdings Limited, Wynn Asia, Wynn Resorts Holdings LLC, Wynn International, Wynn Resorts, Wynn HK, Wynn Holdings, Wynn Design & Development, LLC);
- (xii) paragraph 8(b);
- (xiii) paragraph 13;
- (xiv) paragraph 14(o);
- (xv) paragraph 14(p);
- (xvi) paragraph 16;
- (xvii) paragraph 17(a)(i);
- (xviii) paragraph 17(a)(ii);
- (xix) paragraph 17(a)(iv);
- (xx) paragraph 17(a)(v);
- (xxi) paragraph 17(a)(vi);
- (xxii) paragraph 17(a)(vii);
- (xxiii) paragraph 17(b);
- (xxiv) paragraph 17(c);
- (xxv) paragraph 18;
- (xxvi) paragraph 19;

- (xxvii) paragraph 25;
- (xxviii) paragraph 26; and
- (xxix) paragraph 28,

of Part A of Schedule 2 (*Conditions Precedent*) following execution and delivery of this Agreement by each of the Persons expressed to be a party hereto; and

- (b) the remaining conditions precedent in this Clause 2.1 if, prior to the date of the Advance Request for the Initial Advance, the Intercreditor Agent has notified the Company and the Facility Agents accordingly.

2.1.3 Notwithstanding anything in this Agreement to the contrary, the Company may, from time to time prior to the CP Satisfaction Date, but no more frequently than once every five Business Days, submit or resubmit to the Intercreditor Agent for approval (if such approval is required) additional documents, instruments, agreements, certificates and other items listed under conditions precedent in Part A of Schedule 2 (*Conditions Precedent*) that were not deemed satisfied under Clause 2.1.2(a). The Intercreditor Agent agrees to promptly review and, where it considers appropriate under the terms of the Senior Finance Documents, determine whether to approve any such submittals or resubmittals by the Company (or, if it considers it not appropriate to make such determination acting on its own, the Intercreditor Agent agrees promptly to forward to the relevant Senior Secured Creditors such submittals or resubmittals for approval). Upon approval (whether by the Intercreditor Agent or the Required Lenders, as the case may be), the Intercreditor Agent shall notify the Company and the Facility Agents accordingly, and the item(s) so submitted (or resubmitted) and notified approved shall be deemed to have been satisfied with the same effect as the conditions precedent enumerated in Clause 2.1.2(a) as of the date of such notification.

2.2 **Conditions Precedent to each Advance**

The obligation of each Lender to participate in each Advance under a Term Loan Facility and a Revolving Credit Facility is subject to:

- (a) the Company having satisfied the conditions set out in Part B of Schedule 2 (*Conditions Precedent*) in respect of such Facility in form and substance acceptable to the Intercreditor Agent; and
- (b) in respect of each Advance under a Revolving Credit Facility, the Company having procured that each of the:
 - (i) Sponsor's Subordination Deed Deed of Release, Amendment and Acknowledgment of Security;
 - (ii) Debenture Deed of Amendment and Release;

- (iii) Wynn International Share Charge Deed of Amendment and Acknowledgment of Security;
- (iv) Wynn HK Share Charge Deed of Amendment and Acknowledgment of Security;
- (v) Charge over HK Accounts Deed of Acknowledgment;
- (vi) US Operating Account Control Agreement Confirmation Agreement;
- (vii) Amendment to Mortgage;
- (viii) Amendment to Land Security Assignment;
- (ix) Amendment to Assignment of Rights;
- (x) Amendment to Pledge over Gaming Equipment and Utensils;
- (xi) Amendment to Pledge over Onshore Accounts;
- (xii) Amendment to Assignment of Insurances;
- (xiii) Amendment to Floating Charge;
- (xiv) Amendment to Wong Share Pledge; and
- (xv) Amendment to Company Share Pledge,

have been registered as necessary at Companies House in England and Wales, the Hong Kong Companies Registry, the Financial Supervision Commission of the Isle of Man, the Conservatória dos Registos Comercial e de Bens Móveis in Macau SAR, the Conservatória do Registo Predial in Macau SAR and the applicable Uniform Commercial Code filing office for local/county, state and federal Uniform Commercial Code filings, as applicable, based on the Senior Finance Document subject to the filing by no later than the date falling 30 days from the Second Amendment Signing Date.

2.3 **Independent rights and obligations of Lenders**

- 2.3.1 The obligations of each Senior Secured Creditor under the Senior Finance Documents are several. Failure by a Senior Secured Creditor to perform its obligations under the Senior Finance Documents does not affect the obligations of any other party under the Senior Finance Documents. No Senior Secured Creditor is responsible for the obligations of any other Senior Secured Creditor under the Senior Finance Documents.
- 2.3.2 The rights of each Senior Secured Creditor under or in connection with the Senior Finance Documents are separate and independent rights and any debt arising under the Senior Finance Documents to a Senior Secured Creditor from an Obligor shall be a separate and independent debt.

- 2.3.3 A Senior Secured Creditor may, except as otherwise stated in the Senior Finance Documents, separately enforce its rights under the Senior Finance Documents.
- 2.3.4 Notwithstanding any other provision of the Senior Finance Documents, no Lender under a Term Loan Facility shall be obliged to make or participate in an Advance on a proposed Advance Date if drawdowns under another Term Loan Facility have been withheld, suspended or cancelled in accordance with the Senior Finance Documents.

3. **DRAWDOWN OF ADVANCES**

3.1 **Drawdown conditions**

Subject to the terms of this Agreement and the Facility Agreements, the Company may request, and the relevant Lending Group 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; and
- 3.1.2 in the case of the Term Loan Facilities, no other Advance Request has been served by the Company in respect of any Term Loan Facility in the same month.

3.2 **Completion of an Advance Request**

Each Advance Request is irrevocable and shall not be regarded as having been completed unless:

- 3.2.1 it is signed by a Responsible Officer of the Company whose specimen signature has been delivered to the Intercreditor Agent and who is identified as being authorised to so sign on behalf of the Company by a resolution of its Board of Directors, a copy of which, together with a certification in relation thereto by a Responsible Officer in substantially the form set out in paragraph 3(ii) of Part C of Schedule 2 (*Conditions Precedent*), has also been delivered to the Intercreditor Agent;
- 3.2.2 the proposed Advance Date is a Business Day within the relevant Availability Period;
- 3.2.3 it specifies:
- (a) the amount and 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 Loan Facilities) the purpose for which such Advances shall be applied (which shall be, in the case of Advances under the Hotel Facility, to pay or refinance payment of Hotel Project Costs and, in the case of Advances under the Project Facility, to pay or refinance payment of Project Costs which have, in each case, been incurred and paid or are due and payable, or which will or the Company reasonably expects might be incurred and be due and payable, prior to the date falling 30 days after the proposed Advance Date); and
- (e) (in the case of Advances under the Revolving Credit Facility) the purpose for which such Advances shall be applied (which shall be, in the case of Advances under the Hotel Revolving Credit Facilities, to pay or refinance payment of Hotel Project Costs or otherwise for purposes unconnected with the operation of casino games of chance or other forms of gaming and, in the case of Advances under the Project Revolving Credit Facilities to pay or refinance payment of Project Costs or the Company's general corporate purposes).

3.2.4 the amount requested under each Facility is not more than the aggregate for the time being of each Lender's Available Commitment under such Facility and, in the case of:

- (a) any Term Loan Facility, the amount requested is either a minimum amount of USD5,000,000 or (as the case may be) its HK dollar equivalent which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount;
- (b) the Hotel Facility, the US dollar equivalent of the amount requested, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs incurred and paid by the Company or which will or the Company reasonably expects might be incurred and be due and payable by it prior to the date falling 30 days after the proposed Advance Date;
- (c) the Hotel Revolving Credit Facilities under the Revolving Credit Facility, the US dollar equivalent of the amount requested, when aggregated with the aggregate amount of Advances under the Hotel Facility referred to in sub-paragraph (b) above and the US dollar equivalent amounts of all other Advances under the Hotel Revolving Credit Facilities which are outstanding or due to be made on or before the proposed Advance Date (other than any due to be repaid or prepaid

on or before such Advance Date) is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming incurred and paid or which will be incurred and paid by the Company; and

- (d) any Revolving Credit Facility, the amount requested is either a minimum amount of USD5,000,000 which is less than the aggregate for the time being of each Lender's Available Commitment under such Facility or, if less than such minimum amount, equal to this latter amount; and

3.2.5 it certifies, among other things and without any personal liability on the part of the officer of the Company signing such Advance Request, that:

- (a) (in the case of Advances under the Term Loan Facilities) the proceeds of any Advance under the Hotel Facility shall be applied to pay or refinance payment of Hotel Project Costs;
- (b) (in the case of Advances under the Term Loan Facilities) the US dollar equivalent amount of any Advance under the Hotel Facility, when aggregated with the US dollar equivalent amounts of all other Advances under the Hotel Facility, is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs incurred and paid by the Company or which will or the Company reasonably expects might be incurred and be due and payable by it prior to the date falling 30 days after the proposed Advance Date;
- (c) (in the case of Advances under the Hotel Revolving Credit Facilities) the US dollar equivalent of the amount requested, when aggregated with the aggregate amount of Advances under the Hotel Facility referred to in sub-paragraph (b) above and the US dollar equivalent amounts of all other Advances under the Hotel Revolving Credit Facilities which are outstanding or due to be made on or before the proposed Advance Date (other than any due to be repaid or prepaid on or before such Advance Date) is no greater than the US dollar equivalent amount of the aggregate of all Hotel Project Costs or other amounts unconnected with the operation of casino games of chance or other forms of gaming incurred and paid or which will be incurred and paid by the Company;
- (d) 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
- (e) 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

4. **AVAILABILITY PERIODS**

4.1 **Hotel Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Hotel Facility shall be made available from the Effective Date until the date falling 5 Business Days from the Effective Date.

4.2 **Project Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Project Facility shall be made available from the Effective Date until the date falling 5 Business Days from the Effective Date.

4.3 **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 date of issue of the Project Certificate of Occupancy for the Original Project until the earliest of:

- (a) the Termination Date (as defined in the Revolving Credit Facility Agreement); and
- (b) the date upon which the Advances thereunder are declared to be immediately due and payable pursuant to Clause 19.2 (*Remedies following an Event of Default*).

4.4 **Additional Lender Facility Availability Period**

Subject to other terms of the Senior Finance Documents, the Additional Lender Facility shall be made available from the date of issue of the Project Certificate of Occupancy for the Original Project until the earliest of:

- (a) the Termination Date (as defined in the 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.

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:

- (a) if prepaid prior to the Expansion Opening Date (other than in the case of paragraph (b)(i) below), equal the balance of the principal amount owing to all Term Loan Facility Lenders (and each of the Term Loan Facilities (and any Available Commitments thereunder) shall be automatically cancelled); or

- (b) if prepaid:
 - (i) using only the proceeds of Shareholder Loans not forming part of any other Equity required to be paid up or advanced in accordance with the terms of the Senior Finance Documents; or
 - (ii) following the Expansion Opening Date,
exceed an aggregate of USD10,000,000 or its equivalent or, if less, the balance of the principal amount owing to all Term Loan Facility Lenders.

8.2.2 Amounts prepaid under sub-clause 8.2.1 above shall be applied on the Interest Payment Date on which they are made *pro rata* between the Advances outstanding under the Term Loan Facilities and applied *pro rata* against the repayment instalments of those Advances.

8.3 **Mandatory Prepayment**

8.3.1 The Company shall prepay Advances 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 against the first year's repayment instalments thereof in order of maturity and thereafter in inverse order of maturity against the remaining repayment instalments of those Advances;
- (b) **second**, in cancellation of the Available Commitments under the Revolving Credit Facilities (and the Available Commitments of the Lenders under the Revolving Credit Facilities will be cancelled rateably); and
- (c) **thirdly**, in prepayment pro rata of Advances outstanding under the Revolving Credit Facilities (and any Available Commitments of the Lenders under the Revolving Credit Facilities associated therewith shall be automatically cancelled).

8.3.3 Each of the Facilities (and any Available Commitments thereunder) shall be automatically cancelled upon the Company being required to make prepayment pursuant to paragraph 7 of Schedule 9 (*Mandatory Prepayment*).

8.4 **Cancellation**

- (a) Save as provided in Clause 8.5 (*Prepayment and Cancellation of Individual Lenders*) and Clause 14 (*Illegality*), the Company may only cancel the whole or any part (being a minimum amount of USD25,000,000) of the Available

Commitments under the Revolving Credit Facilities made available pursuant to the Revolving Credit Facility Agreements on not less than thirty 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(h) of Part B of Schedule 5 (*Covenants*) or the amendment or waiver of paragraph 2.1 of Part B of Schedule 5 (*Covenants*),

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 If, following any prepayment pursuant to this Clause 8, the US dollar equivalent of the aggregate of the Notional Amounts of the Hedging Agreements is more than 125% of the US dollar equivalent of the aggregate of the Advances outstanding under the Term Loan Facilities following such prepayment, the Company shall reduce each such Notional Amount *pro rata* so that their US dollar equivalent is, in aggregate, not less than 50% and not more than 125% of the US dollar equivalent of the aggregate of such Advances (and, if the Term Loan Facilities are prepaid in full, the Company shall, subject to Schedule 8 (*Hedging Arrangements*), unwind all remaining transactions under the Hedging Agreements).

8.7 Replacement of Lender

If any Lender:

- (a) claims any amounts from the Company under Clauses 11.2, 11.3 or 12 hereof;
- (b) fails to make its portion of any Advance to be made by it on the relevant Advance Date; or
- (c) withholds its consent in any of the circumstances contemplated in Clause 8.5(d),

(an “**Affected Lender**”), the Company may (after paying all amounts then due under Clauses 11.2, 11.3 and 12 hereof to the Affected Lender and, in the case of paragraph (c) above, whilst the circumstances referred to therein continue) designate a non-Affected Lender, any commercial bank or any other financial institution or bank reasonably satisfactory to the Intercreditor Agent (the “**Replacement Lender**”) to

accept a transfer in accordance with Clause 21.6 of the Affected Lender's rights, benefits and obligations hereunder, and, promptly following such designation, the Affected Lender shall be obliged to execute the Novation Certificate required for such transfer in accordance with Clause 21.6 and the non-Affected Lender may, but shall not be obliged to, execute such Novation Certificate and, if it does so, shall be obliged to accept such transfer in accordance with Clause 21.6. 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 15 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.

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) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 60 days after the date the Non-Consenting Lender notifies the Company and the Intercreditor Agent of its failure or refusal to agree to any consent, waiver or amendment to the Senior Finance Documents requested by the Company; 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 Clause 33.1.2 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 or any equivalent United States or European Communities body (or any divisions of any of them or authority deriving power from any of them) is pending against a Lender (an “**Outgoing Lender**”) as a direct result of that Outgoing Lender’s (i) receipt of funds or other property from a Restricted Party or (ii) breach of any Anti-Terrorism Law, the Company may on 15 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 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 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 Effective Date and, thereafter, 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: (A) prior to the First Repayment Date, one, two, three or six months and (B) on and from the First Repayment Date, one, two or three 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 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 Hotel Facility or the Project 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, the Interest Payment Dates for such Advances coincide with (and are no more frequent than) the selected dates for payment of amounts to the Company under the Hedging Agreements.
- 9.3.7 Any Interest Period which would end on a day which is not a Business Day shall be extended to the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).
- 9.3.8 Interest on an Advance shall accrue from and including the first day of an Interest Period relating to such Advance up to but excluding the last day of such Interest Period.

9.4 **Default interest**

- 9.4.1 If the Company fails to pay any amount payable by it under a Senior Finance Document on its due date, interest shall accrue on such Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to sub-clause 9.4.2 below, is 2% higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted an Advance under the relevant Facility Agreement in the currency of the overdue amount (or, where there is no such relevant Facility Agreement, an Advance in the relevant currency under the Hotel

Facility Agreement) for successive Interest Periods, each of a duration selected by the relevant Facility Agent (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 After making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall, if so requested in writing by the Intercreditor Agent, deliver to the Intercreditor Agent the payment evidence reasonably satisfactory to the relevant Senior Secured Creditor that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority (*provided* that the Company shall not be obliged to provide any such evidence from a Governmental Authority to the extent that it is not provided by such Governmental Authority).

11.3 **Tax indemnity**

11.3.1 The Company shall (within fifteen days of demand by the Intercreditor Agent) pay to a Senior Secured Creditor an amount equal to the loss, liability or cost which that Senior Secured Creditor determines has been (directly or indirectly) suffered for or on account of Tax by that Senior Secured Creditor in respect of a Senior Finance Document including Tax arising on payment of any premia or other sums payable on an Ancillary Finance Document whether or not such payment is required to be made by such Senior Secured Creditor.

11.3.2 Sub-clause 11.3.1 above shall not apply:

(a) with respect to any Tax assessed on a Senior Secured Creditor:

- (i) under the law of the jurisdiction in which that Senior Secured Creditor is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Senior Secured Creditor is treated as resident for tax purposes; or
- (ii) under the law of the jurisdiction in which that Senior Secured Creditor's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Senior Secured Creditor; or

(b) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*).

11.3.3 A Senior Secured Creditor making, or intending to make a claim under sub-clause 11.3.1 above shall promptly notify the Intercreditor Agent of the event which shall give, or has given, rise to the claim, following which the Intercreditor Agent shall promptly notify the Company.

11.3.4 A Senior Secured Creditor shall, on receiving a payment from the Company under this Clause 11.3, notify the Intercreditor Agent.

11.3.5 Each Senior Secured Creditor shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of the

loss, liability or cost referred to in sub-clause 11.3.1 above and the basis thereof.

11.4 **Tax Credit**

If the Company makes a Tax Payment and the relevant Senior Secured Creditor determines that:

11.4.1 a Tax Credit is attributable to that Tax Payment; and

11.4.2 that Senior Secured Creditor has obtained, utilised and retained that Tax Credit,

that Senior Secured Creditor shall pay an amount to the Company which that Senior Secured Creditor determines shall leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Company.

11.5 **Stamp taxes**

The Company shall pay and, within fifteen days of demand, indemnify each Senior Secured Creditor against any cost, loss or liability that a Senior Secured Creditor incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Senior Finance Document.

12. **INCREASED COSTS**

12.1 **Increased costs**

12.1.1 Subject to Clause 12.3 (*Exceptions*), the Company shall, within fifteen days of a demand by the Intercreditor Agent, pay for the account of a Lender the amount of any Increased Costs incurred by that Lender or any Affiliate of that Lender as a result of:

- (a) the introduction of or change in (or in the interpretation, administration or application of) any law or regulation after the Signing Date; or
- (b) compliance with any request or requirement relating to the maintenance of capital or any other request from or requirement of any central bank or other fiscal, monetary, regulatory or other authority.

12.1.2 In this Agreement "**Increased Costs**" means:

- (a) a reduction in the rate of return from a Facility or on a Lender's (or its Affiliate's) overall capital (including as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Lender or Affiliate);
- (b) an additional or increased cost; or

(c) a reduction of any amount due and payable under any Senior Finance Document, which is incurred or suffered by a Lender or any of its Affiliates to the extent that it is attributable to that Lender's having entered into or maintaining its commitment or funding or performing its obligations under any Senior Finance Document.

12.2 **Increased cost claims**

12.2.1 When a Senior Secured Creditor intends to make a claim pursuant to Clause 12.1 (*Increased costs*), it shall notify the Intercreditor Agent of the event giving rise to the claim, following which the Intercreditor Agent shall promptly notify the Company.

12.2.2 Each Senior Secured Creditor shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of its Increased Costs and the basis thereof.

12.3 **Exceptions**

Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

12.3.1 attributable to a Tax Deduction required by law to be made by the Company and compensated for by payment under Clause 11 (*Tax Gross Up and Indemnities*);

12.3.2 compensated for by Clause 11.3 (*Tax indemnity*) (or would have been compensated for under Clause 11.3 (*Tax indemnity*) but was not so compensated solely because one of the exclusions in sub-clause 11.3.2 of Clause 11.3 (*Tax indemnity*) applied); or

12.3.3 attributable to the wilful breach by the relevant Senior Secured Creditor or their Affiliates of any law or regulation.

13. **CURRENCY AND OTHER INDEMNITIES**

13.1 **Currency Indemnity**

If any Senior Secured Creditor receives an amount in respect of the Company's liability to that Senior Secured Creditor under any Senior Finance Document or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency (the "**contractual currency**") in which the amount is expressed to be payable under that Senior Finance Document:

13.1.1 the Company shall indemnify that Senior Secured Creditor as an independent obligation against any costs, loss or liability arising out of or as a result of the conversion; and

13.1.2 if the amount received by that Senior Secured Creditor, when converted into the contractual currency at a market rate in the usual course of its business is less than the amount owed in the contractual currency and such is specified to the Company in reasonable detail, the Company shall, within 3 Business Days of its receipt of a written demand by such Senior Secured Creditor, pay to that Senior Secured Creditor an amount in the contractual currency equal to the deficit.

13.2 **Other Indemnities**

The Company shall, within fifteen days of demand, indemnify each Senior Secured Creditor against any cost, loss or liability incurred by that Senior Secured Creditor as a result of:

13.2.1 the occurrence of any Event of Default;

13.2.2 funding, or making arrangements to fund, its participation in an Advance requested by the Company in an Advance Request but not made by reason of the operation of any one or more of the provisions of the Senior Finance Documents (other than by reason of default or negligence by that Senior Secured Creditor alone);

13.2.3 an Advance (or part of an Advance) not being prepaid in accordance with a notice of prepayment given by the Company; and

13.2.4 any claim concerning either Project and its participation therein to the extent that loss or liability is suffered or incurred by that Senior Secured Creditor (other than by reason of default or negligence by a Senior Secured Creditor),

provided that, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

13.3 **Indemnity to the Agents**

The Company shall, within fifteen days of demand, indemnify each of the Agents against any cost, loss or liability incurred by such Agent (acting reasonably) as a result of:

13.3.1 investigating any event which it reasonably believes is a Default; or

13.3.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised,

provided that, prior to the delivery of an Enforcement Notice, any such cost, loss or liability shall be reasonable.

14. **ILLEGALITY**

If it becomes, or shall become, unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by the Senior Finance Documents to which it is a party or to fund or maintain its participation in any Advance:

- 14.1.1 that Lender shall promptly notify the Company through the Intercreditor Agent and the relevant Facility Agent upon becoming aware of that event; and
- 14.1.2 by the latest date necessary to ensure compliance with the relevant law or regulation:
 - (a) if the relevant Facility Agent so requires, the Company shall prepay that Lender's participation in all the Advances (or such lesser amount if required to comply with the relevant law or regulation) together with all other relevant amounts payable by it to that Lender under the Senior Finance Documents to which it is a party; and
 - (b) that Lender's undrawn Available Commitment (or such lesser amount if permitted by the relevant law or regulation) shall be cancelled.

15. **MITIGATION BY THE SENIOR SECURED CREDITORS**

15.1 **Mitigation**

- 15.1.1 Each Lender shall, in consultation with the Company, take all reasonable steps to mitigate or remove any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 10 (*Changes to the calculation of interest*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) or Clause 14 (*Illegality*) including (but not limited to) transferring its rights and obligations under the Senior Finance Documents to another Affiliate or Facility Office.
- 15.1.2 Sub-clause 15.1.1 above does not in any way limit the obligations of any Obligor under the Senior Finance Documents.

15.2 **Indemnity by Company**

- 15.2.1 The Company shall indemnify each Senior Secured Creditor for all costs and expenses reasonably incurred by that Senior Secured Creditor as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- 15.2.2 A Senior Secured Creditor is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Senior Secured Creditor (acting reasonably), to do so might be prejudicial to it.

16. **FEES, COSTS AND EXPENSES**

16.1 **Agency Fees**

The Company shall pay to each Agent for its own account a fee in amounts and on dates separately agreed between that Agent and the Company in the relevant Fee Letter.

16.2 **Transaction expenses**

The Company shall, within fifteen days of receipt of a written demand, pay the Agents the amount of all reasonable costs and expenses (including legal fees) incurred by any of them in connection with the review, negotiation, preparation, printing and execution of:

- (a) this Agreement, the other Senior Finance Documents and any other documents referred to herein or therein; and
- (b) any other Senior Finance Documents executed after the Signing Date,

in accordance with, in the case of any fees, costs and expenses of the Technical Adviser, Insurance Adviser and legal advisers appointed on or prior to the Signing Date, the appointment or engagement letters (if any) executed by the Company on or prior to the Signing Date.

16.3 **Amendment costs**

If the Company 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**

Unless otherwise stated to have been made as of a specific date, each of the representations and warranties set out in Schedule 4 (*Representations and Warranties*) is made by the Company on the Second Amendment Signing Date, the Effective Date and (other than the representations and warranties set out in paragraph 21 (*Subsidiaries and Beneficial Interest*) of Schedule 4) is deemed to be repeated by the Company on each subsequent Advance Date with reference to the facts and circumstances then existing.

18. **COVENANTS**

18.1 **Content**

The Company undertakes to each of the Senior Secured Creditors that it shall comply with the covenants set out in Schedule 5 (*Covenants*).

18.2 **Duration**

The covenants in Schedule 5 (*Covenants*) shall remain in force from the Signing Date until the Senior Secured Indebtedness has been fully discharged.

19. **EVENTS OF DEFAULT**

19.1 **Events of Default**

Each of the events set out in Schedule 10 (*Events of Default*) is an Event of Default.

19.2 **Remedies following an Event of Default**

Upon the occurrence of an Event of Default and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, by written notice to the Company:

- 19.2.1 declare that the Available Commitments under any of the Facility Agreements be cancelled or suspended, whereupon they shall be cancelled or suspended;
- 19.2.2 declare that all or any part of the Advances, together with accrued interest, and all other amounts accrued or outstanding under the Senior Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- 19.2.3 declare that all or part of the Advances be payable on demand, whereupon they shall immediately become payable on demand by the Intercreditor Agent;
- 19.2.4 notify the Security Agent that an Event of Default has occurred and is continuing and instruct the Security Agent to issue an Enforcement Notice;
- 19.2.5 following the issue of an Enforcement Notice, require the Security Agent to 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 a Wong Event**

Without prejudice to Clause 19.2 (*Remedies following an Event of Default*) or in any way affecting the Intercreditor Agent's or the Security Agent's right to separately enforce its rights under the Senior Finance Documents, upon the occurrence of a Wong Event (as defined in the Wong Share Pledge) and at any time thereafter whilst it is continuing or following issuance of an Enforcement Notice (as the case may be), the Intercreditor Agent shall, if so instructed by the Required Lenders, require the Security Agent to take action to enforce all or any part of the Security granted pursuant to the Wong Share Pledge.

20. **APPLICATION OF ENFORCEMENT PROCEEDS**

After delivery of an Enforcement Notice and notwithstanding the provisions of Schedule 6 (*Accounts*), all Enforcement Proceeds shall be applied in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

21. **CHANGES TO THE PARTIES**

21.1 **Binding Agreement**

This Agreement shall be binding upon and enure to the benefit of each party hereto and its or any subsequent successors and transferees.

21.2 **Assignment and Transfer by the Company or the GCLAs**

21.2.1 The Company may not assign, transfer, novate or dispose of any of its rights or obligations under this Agreement or the other Senior Finance Documents.

21.2.2 The GCLAs may not assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the Company.

21.3 **Assignment and Transfer by Agents**

Each Agent may assign or transfer any of its rights and obligations under any Senior Finance Document to which it is party only in accordance with its voluntary or requested resignation under and subject to the relevant Senior Finance Document and this Agreement and then only if it first procures that its assignee or transferee executes a duly completed Agent's Deed of Accession and Finance Party Accession Undertaking (also executed, in the case of the latter, by such Agent, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent) and promptly delivered by the Intercreditor Agent to the Security Agent) and enters into such other acknowledgements as may be necessary or desirable to protect the Security.

21.4 **Assignment and Transfer by Lenders**

21.4.1 Subject to the provisions of the Facility Agreement to which it is a party and execution and delivery by the assignee or Transferee of a Finance Party Accession Undertaking, any Lender may, at any time, assign in accordance with Clause 21.5 (*Assignments by Lenders*) all or any of its rights and benefits under the Senior Finance Documents or transfer in accordance with Clause 21.6 (*Transfers by Lenders*) all or any of its rights, benefits and obligations under the Senior Finance Documents to:

- (a) another Lender or an Affiliate of a Lender;
- (b) any commercial bank;
- (c) 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; or
- (d) any other entity with the consent of the Company (such consent not to be unreasonably withheld or delayed and which consent shall not be required in respect of any assignment or transfer after the occurrence of an Event of Default which is continuing),

provided that all transactional costs (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 Hotel Facility or the Project 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.

21.5 **Assignments by Lenders**

If any Lender assigns all or any of its rights and benefits under the Senior Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), then, unless and until the assignee has delivered:

- (a) a notice to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) confirming in favour of the Senior Secured Creditors that it shall be under the same obligations towards each of them as it would have been under if it had been an original party hereto as a Lender and to the relevant Facility Agreement as a Hotel Facility Lender, Project Facility Lender, Additional Lender or Revolving Credit Facility Lender (as the case may be); and
- (b) a duly completed Finance Party Accession Undertaking executed by such Lender, such assignee, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent),

(whereupon such assignee shall become a party hereto as a "Lender" or thereto as a "Hotel Facility Lender", "Project Facility Lender", "Additional Lender" or "Revolving Credit Facility Lender"), the Company and the Senior Secured Creditors shall not be obliged to recognise such assignee as having the rights against each of them which it would have had if it had been such a party hereto or thereto.

21.6 **Transfers by Lenders**

If any Lender wishes to transfer all or any of its rights, benefits and/or obligations under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents as contemplated in Clause 21.4 (*Assignment and Transfer by Lenders*), then such transfer shall only be effective if the procedure set out in this Clause 21.6 is complied with. Such transfer shall be effected by the delivery to the Intercreditor Agent (which the Intercreditor Agent shall promptly copy to the Company and the other Senior Secured Creditors) of:

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

in which event, on the later of the Transfer Date specified in such Novation Certificate and the fifth Business Day after (or such earlier Business Day endorsed by the Intercreditor Agent on such Novation Certificate falling on or after) the date of delivery of such Novation Certificate and Finance Party Accession Undertaking to the Intercreditor Agent:

- 21.6.1 to the extent that in such Novation Certificate the Lender party thereto seeks to transfer by novation its rights, benefits and obligations under this Agreement and the corresponding rights, benefits and obligations under the other Senior Finance Documents, the Company and such Lender shall be released from further obligations towards one another under this Agreement and the corresponding rights, benefits and/or obligations under the other Senior Finance Documents and their respective rights against one another shall be cancelled (such rights and obligations being referred to in this Clause 21.6 as “**discharged rights and obligations**”);
- 21.6.2 each of the Company and the Transferee shall assume obligations towards one another and/or acquire rights against one another which differ from such discharged rights and obligations only insofar the Company and such Transferee have assumed and/or acquired the same in place of such other party and such Lender;
- 21.6.3 the Agents, the GCLAs, such Transferee and the other Lenders shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such Transferee been an original party to this Agreement and the other relevant Senior Finance Documents as a Lender with the rights, benefits and/or obligations acquired

or assumed by it as a result of such transfer and to that extent the Agents, the GCLAs and the relevant Lender shall each be released from further obligations to each other under this Agreement and the other relevant Senior Finance Documents; and

21.6.4 such Transferee shall become a party hereto as a “Lender” and to the relevant Facility Agreement as a “Hotel Facility Lender”, “Project Facility Lender”, “Additional Lender” or “Revolving Credit Facility Lender” (as the case may be).

21.7 **Assignment and Transfer Fees**

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*), the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee of USD1,500.

21.8 **Disclosure of Information**

Any Senior Secured Creditor may disclose to any 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, the Projects and the Senior Finance Documents as such Senior Secured Creditor may consider appropriate, *provided* that the Person to whom such information is provided under sub-clause 21.8.1 or 21.8.2 first enters into a Confidentiality Undertaking (or, in the case of the Security Agent, the confidentiality undertaking referred to in clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority) and that the Company has received an original copy of such signed undertaking.

21.9 **Change of Facility Office**

Any Lender may change its Facility Office *provided* that the Company shall have no liability (or no increase in liability) under Clause 11 (*Tax gross-up and Indemnities*) or Clause 12 (*Increased costs*) which would not exist as at the date of such change but for such change, unless such change was requested by the Company pursuant to Clause 15 (*Mitigation by the Senior Secured Creditors*).

22. **HEDGING COUNTERPARTIES**

22.1 **Accession**

Each Hedging Counterparty shall execute and deliver to the Intercreditor Agent a Hedging Counterparty's Deed of Accession and shall execute and deliver to the Security Agent in accordance with the Deed of Appointment and Priority a Finance Party Accession Undertaking. A Hedging Counterparty may, at any time, assign all or any of its rights and benefits or transfer all or any of its rights, benefits and obligations under and in accordance with the Senior Finance Documents subject to delivery to the Intercreditor Agent of a duly completed:

- (a) Hedging Counterparty's Deed of Accession executed by the assignee or transferee; and
- (b) Finance Party Accession Undertaking executed by the assignee or transferee, the Hedging Counterparty, the Intercreditor Agent and all other parties hereto acting through the Intercreditor Agent for this purpose (the authority for which is hereby conferred on the Intercreditor Agent and which the Intercreditor Agent shall promptly deliver to the Security Agent).

22.2 **Interest in the Security**

The obligations of the Company owed to each Hedging Counterparty shall be secured by the Security and each Hedging Counterparty shall be entitled to share in the Enforcement Proceeds in accordance with the Deed of Appointment and Priority and Clause 33.6 (*Application of Enforcement Proceeds*).

22.3 **Voting rights**

Nothing in this Clause 22 nor any other provisions of any Senior Finance Document shall be deemed to entitle any Hedging Counterparty in its capacity as such under any Hedging Agreement to exercise any voting, consent, approval or similar right under the Senior Finance Documents (other than the Hedging Agreements) including any right to participate in any Decision *provided* that:

- 22.3.1 each Hedging Counterparty shall have the right to participate in all Decisions after the occurrence of a Hedging Voting Right Event in relation to such Hedging Counterparty that is continuing; and
- 22.3.2 the consent of all Hedging Counterparties shall be required for any change to the matters referred to in paragraphs (a), (b), (f), (g), (h), (i) 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 Hotel Facility Lenders appoints the Hotel Facility Agent;
 - (c) the Project Facility Lenders appoints the Project Facility Agent;
 - (d) the Revolving Credit Facility Lenders appoints the Revolving Credit Facility Agent; and
 - (e) the Additional Lenders appoints the Additional Lender Agent,

to act as its agent under and in connection with the Senior Finance Documents and irrevocably authorises it on its behalf to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the Senior Finance Documents, together with any other incidental rights, powers and discretions.

23.1.2 None of the Agents may begin any legal action or proceeding in the name of a Senior Secured Creditor (other than itself) without that Senior Secured Creditor's consent.

23.1.3 Each Agent has only those duties which are expressly specified in the Senior Finance Documents, and those duties are solely of a mechanical and administrative nature.

23.2 Relationship

23.2.1 The relationship between each Agent and the relevant Senior Secured Creditors is that of principal and agent only. Nothing in this Agreement constitutes any Agent as trustee or fiduciary for any other Person and no Agent need hold in trust any moneys paid to it for a Person or be liable to account for interest on those moneys except to the extent expressly stated in a Senior Finance Document.

23.2.2 No Agent shall in any respect be the agent of the Company by virtue of this Agreement.

23.2.3 No Agent shall be liable to the Company for any breach by any other Senior Secured Creditor of any Senior Finance Document or be liable to any other Secured Creditor for any breach by the Company of the Senior Finance Documents.

23.3 Role of the GCLAs

Except as specifically provided in the Senior Finance Documents, none of the GCLAs has any obligations of any kind to any other Party under or in connection with any Senior Finance Document.

23.4 Delegation

Each Agent may act through its personnel and agents.

23.5 Instructions

23.5.1 Unless otherwise expressly provided in the Senior Finance Documents, the Intercreditor Agent shall act (and shall be fully protected if it so acts) in accordance with the instructions of the Required Lenders in connection with the exercise of any right, power or discretion under or in connection with the Senior Finance Documents.

- 23.5.2 Each Facility Agent shall be fully protected if it acts in accordance with the instructions of its Lending Group in connection with the exercise of any right, power or discretion under or in connection with any matter not expressly provided for in the Senior Finance Documents.
- 23.5.3 In the absence of such instructions each Agent may act, subject to the terms of the Senior Finance Documents, as that Agent, in its sole discretion, considers to be in the best interests of all the Senior Secured Creditors or, in the case of each Facility Agent, its Lending Group.

23.6 **Discretions**

Notwithstanding any provision of the Senior Finance Documents, each Agent may:

- 23.6.1 assume, unless it has, in its capacity as Agent, received written notice to the contrary from any other Party, that (a) any representation made or deemed to be made by an Obligor in connection with the Senior Finance Documents is true, (b) no Default has occurred, (c) no Obligor is in breach of or default under its obligations under the Senior Finance Documents and (d) any right, power, authority or discretion vested in the Senior Finance Documents upon the Required Lenders, a Lending Group, the Lenders or any other Person or group of Persons has not been exercised;
- 23.6.2 assume that (a) the Facility Office of each Lender is that notified to it by such Lender in writing and (b) the information provided by each Lender pursuant to Clause 29 (*Notices*) is true and correct in all respects until it has received from such Lender notice of a change to the Facility Office or any such information and act upon any such notice until the same is superseded by a further notice;
- 23.6.3 engage and pay for the advice or services of any lawyers, accountants, surveyors or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;
- 23.6.4 rely as to any matters of fact which might reasonably be expected to be within the knowledge of an Obligor upon a certificate signed by or on behalf of such Obligor;
- 23.6.5 rely upon any communication or document believed by it to be genuine;
- 23.6.6 refrain from exercising any right, power or discretion vested in it as Agent under the Senior Finance Documents unless and until instructed as described in Clause 23.5 (*Instructions*) as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised;
- 23.6.7 refrain from acting in accordance with any instructions to begin any action or proceeding arising out of or in connection with the Senior Finance Documents until it shall have received such security as it may require (whether by way of

payment in advance or otherwise) for all costs, claims, losses, expenses (including legal fees) and liabilities which it shall or may expend or incur in complying with such instructions;

23.6.8 refrain from acting where to do so would put it in breach of an applicable Legal Requirement;

23.6.9 treat each Facility Agent as the duly appointed and authorised agent of the relevant Lenders until it receives written notice to the contrary from the relevant Lenders; and

23.6.10 (in the case of the Intercreditor Agent) in applying any moneys received by it under any Security Document under Clause 33.6 (*Application of Enforcement Proceeds*), rely on any certificate made by the relevant Facility Agent 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 or under its obligations under the Senior Finance Documents;
- 23.8.2 be bound to account to any Senior Secured Creditor for any sum or the profit element of any sum received by it for its own account;
- 23.8.3 be bound to disclose to any other Person any information relating to any Obligor, any party to a Project Document or any of their respective related entities if (a) such Person, on providing such information, expressly stated to such Agent or, as the case may be, such GCLA, that such information was confidential or (b) such disclosure would or might in its opinion constitute a breach of any law or be otherwise actionable at the suit of any Person; or
- 23.8.4 be under any obligations other than those for which express provision is made herein or in any other Senior Finance Document to which such Agent or GCLA is a party.

23.9 **Exclusion of Liabilities**

None of the Agents and the GCLAs accepts any responsibility:

- 23.9.1 for the adequacy, accuracy and/or completeness of the Information Memorandum or any other information supplied by the Agents or the GCLAs, by an Obligor or by any other Person in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;
- 23.9.2 for the legality, validity, effectiveness, adequacy or enforceability of the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; or
- 23.9.3 for the exercise of, or the failure to exercise, any judgement, discretion or power given to any of them by or in connection with the Senior Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, none of the Agents and the GCLAs shall be under any liability (whether in negligence or otherwise) in respect of such matters.

23.10 **No Actions**

Each of the Lenders and the Hedging Counterparties agrees that it shall not assert or seek to assert against any director, officer or employee of any of the Agents or any of the GCLAs any claim it might have against any of them.

23.11 **Business with the Obligors**

Each Agent and GCLA may accept deposits from, lend money to and generally engage in any kind of banking or other business with any of the Obligors or their Affiliates.

23.12 **Resignation**

23.12.1 An Agent may resign its appointment hereunder at any time without assigning any reason therefor by giving not less than 25 Business Days' prior notice to that effect to the Senior Secured Creditors and the Company, in which case:

- (a) the Required Lenders (in the case of the Intercreditor Agent) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Required Lenders and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Required Lenders may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent; and
- (b) the relevant Lending Group under a Facility (in the case of a Facility Agent for that Facility) may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of such Lending Group and the Company or, failing such agreement within 15 Business Days after such notice of resignation, the Lending Group may appoint a successor Agent on the same terms and conditions as previously applied to the outgoing Agent.

23.12.2 If the Required Lenders have not, within 15 Business Days after notice of resignation, appointed a successor Intercreditor Agent which accepts the appointment, the outgoing Agent may appoint a successor Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the Intercreditor Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the Intercreditor Agent may appoint a successor Agent on the same terms and conditions as previously applied to it.

23.12.3 If a Lending Group has not, within 15 Business Days after notice of resignation appointed a successor Facility Agent which accepts the appointment, the outgoing Facility Agent may appoint a successor Facility Agent and, unless an Event of Default has occurred and is continuing, such appointment shall be subject to the prior agreement of the outgoing Facility Agent and the Company or, failing such agreement within 25 Business Days after notice of resignation, the outgoing Facility Agent may appoint a successor Facility Agent on the same terms and conditions as previously applied to it.

- 23.12.4 If, at the time of expiry of the period specified in sub-clause 23.12.2 or, as the case may be, sub-clause 23.12.3 above, the outgoing Agent cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Projects.
- 23.12.5 If the Agent has not been paid an amount due to it under the Senior Finance Documents and gives notice thereof as its reason for resigning together with its notice pursuant to Clause 23.12.1, it shall not be obliged to appoint a successor. If, at the time of expiry of the period specified in clause 23.12.1, the Required Lenders or, as the case may be, the relevant Lending Group, cannot find a successor owing to the unwillingness of any proposed successor to accept the terms and conditions which apply to the outgoing Agent, the Company shall offer to any proposed successor such terms and conditions as are consistent with the role to be performed, taking into account the current market for the performance of such duties and the then existing circumstances of the Projects.
- 23.12.6 The resignation of an Agent and the appointment of any successor Agent shall both become effective only upon the successor Agent executing an Agent's Deed of Accession *provided* that, where the Agent has notified the reason for its resignation pursuant to Clause 23.12.5, its resignation shall become effective upon the expiry of the period notified by it pursuant to Clause 23.12.1. Upon the execution of an Agent's Deed of Accession, the successor Agent shall succeed to the position of the retiring Agent (as the case may be) under the Senior Finance Documents and the term "Agent" shall mean the successor Agent.
- 23.12.7 The Intercreditor Agent agrees that it shall, if so requested in writing by the Required Lenders, tender its resignation in accordance with this Clause 23.12.
- 23.12.8 Each Facility Agent agrees that it shall, if so requested in writing by its Lending Group, tender its resignation in accordance with this Clause 23.12.
- 23.12.9 Upon the appointment of a successor (or, as the case may be, its resignation becoming effective), the retiring Agent shall be discharged from any future (but not accrued) obligations in respect of the Senior Finance Documents but shall remain entitled to the benefit of Clause 13.2 (*Other Indemnities*) and sub-clauses 23.1, 23.2, 23.5.2, 23.5.3, 23.6.10, 23.8, 23.9, 23.10 and 23.15 of this Clause 23.

23.13 **Own Responsibility**

It is understood and agreed by each Senior Secured Creditor that at all times it has itself been, and shall continue to be, solely responsible for making its own independent

appraisal of and investigation into all risks arising under or in connection with the Senior Finance Documents including, but not limited to:

- 23.13.1 the financial condition, creditworthiness, condition, affairs, status and nature of the Projects and each Obligor;
- 23.13.2 the legality, validity, effectiveness, adequacy and enforceability of the Senior Finance Documents and any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents;
- 23.13.3 whether such Senior Secured Creditor has recourse, and the nature and extent of that recourse, against an Obligor or any other Person or any of their respective assets under or in connection with the Senior Finance Documents, the transactions therein contemplated or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents; and
- 23.13.4 the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Agents or the GCLAs, an Obligor, or by any other Person in connection with the Senior Finance Documents, the transactions contemplated therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Senior Finance Documents.

Accordingly, each Senior Secured Creditor acknowledges to the Agents and the GCLAs that it has not relied on and shall not hereafter rely on the Agents and the GCLAs or any of them in respect of any of these matters.

23.14 Agency Division Separate

In acting as Agent under the Senior Finance Documents, each of the Agents shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments and, notwithstanding the foregoing provisions of this Clause 23, any information received by some other division or department of such Agent may be treated as confidential and shall not be regarded as having been given to such Agent's agency division.

23.15 Indemnity to Intercreditor Agent

- 23.15.1 Each Senior Secured Creditor shall rateably in accordance with 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 the fraud,

negligence or wilful misconduct of the Intercreditor Agent) in acting as Intercreditor Agent in accordance with the terms of the Senior Finance Documents (unless the Intercreditor Agent has been reimbursed by, or indemnified to its satisfaction by, an Obligor pursuant to a Senior Finance Document or otherwise in writing). For the purposes of this Clause 23.15.1, each Hedging Counterparty shall, in respect of each Hedging Agreement entered into by it, be deemed to have made an Advance to the Company in an amount equal to the Realised Hedge Loss (if any) under the Hedging Agreement to which such Hedging Counterparty is party.

23.15.2 Clause 23.15.1 shall not apply to the extent that the Intercreditor Agent is otherwise actually indemnified or reimbursed by any Party under any other provision of the Senior Finance Documents.

23.15.3 Provided that the Company is required to reimburse or indemnify the Intercreditor Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Senior Secured Creditor, indemnify such Senior Secured Creditor in relation to any payment actually made by such Senior Secured Creditor pursuant to Clause 23.15.1 above.

24. **CONDUCT OF BUSINESS BY THE SENIOR SECURED CREDITORS**

No provision of the Senior Finance Documents shall:

24.1.1 interfere with the right of any Senior Secured Creditor to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

24.1.2 subject to Clause 15 (*Mitigation by Senior Secured Creditors*), oblige any Senior Secured Creditor to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

24.1.3 oblige any Senior Secured Creditor to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

25. **SHARING AMONG THE SENIOR SECURED CREDITORS**

25.1 **Payments to Senior Secured Creditors**

If a Senior Secured Creditor (a “**Recovering Senior Secured Creditor**”) receives or recovers any amount from an Obligor other than in accordance with the provisions of the Senior Finance Documents (excluding any such provision which permits the setting off of obligations owed by such Obligor against obligations owed to it by such Recovering Senior Secured Creditor but allowing, for the avoidance of doubt, any such provision in any Hedging Agreement permitting netting off between transactions under such Hedging Agreement) and applies that amount to a payment due under the Senior Finance Documents then:

- 25.1.1 the Recovering Senior Secured Creditor shall, within 5 Business Days, notify details of the receipt or recovery, to the Intercreditor Agent;
- 25.1.2 the Intercreditor Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Senior Secured Creditor would have been paid had the receipt or recovery been received and distributed in accordance with this Agreement, without taking account of any Tax which would be imposed on that Agent in relation to the receipt, recovery or distribution; and
- 25.1.3 the Recovering Senior Secured Creditor shall, within 10 Business Days of demand by the Intercreditor Agent, pay to the Intercreditor Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Intercreditor Agent determines may be retained by the Recovering Senior Secured Creditor as its share of any payment to be made, in accordance with this Agreement.

25.2 **Redistribution of payments**

The Intercreditor Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Senior Secured Creditors (other than the Recovering Senior Secured Creditor) in accordance with this Agreement.

25.3 **Recovering Senior Secured Creditor’s Rights**

- 25.3.1 On a distribution by the Intercreditor Agent under 25.2 (*Redistribution of payments*), the Recovering Senior Secured Creditor shall be subrogated to the rights of the Senior Secured Creditors which have shared in the redistribution.
- 25.3.2 If and to the extent that the Recovering Senior Secured Creditor is not able to rely on its rights under sub-clause 25.3.1 above, the Company shall be liable to the Recovering Senior Secured Creditor for a debt equal to the Sharing Payment which is immediately due and payable.

25.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Senior Secured Creditor becomes repayable and is repaid by such Recovering Senior Secured Creditor, then:

- 25.4.1 each Senior Secured Creditor which has received a share of such Sharing Payment pursuant to Clause 25.2 (*Redistribution of payments*) shall, upon request of the Intercreditor Agent, pay to the Intercreditor Agent for account of that Recovering Senior Secured Creditor an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Senior Secured Creditor for its proportion of any interest on the Sharing Payment which that Recovering Senior Secured Creditor is required to pay); and

25.4.2 that Recovering Senior Secured Creditor's rights of subrogation in respect of any reimbursement shall be cancelled and the Company shall be liable to the reimbursing Senior Secured Creditor for the amount so reimbursed.

25.5 **Exceptions**

This Clause 25 shall not apply to the extent that the Recovering Senior Secured Creditor would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

25.6 **Benefit**

The provisions of this Clause 25 are for the sole benefit of the Senior Secured Creditors and may be waived or amended by the Required Lenders without the consent of the Company provided there is no increase in the liability of the Company as a result.

26. **PAYMENT MECHANICS**

26.1 **Payments under the Senior Finance Documents**

26.1.1 ***Prior to an Event of Default***

Unless and until an Event of Default has occurred and is continuing:

- (a) all payments to be made by the Company to or for the account of any Lender under the Facility Agreement to which that Lender is a party shall be made to the relevant Facility Agent 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*):

- (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 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 Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

29. **NOTICES**

29.1 **Communications in Writing**

Any notice, demand or other communication (each, for the purposes of this Clause 29, a “**communication**”) to be made under or in connection with the Senior Finance Documents shall be made in writing but, unless otherwise stated, may be made by fax or letter.

29.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Senior Finance Documents is:

29.2.1 in the case of the Company, each of the GCLAs, each of the Agents, each of the Lenders and each of the Hedging Counterparties party to the Common Terms Agreement Second 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

- (a) 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 jerry.parisi@sgcib.com and patricia.wright@sgcib.com (or such other e-mail address or addresses designated by the Intercreditor Agent from time to time).
- (b) 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.
- (c) 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.

- (d) Notwithstanding Clause 29.6(e) 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.
- (e) 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 Clause 26.1.2 (*Payments under the Senior Finance Documents*)) in the following order:

- (i) first, in payment of all costs and expenses incurred by or on behalf of the Intercreditor Agent in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Intercreditor Agent;
- (ii) second, in payment *pro rata* of all costs and expenses incurred by or on behalf of the Facility Agents in connection with such enforcement or recovery and which have been certified, in writing, as having been incurred by the Facility Agent seeking recovery;
- (iii) third, in payment *pro rata* of all amounts paid by the Senior Secured Creditors under Clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (iv) fourth, in payment *pro rata* of all amounts paid by the Hotel Facility Lenders under clause 15.3 (*Indemnity to Hotel Facility Agent*) of the Hotel Facility Agreement or the Project Facility Lenders under clause 15.3 (*Indemnity to Project Facility Agent*) of the Project Facility Agreement 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 the Additional Lender Facility Agreement in respect of indemnities to the Additional Lender 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 Second Amendment Signing Date and on the Effective Date, each Senior Secured Creditor party hereto represents and warrants to the other Senior Secured Creditors Party hereto that:

- 33.7.1 it is duly organised and validly existing under the laws of the jurisdiction in which it is incorporated;
- 33.7.2 it has power to enter into and has duly authorised the execution, delivery and performance of this Agreement;
- 33.7.3 the obligations expressed to be assumed by it hereunder are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof; and
- 33.7.4 it is not the beneficiary of any Liens in respect of any Financial Indebtedness owed to it by the Company other than under the Senior Finance Documents.

33.8 The provisions of this Clause 33 (*Intercreditor Arrangements*) are for the sole benefit of the Senior Secured Creditors and may be waived or amended without the consent or agreement of the Company provided there is no increase in the liability of the Company as a result.

34. **AMENDMENTS AND WAIVERS**

34.1 **Amendment and waiver of common terms**

Subject to Clause 25.6 (*Benefit*) and to Clause 34.2 to Clause 34.4 below, any term of, or matter dealt with under, this Agreement and any other Senior Finance Document may be amended, waived or supplemented with the agreement of the Company and/or the other Obligors which are a party to that Senior Finance Document and/or, as the case may be, the Required Lenders.

34.2 **Amendment and waiver of Facility Agreements**

Subject to Clause 34.3 and Clause 34.4 below, any term of, or matter dealt with under, a Facility Agreement may be amended, waived or supplemented with the agreement of the Company and/or, as the case may be, the required Senior Secured Creditors as specified in that Facility Agreement.

34.3 **Amendment and waiver of Fundamental Terms**

A Fundamental Term may only be amended or waived by agreement between the Obligors which are a party to the Senior Finance Document which contains that Fundamental Term and each Lender (and, in the case of the provisions referred to in paragraphs (a), (b), (f), (g), (h), (i) and (j) of the definition of Fundamental Term, each Hedging Counterparty).

34.4 **Amendment and waiver affecting Agents**

An amendment or waiver of any term of the Senior Finance Documents which relates to the rights and/or obligations of any Agent may not be effected without the prior written consent of that Agent.

35. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

36. **LANGUAGE**

The English language shall be the only official and recognised language of this Agreement. If for any reason a translation of this Agreement is required, such translation shall in the event of any dispute be secondary to the original English version which shall take precedence.

37. **GOVERNING LAW**

This Agreement shall be governed by English law.

38. **JURISDICTION**

38.1 **Jurisdiction of English courts**

- 38.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).
- 38.1.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they shall not argue to the contrary.
- 38.1.3 This Clause 38.1 is for the benefit of the Senior Secured Creditors only. As a result, no Senior Secured Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Senior Secured Creditors may take concurrent proceedings in any number of jurisdictions.

38.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

- 38.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
- 38.2.2 agrees that failure by a process agent to notify the Company of the process shall not invalidate the proceedings concerned.

39. **CONFIDENTIALITY**

Subject to Clause 40 (*Gaming Authorities*), each of the Senior Secured Creditors agrees to keep confidential all non-public information of a proprietary or confidential nature provided to it by any Obligor pursuant to this Agreement *provided* that nothing herein shall prevent any Senior Secured Creditor from disclosing any such information:

- (a) to any other Senior Secured Creditor, or any Affiliate thereof that is bound by confidentiality obligations;
- (b) to any other Person pursuant to Clause 21.8 (*Disclosure of Information*) or clause 18.9 (*Disclosure of Information by Security Agent*) of the Deed of Appointment and Priority;
- (c) to any of its or its Affiliates’ employees, directors, agents, auditors, attorneys, accountants and other professional advisors who or that is bound by confidentiality obligations;

- (d) upon the request or demand of any Governmental Authority having jurisdiction over it;
- (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Legal Requirement or the rules of any stock exchange on which the shares or other securities of such Senior Secured Creditor or any Affiliate thereof are listed or by any other competent supervisory or regulatory body;
- (f) if required to do so in connection with any litigation or similar proceeding;
- (g) that has been publicly disclosed other than in breach of this Clause; or
- (h) in connection with the exercise of any remedy hereunder or under any other Senior Finance Document.

40.

GAMING AUTHORITIES

Each of the Senior Secured Creditors agrees to cooperate, having regard to its internal procedures and policies, with the reasonable requests of any and all gaming authorities in connection with the administration of their regulatory jurisdiction over the Company or any Obligor, to the extent not inconsistent with any applicable legal, regulatory or contractual restrictions (including any duties of confidentiality) or the terms of the Senior Finance Documents, *provided* that the Senior Secured Creditors are indemnified for any cost, loss or liabilities incurred in connection with such cooperation.

C L I F F O R D
C H A N C E

CONFORMED COPY

DATED 27 JUNE 2007

WYNN RESORTS (MACAU) S.A.
as Company

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Hotel Facility Agent

and

CERTAIN FINANCIAL INSTITUTIONS
as Hotel Facility Lenders

HOTEL FACILITY AGREEMENT
SECOND AMENDMENT AGREEMENT

CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION	1
2. AMENDMENT	1
3. CONTINUITY AND FURTHER ASSURANCE	2
4. MISCELLANEOUS	2
5. GOVERNING LAW	2
SCHEDULE Amended Hotel Facility Agreement	6

THIS AGREEMENT is dated 27th June 2007 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Hotel Facility Agent**”); and
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Hotel Facility Lenders.

RECITALS:

- (A) The Company proposes to further expand the Projects.
- (B) The Secured Parties have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents and the Lenders have agreed to increase the total size of the Facilities originally provided thereunder in connection with the Diamond Expansion 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 Hotel Facility Agreement as set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Incorporation of defined terms

- 1.1.1 Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.
- 1.1.2 The principles of construction and rules of interpretation referred to set out or referred to in the Schedule shall have effect as if set out in this Agreement.

1.2 Clauses

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

2. AMENDMENT

With effect from the Effective Date, the Hotel Facility Agreement shall be amended so that it shall be read and construed for all purposes as set out in the Schedule (*Amended Hotel Facility Agreement*).

3. CONTINUITY AND FURTHER ASSURANCE

3.1 Continuing obligations

The provisions of the Hotel Facility Agreement shall, save as amended by this Agreement, continue in full force and effect.

3.2 Further assurance

The Company shall, upon the written request of the Hotel Facility Agent and at its own expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

4. MISCELLANEOUS

4.1 Incorporation of terms

The provisions of clause 1.3 (*Third Party Rights*), clause 1.4 (*Non-recourse Liability*) and clause 18 (*Jurisdiction*) of the Schedule shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "Agreement" are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

4.2 Counterparts

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

5. GOVERNING LAW

This Agreement is governed by English law.

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

SIGNATURES

The Company

WYNN RESORTS (MACAU) S.A.

By: /s/ MATTHEW MADDOX

Address: 335-341 Alameda Dr. Carlos d'Assumpção
9th Floor
Hotline Center
Macau

Telephone: (853) 2888 9966

Fax: (853) 2832 9966

Attention: Chief Financial Officer

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
USA

Tel: (1) 702 770 2112

Fax: (1) 702 770 1518

Attention: General Counsel

The Hotel Facility Agent

SOCIÉTÉ GÉNÉRALE ASIA LIMITED

By: /s/ SUNNY LUI SUN PENG

/s/ KENNETH CHOI

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

The Hotel Facility Lender

SOCIÉTÉ GÉNÉRALE, NEW YORK BRANCH

By: /s/ PATRICIA WRIGHT

Address: 1221 Avenue of the Americas, 10th Floor
New York
NY 10020

Tel: (1) 212 278 5448

Fax: (1) 212 278 7614

Attention: Jerry Parisi

SCHEDULE
AMENDED HOTEL FACILITY AGREEMENT

DATED 14 SEPTEMBER 2004

WYNN RESORTS (MACAU) S.A.
as Company

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Hotel Facility Agent

and

THE HOTEL FACILITY LENDERS
referred to herein

HOTEL FACILITY AGREEMENT
(As amended by the Hotel Facility Agreement Amendment
Agreement dated 14 September 2005 and the Hotel Facility
Second Amendment Agreement dated June 27 2007)

CONTENTS

Clause	Page
1. Definitions And Interpretation	8
2. Common Terms Agreement	14
3. The Hotel Facility	14
4. Purpose	14
5. Conditions Precedent	14
6. Availability Of The Hotel Facility	14
7. Repayment	15
8. Prepayment And Cancellation	15
9. Interest	16
10. Interest Periods	16
11. Notification	16
12. [Not Used]	17
13. Changes To The Parties	17
14. Payments	17
15. Decision Making Amongst Hotel Facility Lenders	19
16. Counterparts	20
17. Governing Law	20
18. Jurisdiction	20
Schedule 1 THE HOTEL FACILITY LENDERS	21
Schedule 2 REPAYMENT SCHEDULE	22

BETWEEN:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Hotel Facility Agent**”); and
- (3) **THE HOTEL FACILITY LENDERS** (as defined below).

WHEREAS:

The Hotel Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the Hotel Project upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Common Terms Agreement shall have the same meaning herein and in addition:

“**Available Commitment**” means, in relation to a Hotel Facility Lender at any time and save as otherwise provided herein, the aggregate US dollar equivalent amount of Available Tranche A Commitment and Available Tranche B Commitment of such Hotel 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 Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche A Commitment” in Schedule 1 (*The Hotel Facility Lenders*) **less:**

- (a) its Existing Participation in respect of the Tranche A Facility;
- (b) any amounts of the Available Tranche A Commitment of such Hotel Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (c) the aggregate amount of Tranche A Advances which have been made by such Hotel Facility Lender at such time on or after the Effective Date; and
- (d) in relation to any Advance Request, the amount of any Tranche A Advance due to be made on or before the proposed Advance Date.

“**Available Tranche B Commitment**” means, in relation to a Hotel Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche B Commitment” in Schedule 1 (*The Hotel Facility Lenders*) less:

- (a) its Existing Participation in respect of the Tranche B Facility;
- (b) any amounts of the Available Tranche B Commitment of such Hotel Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (c) the aggregate amount of Tranche B Advances which have been made by such Hotel Facility Lender at such time on or after the Effective Date; and
- (d) in relation to any Advance Request, the amount of any Tranche B Advance due to be made on or before the proposed Advance Date.

“**Available Tranche A Facility**” means, at any time, the aggregate amount of the Available Tranche A Commitments of all the Hotel Facility Lenders at such time.

“**Available Tranche B Facility**” means, at any time, the aggregate amount of the Available Tranche B Commitments of all the Hotel Facility Lenders at such time.

“**Common Terms Agreement**” means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility Agent, the Intercreditor Agent and the Security Agent, as amended and restated by the Common Terms Agreement Amendment Agreement and the Common Terms Agreement Second Amendment Agreement.

“**Existing Participation**” means, in relation to each Hotel Facility Lender in respect of any Hotel Facility as at the Effective Date, the product of the commitment amount set out opposite its name in the column for that Hotel Facility in Schedule 1 (*The Hotel Facility Lenders*) and the Participation Proportion.

“**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 Hotel Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Hotel Facility Agent at its request quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 a.m. (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Hotel Facility Advance.

“**Hotel Facility**” means the Tranche A Facility and the Tranche B Facility.

“**Hotel Facility Advance**” means, as the context may require, a Tranche A Advance or a Tranche B Advance and “**Hotel Facility Advances**” shall mean each Tranche A Advance and Tranche B Advance or any of them.

“**Hotel Facility Lender**” means a Tranche A Facility Lender or a Tranche B Facility Lender.

“**Hotel Finance Documents**” means:

- (a) this Agreement;
- (b) the Common Terms Agreement;
- (c) any other Senior Finance Document to which a Hotel Facility Lender is a party in its capacity as a Hotel Facility Lender; and
- (d) any other document designated as such by the Hotel Facility Agent and the Company.

“**Hotel Finance Parties**” means the Hotel Facility Agent and the Hotel Facility Lenders.

“**Hotel Loan**” means the aggregate principal amount for the time being outstanding hereunder.

“**LIBOR**” means, in relation to any Tranche A Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for US dollars or for the Interest Period for that Hotel Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Hotel Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

at or about 11:00 a.m. (London time) on the Quotation Day for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Hotel Facility Advance.

“**Majority Hotel Facility Lenders**” means a Hotel Facility Lender or Hotel Facility Lenders whose US dollar equivalent participations in the Hotel 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 Hotel Facility Advances then outstanding and undrawn Available Commitments.

“**Margin**” means in relation to any Hotel Facility Advance hereunder, 1.75% per annum but, if the Quarterly Date falling on the last day of the first full Fiscal Quarter of the Company following the Diamond Opening Date has occurred, the Leverage Ratio as at the most recent Quarterly Date is within the range set out below and the

Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the Margin) no Default has occurred and is continuing, the Margin will be the percentage per annum specified for that range:

<u>Leverage Ratio</u>	<u>Margin</u>
Less than 3.0	1.25%
Greater than or equal to 3.0 but less than 4.0	1.50%
Greater than or equal to 4.0 but less than 4.5	1.75%
4.5 or above	2.00%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions specified above (or, where such Business Day falls less than five Business Days before the end of the then current Interest Period, from the commencement of the next Interest Period).

“**Participation Proportion**” means, in relation to the Existing Participation of any Hotel Lender,

$$1 - \frac{X - Y}{X}$$

where: X is the sum of USD10,250,000 and the US dollar equivalent, as at the Effective Date, of HKD639,600,000

Y is the US dollar equivalent, as at the Effective Date, of the sum of the principal amounts outstanding under the Hotel Facility Agreement, the Project Facility Agreement and the Additional Lender Facility Agreement immediately prior to the Effective Date,

and “**US dollar equivalent**” means, for these purposes, in respect of any HK dollar amount, that amount converted into US dollars at such Hotel Lender's spot rate of exchange for the purchase of HK dollars with US dollars in the New York foreign exchange market at or about 11.00 am two Business Days prior to the Effective Date.

“**Party**” means a party to this Agreement.

“**Reference Banks**” means, in relation to:

- (a) LIBOR, the principal London offices of Deutsche Bank AG, Société Générale and Citibank, N.A.; and
- (b) HIBOR, the principal Hong Kong offices of Deutsche Bank AG, Société Générale and Citibank, N.A.,

or such other bank or banks designated from time to time by the Hotel Facility Agent provided that the consent of the Company shall be required if such designation is made prior to an occurrence of an Event of Default which is continuing.

“**Screen Rate**” means, in relation to:

- (a) LIBOR, the British Bankers’ Association Interest Settlement Rate for US dollars for the relevant period, displayed on the appropriate page (being currently “LIBOR01”) of the Reuters Monitor Money Rates Service screen; and
- (b) HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the Hotel Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Hotel Facility Lenders.

“**Tranche A Advance**” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the 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 (*Grant of the Hotel Facilities*).

“**Tranche A Facility Lender**” means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*The Hotel Facility Lenders*) as a 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 (*Grant of the Hotel Facilities*).

“**Tranche B Facility Lender**” means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*The Hotel Facility Lenders*) as a 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 “**Hotel Facility Agent**” or “**Hotel Facility Lender**” shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and
- 1.2.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

1.3 Third Party Rights

- 1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-recourse Liability*) but only for the benefit of the Operatives and subject always to the terms of Clause 17 (*Governing Law*) and Clause 18 (*Jurisdiction*).
- 1.3.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- 1.3.3 Save as provided by the Common Terms Agreement, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

1.4 Non-recourse Liability

Notwithstanding any provision in the Senior Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Hotel Finance Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

2. **COMMON TERMS AGREEMENT**

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

3. **THE HOTEL FACILITY**

3.1 **Grant of the Hotel 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 USD10,250,000.

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 HKD639,600,000.

4. **PURPOSE**

The Company shall apply all amounts borrowed by it under the Hotel Facility to finance Project Costs incurred or to be incurred in connection with the Hotel Project.

5. **CONDITIONS PRECEDENT**

The provisions of Clause 2 (*Conditions Precedent*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6. **AVAILABILITY OF THE HOTEL FACILITY**

6.1 **Drawdown of Advances**

The provisions of Clause 3 (*Drawdown of Advances*) and Clause 4.1 (*Hotel Facility Availability Period*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6.2 **Each Hotel Facility Lender's Participation**

6.2.1 It is acknowledged and agreed that, as at the Effective Date, the amounts of each Tranche A Advance and each Tranche B Advance made and outstanding hereunder and the participation of each Hotel Facility Lender therein are equal to, respectively, the Existing Participation of that Hotel Lender in respect of the Tranche A Facility and the Tranche B Facility and the terms of this Agreement and each other Senior Finance Document shall apply as between the parties hereto and thereto accordingly.

- 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.

6.3 Reduction of Available Commitment

If a Hotel 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 Hotel 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, the 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 Hotel Loans in quarterly instalments by repaying on each Repayment Date amounts equal to the percentage set out next to the relevant Repayment Date in Schedule 2 (*Repayment Schedule*) of the aggregate US dollar denominated Hotel Facility Advances and the aggregate HK dollar denominated Hotel Facility Advances outstanding as at the end of the last day of the Hotel Facility Availability Period.

7.2 Final maturity

The Company shall repay on the Final Repayment Date all amounts outstanding or due and payable under the Hotel Facility on that day.

7.3 No re-borrowing

The Company may not re-borrow any part of the Hotel Facility which is repaid.

8. PREPAYMENT AND CANCELLATION

All prepayments of Hotel Facility Advances and cancellation of Available Commitments shall be made in accordance with Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement.

9. INTEREST

9.1 Calculation of Interest

The rate of interest on each Hotel Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

9.1.1 the Margin; and

9.1.2 LIBOR (in the case of a Tranche A Advance) or HIBOR (in the case of a Tranche B Advance).

9.2 Payment of interest

Accrued interest on each Hotel Facility Advance is payable by the Company on the last day of each Interest Period relating to that Hotel Facility Advance.

9.3 Default Interest

Default interest shall be calculated and paid in accordance with Clause 9.4 (*Default Interest*) of the Common Terms Agreement.

10. INTEREST PERIODS

The duration of each Interest Period shall be determined in accordance with Clause 9.3 (*Interest Periods*) of the Common Terms Agreement.

11. NOTIFICATION

11.1 Advances

Promptly, and in any event, not less than 4 Business Days before the proposed Advance Date for each Hotel Facility Advance, the Hotel Facility Agent shall notify each Hotel Facility Lender of the proposed amount of the relevant Hotel Facility Advance and the aggregate principal amount of the relevant Hotel Facility Advance allocated to such Hotel Facility Lender pursuant to Clause 6.2 (*Each Hotel Facility Lender's Participation*) and each Hotel Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Hotel Facility Agent for the account of the Company its said portion of such Hotel Facility Advance.

11.2 Interest rate determination

The Hotel Facility Agent shall promptly notify the Company and the Hotel Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

11.3 Changes to interest rates

The Hotel Facility Agent shall promptly notify the Company and the Hotel Facility Lenders of any change to any interest rate occasioned by the operation of Clause 10 (*Changes to the calculation of interest*) of the Common Terms Agreement.

11.4 **Interest payment and repayment instalments**

Without prejudice to the Company's obligation to make any interest payment or to pay any repayment instalment on the due date, the Hotel Facility Agent shall provide to the Company and each Hotel Facility Lender (with a copy to the Intercreditor Agent) a notice setting out the relevant scheduled payment of interest and scheduled repayment of principal under this Agreement at least 15 Business Days before such amounts fall due for payment by the Company.

12. **[NOT USED]**

13. **CHANGES TO THE PARTIES**

13.1 **Transfers by the Hotel Facility Agent**

The Hotel Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Hotel Finance Documents to a replacement Hotel Facility Agent appointed in accordance with the terms of the Common Terms Agreement.

13.2 **Transfers by the Company**

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Hotel Finance Documents.

13.3 **Transfers by the Hotel Facility Lenders**

A Hotel Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Hotel Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), Clause 21.5 (*Assignments by Lenders*) and Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement.

13.4 **Assignment and Transfer Fees**

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) of the Common Terms Agreement or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreements, the relevant assignee or transferee shall pay to the Intercreditor Agent for its own account a fee in accordance with Clause 21.7 of the Common Terms Agreement.

14. **PAYMENTS**

14.1 **Payments**

14.1.1 All payments under this Agreement shall be made in accordance with Clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

14.1.2 Subject to Clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company or a Hotel Facility Lender, the Company or, as the case may be, such Hotel Facility Lender shall make the same available to the Hotel Facility

Agent for value on such due date and at such time and in such funds and to such account with such bank as the Hotel Facility Agent shall specify from time to time.

14.2 Partial Payments

- 14.2.1 If the Hotel Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Hotel Facility Lenders under the Hotel Finance Documents, the Hotel Facility Agent shall apply that payment towards the obligations of the Company under the Hotel Finance Documents in the following order:
- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Hotel Facility Lenders under Clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
 - (b) **secondly**, in or towards payment *pro rata* of all amounts paid by the Hotel Facility Lenders under Clause 15.3 (*Indemnity to Hotel Facility Agent*) but which have not been reimbursed by the Company;
 - (c) **thirdly**, in or towards payment *pro rata* of all costs and expenses incurred by the Hotel Facility Lenders which the Company is obliged to reimburse;
 - (d) **fourthly**, in or towards payment *pro rata* of all accrued but unpaid fees and commissions due to the Hotel Facility Lenders under the Hotel Finance Documents;
 - (e) **fifthly**, in or towards payment *pro rata* of all accrued but unpaid interest (including default interest) due to the Hotel Facility Lenders under the Hotel Finance Documents;
 - (f) **sixthly**, in or towards payment *pro rata* of any principal due to the Hotel Facility Lenders under the Hotel Finance Documents but unpaid; and
 - (g) **seventhly**, in or towards payment *pro rata* of any other sum due to the Hotel Facility Lenders under the Hotel Finance Documents but unpaid.
- 14.2.2 The Hotel Facility Agent shall, if so directed by the Majority Hotel Facility Lenders, vary the order set out in sub-clause 14.2.1 above.
- 14.2.3 Sub-clause 14.2.1 above will override any appropriation made by the Company.

15. DECISION MAKING AMONGST HOTEL FACILITY LENDERS

15.1 Decisions

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purpose of any decision within the scope of Clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement) relating to this Agreement shall be the Hotel Facility Agent acting on the instructions of the Majority Hotel Facility Lenders.

15.2 Failure to Give Instructions

If the Hotel Facility Agent gives notice to the Hotel Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Hotel Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Hotel Facility Lender which fails to respond by the date and time so specified shall have its portion of the Hotel Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Hotel Facility Agent by the Majority Hotel Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Hotel Facility Advances outstanding, the Available Commitments and portion of Hotel Facility Advances of such Hotel Facility Lender shall be deducted).

15.3 Indemnity to Hotel Facility Agent

15.3.1 Each Hotel Facility Lender shall, rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Hotel Facility Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Hotel 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 Hotel Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Hotel Facility Agent (other than by reason of the negligence or wilful misconduct of the Hotel Facility Agent) in acting as Hotel Facility Agent under any of the Senior Finance Documents (unless the Hotel Facility Agent has been reimbursed by the Company pursuant to a Senior Finance Document).

15.3.2 Provided that the Company is required to reimburse or indemnify the Hotel Facility Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Hotel Facility Lender, indemnify such Hotel Facility Lender in relation to any payment actually made by such Hotel Facility Lender pursuant to Clause 15.3.1 above.

16. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

17. **GOVERNING LAW**

This Agreement shall be governed by English law.

18. **JURISDICTION**

18.1 **Jurisdiction of English courts**

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).

18.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 (*Jurisdiction of English Courts*) is for the benefit of the Hotel Finance Parties only. As a result, no Hotel Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Hotel Finance Parties may take concurrent proceedings in any number of jurisdictions.

18.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

18.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

18.2.2 agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.

SCHEDULE 1

THE HOTEL FACILITY LENDERS

<u>Hotel Facility Lender</u>	<u>Tranche A Commitment (USD)</u>	<u>Tranche B Commitment (HKD)</u>
Société Générale, New York Branch	10,250,000	639,600,000
Total	10,250,000	639,600,000

SCHEDULE 2

REPAYMENT SCHEDULE

<u>Repayment Date</u>	<u>Percentage (%)</u>
First Repayment Date	8 1/3
Second Repayment Date	8 1/3
Third Repayment Date	8 1/3
Fourth Repayment Date	8 1/3
Fifth Repayment Date	8 1/3
Sixth Repayment Date	8 1/3
Seventh Repayment Date	8 1/3
Eighth Repayment Date	8 1/3
Ninth Repayment Date	8 1/3
Tenth Repayment Date	8 1/3
Eleventh Repayment Date	8 1/3
Twelfth Repayment Date	8 1/3

C L I F F O R D
C H A N C E

CONFORMED COPY

DATED 27 JUNE 2007

WYNN RESORTS (MACAU) S.A.
as Company

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Project Facility Agent

and

CERTAIN FINANCIAL INSTITUTIONS
as Project Facility Lenders

PROJECT FACILITY AGREEMENT
SECOND AMENDMENT AGREEMENT

CONTENTS

Clause		Page
1.	DEFINITIONS AND INTERPRETATION	1
2.	AMENDMENT	1
3.	CONTINUITY AND FURTHER ASSURANCE	2
4.	MISCELLANEOUS	2
5.	GOVERNING LAW	2
SIGNATURES		3
SCHEDULE	Amended Project Facility Agreement	6

THIS AGREEMENT is dated 27th June 2007 and made between:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Project Facility Agent**”); and
- (3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Project Facility Lenders and Additional Lenders.

RECITALS:

- (A) The Company proposes to further expand the Projects.
- (B) The Secured Parties have agreed to amend certain Senior Finance Documents and enter into additional Senior Finance Documents and the Lenders have agreed to increase the total size of the Facilities originally provided thereunder in connection with the Diamond Expansion 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 Project Facility Agreement and the Additional Lender Facility Agreement as set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Incorporation of defined terms

- (a) Unless a contrary indication appears, a term defined in or by reference in the Schedule has the same meaning in this Agreement.
- (b) The principles of construction and rules of interpretation referred to set out or referred to in the Schedule shall have effect as if set out in this Agreement.

1.2 Clauses

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

2. AMENDMENT

With effect from the Effective Date, the Project Facility Agreement and the Additional Lender Facility Agreement shall be amended so that they are read and construed for all purposes as one agreement as set out in the Schedule (*Amended Project Facility Agreement*) and the Additional Lender Facility Agreement shall, for all purposes, be replaced as a separate agreement accordingly.

3. CONTINUITY AND FURTHER ASSURANCE

3.1 Continuing obligations

The provisions of the Project Facility Agreement and the Additional Lender Facility Agreement shall, save as amended by this Agreement, continue in full force and effect.

3.2 Further assurance

The Company shall, upon the written request of the Project Facility Agent and at its own expense, do all such acts and things reasonably necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

4. MISCELLANEOUS

4.1 Incorporation of terms

The provisions of clause 1.3 (*Third Party Rights*), clause 1.4 (*Non-recourse Liability*) and clause 18 (*Jurisdiction*) of the Schedule shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to this Agreement are references to this Agreement and cross-references to specified clauses thereof are references to the equivalent clauses set out or incorporated herein.

4.2 Counterparts

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

5. GOVERNING LAW

This Agreement is governed by English law.

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

SIGNATURES

The Company

WYNN RESORTS (MACAU) S.A.

By: /s/ MATTHEW MADDOX

Address: 335-341 Alameda Dr. Carlos d' Assumpção
9th Floor
Hotline Center
Macau

Telephone: (853) 2888 9966

Fax: (853) 2832 9966

Attention: Chief Financial Officer

Copy to:

Wynn Resorts, Limited

Address: 3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
USA

Tel: (1) 702 770 2112

Fax: (1) 702 770 1518

Attention: General Counsel

The Project Facility Agent

SOCIÉTÉ GÉNÉRALE ASIA LIMITED

By: /s/ SUNNY LUI SUN PENG

/s/ KENNETH CHOI

Address: Level 38, Three Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5665 / (852) 2166 5667

Fax: (852) 2804 6215

Attention: Michael Poon / Kenneth Choi

Copy to:

Société Générale Asia Limited

Address: Level 38, 3 Pacific Place
1 Queen's Road East
Hong Kong

Tel: (852) 2166 5414/(852) 2166 5316

Fax: (852) 2868 1874

Attention: Kenny Chan/Karen Cheung
Commercial Back Office - Loans

The Project Facility Lender and the Additional Lender

SOCIÉTÉ GÉNÉRALE, NEW YORK BRANCH

By: /s/ PATRICIA WRIGHT

Address: 1221 Avenue of the Americas, 10th Floor
New York
NY 10020

Tel: (1) 212 278 5448

Fax: (1) 212 278 7614

Attention: Jerry Parisi

**SCHEDULE
AMENDED PROJECT FACILITY AGREEMENT**

DATED 14 SEPTEMBER 2004

WYNN RESORTS (MACAU) S.A.
as Company

SOCIÉTÉ GÉNÉRALE ASIA LIMITED
as Project Facility Agent

and

THE PROJECT FACILITY LENDERS
referred to herein

PROJECT FACILITY AGREEMENT
(As amended by the Project Facility Agreement Amendment
Agreement dated 14 September 2005 and the Project Facility
Second Amendment Agreement dated June 27, 2007)

CONTENTS

<u>Clause</u>	<u>Page</u>
1. Definitions And Interpretation	8
2. Common Terms Agreement	15
3. The Project Facility	15
4. Purpose	15
5. Conditions Precedent	15
6. Availability Of The Project Facility	15
7. Repayment	16
8. Prepayment And Cancellation	17
9. Interest	17
10. Interest Periods	17
11. Notification	17
12. [Not Used]	18
13. Changes To The Parties	18
14. Payments	19
15. Decision Making Amongst Project Facility Lenders	20
16. Counterparts	21
17. Governing Law	21
18. Jurisdiction	21
Schedule 1 The Project Facility Lenders	23
Schedule 2 Repayment Schedule	24

THIS AGREEMENT is made on the 14 September 2004

BETWEEN:

- (1) **WYNN RESORTS (MACAU) S.A.** (the “**Company**”);
- (2) **SOCIÉTÉ GÉNÉRALE ASIA LIMITED** (the “**Project Facility Agent**”); and
- (3) **THE PROJECT FACILITY LENDERS** (as defined below).

WHEREAS:

The Project Facility Lenders have agreed to make certain loan facilities available to the Company in connection with the further expansion of the Projects upon the terms and subject to the conditions set out in this Agreement and the Common Terms Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless otherwise defined herein, all terms defined or referred to in the Common Terms Agreement shall have the same meaning herein and in addition:

“**Available Commitment**” means, in relation to a Project Facility Lender at any time and save as otherwise provided herein, the aggregate US dollar equivalent amount of Available Tranche A Commitment, Available Tranche B Commitment and Available Tranche C Commitment of such Project Facility Lender.

“**Available Facility**” means, at any time, the aggregate US dollar equivalent amount of the Available Tranche A Facility, the Available Tranche B Facility and the Available Tranche C Facility.

“**Available Tranche A Commitment**” means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche A Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) its Existing Participation in respect of the Tranche A Facility;
- (b) any amounts of the Available Tranche A Commitment of such Project Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (c) the aggregate amount of Tranche A Advances which have been made by such Project Facility Lender at such time on or after the Effective Date; and

(d) in relation to any Advance Request, the amount of any Tranche A Advance due to be made on or before the proposed Advance Date.

“**Available Tranche B Commitment**” means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche B Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) its Existing Participation in respect of the Tranche B Facility;
- (b) any amounts of the Available Tranche B Commitment of such Project Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (c) the aggregate amount of Tranche B Advances which have been made by such Project Facility Lender at such time on or after the Effective Date; and
- (d) in relation to any Advance Request, the amount of any Tranche B Advance due to be made on or before the proposed Advance Date.

“**Available Tranche C Commitment**” means, in relation to a Project Facility Lender at any time, the amount set out opposite its name under the column entitled “Tranche C Commitment” in Schedule 1 (*The Project Facility Lenders*) less:

- (a) its Existing Participation in respect of the Tranche C Facility;
- (b) any amounts of the Available Tranche C Commitment of such Project Facility Lender cancelled pursuant to Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement or otherwise reduced pursuant to the terms hereof and/or the Common Terms Agreement;
- (c) the aggregate amount of Tranche C Advances which have been made by such Project Facility Lender at such time on or after the Effective Date; and
- (d) in relation to any Advance Request, the amount of any Tranche C Advance due to be made on or before the proposed Advance Date.

“**Available Tranche A Facility**” means, at any time, the aggregate amount of the Available Tranche A Commitments of all the Project Facility Lenders at such time.

“**Available Tranche B Facility**” means, at any time, the aggregate amount of the Available Tranche B Commitments of all the Project Facility Lenders at such time.

“**Available Tranche C Facility**” means, at any time, the aggregate amount of the Available Tranche C Commitments of all the Project Facility Lenders at such time.

“**Common Terms Agreement**” means the common terms agreement dated 14 September 2004 and made between, among others, the Company, the financial institutions defined therein as Hotel Facility Lenders, Project Facility Lenders and Revolving Credit Facility Lenders, the Hotel Facility Agent, the Project Facility

Agent, the Intercreditor Agent and the Security Agent, as amended and restated by the Common Terms Agreement Amendment Agreement and the Common Terms Agreement Second Amendment Agreement.

“Existing Participation” means, in relation to each Project Facility Lender in respect of any Project Facility as at the Effective Date, the product of the commitment amount set out opposite its name in the column for that Project Facility in Schedule 1 (*The Project Facility Lenders*) and the Participation Proportion.

“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 Project Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Project Facility Agent at its request quoted by the Reference Banks to leading banks in the Hong Kong interbank market,

at or about 11.00 a.m. (Hong Kong time) on the Quotation Day for the offering of deposits in HK dollars for a period comparable to the Interest Period for that Project Facility Advance.

“LIBOR” means, in relation to any Tranche A Advance or Tranche C Advance:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for US dollars or for the Interest Period for that Project Facility Advance) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Project Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

at or about 11:00 a.m. (London time) on the Quotation Day for the offering of deposits in US dollars and for a period comparable to the Interest Period for that Project Facility Advance.

“Majority Project Facility Lenders” means a Project Facility Lender or Project Facility Lenders whose US dollar equivalent participations in the Project 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 Project Facility Advances then outstanding and undrawn Available Commitments.

“Margin” means in relation to any Project Facility Advance hereunder, 1.75% per annum but, in relation to any Project Facility Advance under the Tranche A Facility or the Tranche B Facility, if the Quarterly Date falling on the last day of the first full Fiscal Quarter of the Company following the Diamond Opening Date has occurred, the Leverage Ratio as at the most recent Quarterly Date is within the range set out below and the Intercreditor Agent has received, in accordance with paragraphs 1 and 2 of

Part A of Schedule 5 (*Covenants*) of the Common Terms Agreement, the Company's financial statements for the period ending on such Quarterly Date together with the Compliance Certificate required thereunder then, provided (in the case of any decrease in the Margin) no Default has occurred and is continuing, the Margin for such Tranche A Advances and Tranche B Advances will be the percentage per annum specified for that range:

<u>Leverage Ratio</u>	<u>Margin</u>
Less than 3.0	1.25%
Greater than or equal to 3.0 but less than 4.0	1.50%
Greater than or equal to 4.0 but less than 4.5	1.75%
4.5 or above	2.00%

Any increase or decrease in the Margin shall take effect from the Business Day following the satisfaction of the conditions specified above (or, where such Business Day falls less than five Business Days before the end of the then current Interest Period, from the commencement of the next Interest Period).

“**Party**” means a party to this Agreement.

“**Participation Proportion**” means, in relation to the Existing Participation of any Project Lender,

$$1 - \frac{X - Y}{X}$$

where: X is the sum of USD143,500,000 and the US dollar equivalent, as at the Effective Date, of HKD2,451,150,000

Y is the US dollar equivalent, as at the Effective Date, of the sum of the principal amounts outstanding under the Hotel Facility Agreement, the Project Facility Agreement and the Additional Lender Facility Agreement immediately prior to the Effective Date,

and “**US dollar equivalent**” means, for these purposes, in respect of any HK dollar amount, that amount converted into US dollars at such Project Lender's spot rate of exchange for the purchase of HK dollars with US dollars in the New York foreign exchange market at or about 11.00 am two Business Days prior to the Effective Date.

“**Project Facility**” means the Tranche A Facility, the Tranche B Facility and the Tranche C Facility.

“**Project Facility Advance**” means, as the context may require, a Tranche A Advance, a Tranche B Advance or a Tranche C Advance and “**Project Facility Advances**” shall mean each Tranche A Advance, Tranche B Advance and Tranche C Advance or any of them.

“**Project Facility Lender**” means a Tranche A Facility Lender, a Tranche B Facility Lender or a Tranche C Facility Lender.

“Project Finance Documents” means:

- (a) this Agreement;
- (b) the Common Terms Agreement;
- (c) any other Senior Finance Document to which a Project Facility Lender is a party in its capacity as a Project Facility Lender; and
- (d) any other document designated as such by the Project Facility Agent and the Company.

“Project Finance Parties” means the Project Facility Agent and the Project Facility Lenders.

“Project Loan” means the aggregate principal amount for the time being outstanding hereunder.

“Reference Banks” means, in relation to:

- (a) LIBOR, the principal London offices of Deutsche Bank AG, Société Générale and Citibank, N.A.; and
- (b) HIBOR, the principal Hong Kong offices of Deutsche Bank AG, Société Générale and Citibank, N.A.,

or such other bank or banks designated from time to time by the Project Facility Agent provided that the consent of the Company shall be required if such designation is made prior to an occurrence of an Event of Default which is continuing.

“Screen Rate” means, in relation to:

- (a) LIBOR, the British Bankers’ Association Interest Settlement Rate for US dollars for the relevant period, displayed on the appropriate page (being currently “LIBOR01”) of the Reuters Monitor Money Rates Service screen; and
- (b) HIBOR, the rate designated as “FIXING@11:00” (or any other designation which may from time to time replace that designation or, if no such designation appears, the arithmetic average (rounded upwards, to four decimal places) of the displayed rates for the relevant period) appearing under the heading “HONG KONG INTERBANK OFFERED RATES (HK DOLLAR)” on the Reuters Screen HIBOR1=R Page.

If the agreed page is replaced or service ceases to be available, the Project Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Project Facility Lenders.

“Tranche A Advance” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the 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 (*Grant of the Project Facilities*).

“Tranche A Facility Lender” means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*The Project Facility Lenders*) as a 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 (*Grant of the Project Facilities*).

“Tranche B Facility Lender” means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*The Project Facility Lenders*) as a Tranche B Facility Lender; or
- (b) has become party hereto as a Tranche B Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

“Tranche C Advance” means an advance (as from time to time reduced by repayment in accordance with the terms hereof or the Common Terms Agreement) made or to be made by the Tranche C Facility Lenders under the Tranche C Facility.

“Tranche C Facility” means the US dollar term loan facility granted to the Company under Clause 3.1.3 (*Grant of the Project Facilities*).

“Tranche C Facility Lender” means any commercial bank, financial institution or other entity which:

- (a) is named in Schedule 1 (*The Project Facility Lenders*) as a Tranche C Facility Lender; or
- (b) has become party hereto as a Tranche C Facility Lender in accordance with Clause 13 (*Changes to the Parties*),

and which has not ceased to be a party hereto in accordance with the terms hereof.

1.2 Interpretation

In this Agreement:

- 1.2.1 the principles of construction contained in Clause 1.2 (*Principles of Construction*) of the Common Terms Agreement and the rules of interpretation contained in Clause 1.3 (*Rules of Interpretation*) of the Common Terms Agreement shall apply to the construction and interpretation of this Agreement;
- 1.2.2 any reference to the “**Project Facility Agent**” or “**Project Facility Lender**” shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests; and
- 1.2.3 references in this Agreement to any Clause or Schedule shall be to a clause or schedule contained in this Agreement.

1.3 Third Party Rights

- 1.3.1 The Contracts (Rights of Third Parties) Act 1999 applies to Clause 1.4 (*Non-Recourse Liability*) but only for the benefit of the Operatives and subject always to the terms of Clause 17 (*Governing Law*) and Clause 18 (*Jurisdiction*).
- 1.3.2 Except as provided in sub-clause 1.3.1 above, a Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- 1.3.3 Save as provided by the Common Terms Agreement, the consent of any Person who is not a party to this Agreement is not required to rescind or vary this Agreement.

1.4 Non-recourse Liability

Notwithstanding any provision in the Senior Finance Documents to the contrary, no Operative shall be personally liable for payments due hereunder or under any of the Senior Finance Documents or for the performance of any obligation hereunder or thereunder, save, in relation to any Operative, pursuant to any Senior Finance Document to which such Operative is party. The sole recourse of the Project Finance Parties for satisfaction of any of the obligations of any of the Obligors hereunder and under the other Senior Finance Documents shall be against the Obligors, and not against any assets or property of any Operative save to the extent such Operative is party to a Senior Finance Document and is expressed to be liable for such obligation thereunder. In the case of Mr Wong Chi Seng, his liability shall be limited to his shares in the Company.

2. **COMMON TERMS AGREEMENT**

This Agreement and the rights and obligations of the parties hereto shall be subject to the terms and conditions of the Common Terms Agreement which shall be deemed to be incorporated into this Agreement. In the case of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement shall prevail.

3. **THE PROJECT FACILITY**

3.1 **Grant of the Project 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 USD18,500,000.

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 HKD2,451,150,000.

3.1.3 **Tranche C Facility**

The Tranche C 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 USD125,000,000.

4. **PURPOSE**

The Company shall apply all amounts borrowed by it under the Project Facility to finance Project Costs incurred or to be incurred in connection with the Projects and for the general corporate purposes of the Group (including investment in Excluded Subsidiaries, Excluded Projects or Resort Management Agreements).

5. **CONDITIONS PRECEDENT**

The provisions of Clause 2 (*Conditions Precedent*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6. **AVAILABILITY OF THE PROJECT FACILITY**

6.1 **Drawdown of Advances**

The provisions of Clause 3 (*Drawdown of Advances*) and Clause 4.2 (*Project Facility Availability Period*) of the Common Terms Agreement are incorporated by reference herein as if the same were set out in full herein.

6.2 **Each Project Facility Lender's Participation**

6.2.1 It is acknowledged and agreed that, as at the Effective Date, the amounts of each Tranche A Advance, each Tranche B Advance and each Tranche C Advance made and outstanding hereunder and the participation of each Project

Facility Lender therein are equal to, respectively, the Existing Participation of that Project Lender in respect of the Tranche A Facility, the Tranche B Facility and the Tranche C Facility and the terms of this Agreement and each other Senior Finance Document shall apply as between the parties hereto and thereto accordingly.

- 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 Each Tranche C Facility Lender will participate through its Facility Office in each Tranche C Advance made pursuant to Clause 6.1 (*Drawdown of Advances*) in the proportion borne by its Available Tranche C Commitment to the Available Tranche C Facility immediately prior to the making of that Tranche C Advance.

6.3 **Reduction of Available Commitment**

If a Project Facility Lender's Available Tranche A Commitment or, as the case may be, Available Tranche B Commitment or Available Tranche C Commitment is reduced in accordance with the terms hereof or the Common Terms Agreement after the Intercreditor Agent or the Project Facility Agent has received an Advance Request for a Tranche A Advance or, as the case may be, a Tranche B Advance or a Tranche C Advance and such reduction was not taken into account in the Available Tranche A Facility or, as the case may be, the Available Tranche B Facility or the Available Tranche C Facility, then the amount of that Tranche A Advance or, as the case may be, Tranche B Advance or Tranche C Advance shall be reduced accordingly.

7. **REPAYMENT**

7.1 **Repayment**

Subject to Clause 7.2 (*Final Maturity*), the Company shall repay the Project Loans in quarterly instalments by repaying on each Repayment Date amounts equal to the relevant percentage set out next to the relevant Repayment Date in Schedule 2 (*Repayment Schedule*) of the aggregate:

- (i) Tranche A Advances;
- (ii) Tranche B Advances; and

(iii) Tranche C Advances,
outstanding as at the end of the last day of the Project Facility Availability Period.

7.2 Final maturity

The Company shall repay on the Final Repayment Date all amounts outstanding or due and payable under the Project Facility on that day.

7.3 No re-borrowing

The Company may not re-borrow any part of the Project Facility which is repaid.

8. PREPAYMENT AND CANCELLATION

All prepayments of Project Facility Advances and cancellation of Available Commitments shall be made in accordance with Clause 8 (*Repayments, Prepayments and Cancellation*) of the Common Terms Agreement.

9. INTEREST

9.1 Calculation of Interest

The rate of interest on each Project Facility Advance for each Interest Period is the percentage rate per annum which is the aggregate of:

9.1.1 the applicable Margin; and

9.1.2 LIBOR (in the case of a Tranche A Advance or a Tranche C Advance) or HIBOR (in the case of a Tranche B Advance).

9.2 Payment of interest

Accrued interest on each Project Facility Advance is payable by the Company on the last day of each Interest Period relating to that Project Facility Advance.

9.3 Default Interest

Default interest shall be calculated and paid in accordance with Clause 9.4 (*Default Interest*) of the Common Terms Agreement.

10. INTEREST PERIODS

The duration of each Interest Period shall be determined in accordance with Clause 9.3 (*Interest Periods*) of the Common Terms Agreement.

11. NOTIFICATION

11.1 Advances

Promptly, and in any event, not less than 4 Business Days before the proposed Advance Date for each Project Facility Advance, the Project Facility Agent shall notify each Project Facility Lender of the proposed amount of the relevant Project

Facility Advance and the aggregate principal amount of the relevant Project Facility Advance allocated to such Project Facility Lender pursuant to Clause 6.2 (*Each Project Facility Lender's Participation*) and each Project Facility Lender shall, on such Advance Date, subject to the terms and conditions of this Agreement, make available to the Project Facility Agent for the account of the Company its said portion of such Project Facility Advance.

11.2 Interest rate determination

The Project Facility Agent shall promptly notify the Company and the Project Facility Lenders of each determination of LIBOR and HIBOR under this Agreement.

11.3 Changes to interest rates

The Project Facility Agent shall promptly notify the Company and the Project Facility Lenders of any change to any interest rate occasioned by the operation of Clause 10 (*Changes to the calculation of interest*) of the Common Terms Agreement.

11.4 Interest payment and repayment instalments

Without prejudice to the Company's obligation to make any interest payment or to pay any repayment instalment on the due date, the Project Facility Agent shall provide to the Company and each Project Facility Lender (with a copy to the Intercreditor Agent) a notice setting out the relevant scheduled payment of interest and scheduled repayment of principal under this Agreement at least 15 Business Days before such amounts fall due for payment by the Company.

12. [NOT USED]

13. CHANGES TO THE PARTIES

13.1 Transfers by the Project Facility Agent

The Project Facility Agent may resign in accordance with the Common Terms Agreement and may assign and transfer all of its rights and obligations under the Project Finance Documents to a replacement Project Facility Agent appointed in accordance with the terms of the Common Terms Agreement.

13.2 Transfers by the Company

The Company may not assign, transfer, novate or dispose of any of its rights or obligations under the Project Finance Documents.

13.3 Transfers by the Project Facility Lenders

A Project Facility Lender may assign, transfer or novate any of its rights and/or obligations under the Project Finance Documents in accordance with Clause 21.4 (*Assignment and Transfer by Lenders*), Clause 21.5 (*Assignments by Lenders*) and Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreement.

13.4 Assignment and Transfer Fees

On the date upon which an assignment takes effect pursuant to Clause 21.5 (*Assignments by Lenders*) of the Common Terms Agreement or a transfer takes effect pursuant to Clause 21.6 (*Transfers by Lenders*) of the Common Terms Agreements, the relevant assignee or Transferee shall pay to the Intercreditor Agent for its own account a fee in accordance with Clause 21.7 of the Common Terms Agreement.

14. PAYMENTS

14.1 Payments

14.1.1 All payments under this Agreement shall be made in accordance with Clause 26 (*Payment Mechanics*) of the Common Terms Agreement.

14.1.2 Subject to Clause 26 (*Payment Mechanics*) of the Common Terms Agreement, on each date on which this Agreement requires an amount to be paid by the Company or a Project Facility Lender, the Company or, as the case may be, such Project Facility Lender shall make the same available to the Project Facility Agent for value on such due date and at such time and in such funds and to such account with such bank as the Project Facility Agent shall specify from time to time.

14.2 Partial Payments

14.2.1 If the Project Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Company to the Project Facility Lenders under the Project Finance Documents, the Project Facility Agent shall apply that payment towards the obligations of the Company under the Project Finance Documents in the following order:

- (a) **first**, in or towards payment *pro rata* of all amounts paid by the Project Facility Lenders under Clause 23.15 (*Indemnity to Intercreditor Agent*) of the Common Terms Agreement but which have not been reimbursed by the Company;
- (b) **secondly**, in or towards payment *pro rata* of all amounts paid by the Project Facility Lenders under Clause 15.3 (*Indemnity to Project Facility Agent*) but which have not been reimbursed by the Company;
- (c) **thirdly**, in or towards payment *pro rata* of all costs and expenses incurred by the Project Facility Lenders which the Company is obliged to reimburse;
- (d) **fourthly**, in or towards payment *pro rata* of all accrued but unpaid fees and commissions due to the Project Facility Lenders under the Project Finance Documents;

- (e) **fifthly**, in or towards payment *pro rata* of all accrued but unpaid interest (including default interest) due to the Project Facility Lenders under the Project Finance Documents;
- (f) **sixthly**, in or towards payment *pro rata* of any principal due to the Project Facility Lenders under the Project Finance Documents but unpaid; and
- (g) **seventhly**, in or towards payment *pro rata* of any other sum due to the Project Facility Lenders under the Project Finance Documents but unpaid.

14.2.2 The Project Facility Agent shall, if so directed by the Majority Project Facility Lenders, vary the order set out in sub-clause 14.2.1 above.

14.2.3 Sub-clause 14.2.1 above will override any appropriation made by the Company.

15. **DECISION MAKING AMONGST PROJECT FACILITY LENDERS**

15.1 **Decisions**

Save as otherwise set out herein and subject to the Common Terms Agreement, the required Senior Secured Creditors for the purpose of any decision within the scope of Clause 34.2 (*Amendment and waiver of Facility Agreements*) of the Common Terms Agreement) relating to this Agreement shall be the Project Facility Agent acting on the instructions of the Majority Project Facility Lenders.

15.2 **Failure to Give Instructions**

If the Project Facility Agent gives notice to the Project Facility Lenders requesting their specific instructions on any matter referred to in Clause 15.1 (*Decisions*) and it specifies in such notice that the Project Facility Lenders are to give such instructions by a certain date and time specified in such notice, any Project Facility Lender which fails to respond by the date and time so specified shall have its portion of the Project Facility Advances and its Available Commitment disregarded for all purposes of determining whether instructions have been given to the Project Facility Agent by the Majority Project Facility Lenders (and, for the purposes of determining the Available Facility or the amount of all Project Facility Advances outstanding, the Available Commitments and portion of Project Facility Advances of such Project Facility Lender shall be deducted).

15.3 **Indemnity to Project Facility Agent**

15.3.1 Each Project Facility Lender shall, rateably in accordance with the proportion that the US dollar equivalent of the sum of its Available Commitments and its participations in any outstanding Project Facility Advances bear to the US dollar equivalent of the aggregate of the Available Commitments and such participations of all the Project 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 Project Facility Agent, within fifteen days of demand, against any cost, loss or liability incurred by the Project Facility Agent (other than by reason of the negligence or wilful misconduct of the Project Facility Agent) in acting as Project Facility Agent under any of the Senior Finance Documents (unless the Project Facility Agent has been reimbursed by the Company pursuant to a Senior Finance Document).

- 15.3.2 Provided that the Company is required to reimburse or indemnify the Project Facility Agent for such cost, loss or liability in accordance with the terms of the Senior Finance Documents, the Company shall, within fifteen days of demand in writing by any Project Facility Lender, indemnify such Project Facility Lender in relation to any payment actually made by such Project Facility Lender pursuant to Clause 15.3.1 above.

16. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

17. **GOVERNING LAW**

This Agreement shall be governed by English law.

18. **JURISDICTION**

18.1 **Jurisdiction of English courts**

18.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) (a “**Dispute**”).

18.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.

18.1.3 This Clause 18.1 (*Jurisdiction of English Courts*) is for the benefit of the Project Finance Parties only. As a result, no Project Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law and the Senior Finance Documents, the Project Parties may take concurrent proceedings in any number of jurisdictions.

18.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Company:

- 18.2.1 irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
- 18.2.2 agrees that failure by a process agent to notify the Company of the process will not invalidate the proceedings concerned.

SCHEDULE 1
THE PROJECT FACILITY LENDERS

<u>Project Facility Lender</u>	<u>Tranche A Commitment (USD)</u>	<u>Tranche B Commitment (HKD)</u>	<u>Tranche C Commitment (USD)</u>
Société Générale, New York Branch	18,500,000	2,451,150,000	125,000,000
Total	18,500,000	2,451,150,000	125,000,000

**SCHEDULE 2
REPAYMENT SCHEDULE**

<u>Repayment Date</u>	<u>Percentage (%) of Tranche A Facility and Tranche B Facility to be repaid</u>	<u>Percentage (%) of Tranche C Facility to be repaid</u>
First Repayment Date	8 1/3	1 1/4
Second Repayment Date	8 1/3	1 1/4
Third Repayment Date	8 1/3	1 1/4
Fourth Repayment Date	8 1/3	1 1/4
Fifth Repayment Date	8 1/3	1/4
Sixth Repayment Date	8 1/3	1/4
Seventh Repayment Date	8 1/3	1/4
Eighth Repayment Date	8 1/3	1/4
Ninth Repayment Date	8 1/3	1/4
Tenth Repayment Date	8 1/3	1/4
Eleventh Repayment Date	8 1/3	1/4
Twelfth Repayment Date	8 1/3	93 1/4

**FIRST AMENDMENT TO AMENDED AND RESTATED
CREDIT AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "First Amendment"), dated as of April 9, 2007, is made and entered into among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "Borrower"), the Wynn Amendment Parties (as hereinafter defined) and DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent (in such capacity, the "Administrative Agent") on behalf of the Lenders (as hereinafter defined).

RECITALS

A. The Borrower and the Administrative Agent are parties to that certain Amended and Restated Credit Agreement dated as of August 15, 2006 (as amended, modified or supplemented from time to time, the "Credit Agreement") among the Borrower, the Administrative Agent, Deutsche Bank Securities Inc., as lead arranger and joint book running manager, Banc of America Securities LLC, as lead arranger and joint book running manager, Bank of America, N.A., as syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, J.P. Morgan Securities Inc., as arranger and joint book running manager, JPMorgan Chase Bank, as joint documentation agent, SG Americas Securities, LLC, as arranger and joint book running manager, Societe Generale, as joint documentation agent, Bank of Scotland, as managing agent, HSH Nordbank AG, as managing agent, The Royal Bank of Scotland PLC, as managing agent, Wachovia Bank, as managing agent, and the several banks and other financial institutions or entities from time to time parties thereto (the "Lenders").

B. In connection with the Credit Agreement, each of Wynn Las Vegas Capital Corp., a Nevada corporation ("Capital Corp."), Wynn Show Performers, LLC, a Nevada limited liability company ("Show Performers"), Wynn Golf, LLC, a Nevada limited liability company ("Wynn Golf"), Wynn Sunrise, LLC, a Nevada limited liability company ("Wynn Sunrise"), World Travel, LLC, a Nevada limited liability company ("World Travel"), Kevyn, LLC, a Nevada limited liability company ("Kevyn"), and Las Vegas Jet, LLC, a Nevada limited liability company ("Las Vegas Jet" and together with Capital Corp., Show Performers, Wynn Golf, Wynn Sunrise, World Travel, Kevyn, Wynn Resorts Holdings, LLC, a Nevada limited liability company, and Wynn Completion Guarantor, LLC, a Nevada limited liability company, the "Wynn Amendment Parties"), have executed certain Loan Documents.

C. The Borrower has requested that the Lenders agree, subject to the conditions and on the terms set forth in this First Amendment, to amend certain provisions of the Credit Agreement and the Disbursement Agreement to, among other things, (i) permit the release to the Borrower of certain funds on deposit in the Completion Guaranty Deposit Account and the Project Liquidity Reserve Account, (ii) permit the issuance by the Borrower and Capital Corp. of up to \$500,000,000 in principal amount of senior unsecured indebtedness and (iii) declare the occurrence of the Phase I Final Completion Date.

D. The Lenders are willing to agree to such amendments, subject to the conditions and on the terms set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Administrative Agent on behalf of the Lenders and the Wynn Amendment Parties agree as follows:

1. Definitions. Except as otherwise expressly provided herein, capitalized terms used in this First Amendment shall have the meanings given in the Credit Agreement, and the rules of interpretation set forth in the Credit Agreement shall apply to this First Amendment.

2. Amendments.

(a) The definition of “Financing Agreements” set forth in Section 1.1 of the Credit Agreement is amended by inserting the words “and any agreements relating to the Senior Unsecured Debt” immediately after the words “Second Lien Secured Obligations” in the third line thereof.

(b) The definition of “Permitted Refinancing Indebtedness” set forth in Section 1.1 of the Credit Agreement is deleted in its entirety and replaced with the following:

“Permitted Refinancing Indebtedness”: any Indebtedness of any Loan Party issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund any First Lien Secured Obligations, any Second Lien Secured Obligations or any obligations under Senior Unsecured Debt; provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on such Indebtedness and the amount of all expenses and premiums incurred in connection therewith), (b) such Permitted Refinancing Indebtedness has a final maturity date not earlier than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (c) the restrictions on the Loan Parties contained in the agreements governing such Permitted Refinancing Indebtedness are no more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded and, in any event, the differences between the restrictions on the Loan Parties in the agreements governing such Permitted Refinancing Indebtedness from those contained in the agreements governing the Indebtedness being extended, refinancing,

renewed, replaced, defeased or refunded, taken as a whole, could not reasonably be expected to be materially adverse to the Loan Parties (taken as a whole) or the Lenders and (d) to the extent related to any First Lien Secured Obligations or any Second Lien Secured Obligations (including any Permitted Refinancing Indebtedness related thereto) the relevant holders of such Permitted Refinancing Indebtedness become party to the Intercreditor Agreement. In the event Permitted Refinancing Indebtedness is used to extend, refinance, renew, replace, amend and restate, restate, defease or refund the 2014 Notes all relevant definitions and provisions of the Loan Documents related to the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded shall be amended, as necessary, to reflect such Permitted Refinancing Indebtedness and related documentation and/or arrangements by action of the Administrative Agent without the consent of the Lenders.

(c) The following new definition is inserted into Section 1.1 of the Credit Agreement in appropriate alphabetical order:

“Senior Unsecured Debt” as defined in Section 7.2(n).

(d) Section 1.3 of the Credit Agreement is amended by inserting the words “and any proceeds of the Senior Unsecured Debt applied on the date of issuance thereof to transaction costs related thereto” after the words “Refinancing Transaction” in the seventh line thereof.

(e) Section 7.2 of the Credit Agreement is amended by (i) deleting the word “and” at the end of clause (l) of such section, (ii) deleting the period at the end of clause (m) of such section and replacing it with the words “; and” and (iii) inserting a new clause (n) to such section as follows:

(n) Indebtedness of the Borrower and/or Capital Corp. in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any such Indebtedness, not to exceed the lesser of (x) \$500,000,000, (y) the amount of such Indebtedness permitted to be incurred under the 2014 Notes Indenture by the Loan Parties on the date that such Indebtedness is initially issued or obtained in reliance on this clause (n) in accordance with clause (i) below and (z) the principal amount of Indebtedness initially issued or obtained in reliance on this clause (n) in accordance with clause (i) below (in any such case, reduced by any principal payments from time to time made thereon) and Guarantee Obligations of any Loan Party with respect thereto (the “Senior Unsecured Debt”); provided that (i) the Senior Unsecured Debt shall initially be issued by the Borrower and/or Capital Corp. in a single issuance (and thereafter, except with respect to Permitted Refinancing Indebtedness related thereto, no other Indebtedness shall be issued in reliance on this clause (n)), (ii) the Senior Unsecured Debt shall have a final maturity date not earlier than the final maturity date of, and have a

Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the 2014 Notes and (iii) subject to clause (ii) above, the terms and conditions of the Senior Unsecured Debt (including the pricing, covenants and restrictions contained in the agreements governing the Senior Unsecured Debt) shall be in form and substance satisfactory to the Majority of the Arrangers.

(f) Section 7.9 of the Credit Agreement is amended by inserting the words “any Senior Unsecured Debt or” after the words “optionally defease,” in the third line thereof.

(g) Section 7.23 of the Credit Agreement is deleted in its entirety and replaced with the words “[INTENTIONALLY OMITTED].” All references to Section 7.23 of the Credit Agreement contained in the Loan Documents shall have no further force or effect.

(h) Section 7.26 of the Credit Agreement is amended by adding the following immediately after the concluding period thereof:

Notwithstanding the foregoing, this Section 7.26 shall not apply to the acquisition by the Borrower or any other Loan Party of any fee, easement or other interest in any real property as to which the Majority of the Arrangers have determined that the size, location and proposed use thereof are insufficient to justify the time and expense of satisfying the terms of this Section 7.26.

(i) Section 7.27 of the Credit Agreement is deleted in its entirety and replaced with the words “[INTENTIONALLY OMITTED].”

(j) Exhibit K to the Credit Agreement is amended by (i) replacing the words “Three Hundred Million Dollars (\$300,000,000)” in Section 6.8 thereof with the words “Five Hundred Million Dollars (\$500,000,000)” and (ii) deleting Section 4.4.5 thereof in its entirety and replacing it with the words “[INTENTIONALLY OMITTED].”

3. Release of Certain Funds on Deposit in the Completion Guaranty Deposit Account and Project Liquidity Reserve Account. Upon the effectiveness of this Amendment (i) all amounts on deposit in the Project Liquidity Reserve Account shall be released to the Borrower and (ii) any amounts in excess of \$30,000,000 then on deposit in the Completion Guaranty Deposit Account shall be released to the Borrower.

4. Disbursement Agreement Amendment. The Administrative Agent is hereby directed to execute on the date hereof that certain Fifth Amendment to Master Disbursement Agreement (the “Disbursement Agreement Amendment”), substantially in the form attached hereto as Exhibit A on behalf of the Lenders.

5. Phase I Final Completion Date. Notwithstanding anything to contrary contained in the Loan Documents, as of the effective date of this First Amendment, the Phase I Final Completion Date shall be deemed to have occurred.

6. Representations and Warranties. To induce the Lenders to agree to this First Amendment, the Borrower represents to the Administrative Agent and the Lenders that as of the date hereof:

(a) the Borrower and each of the Wynn Amendment Parties has all power and authority to enter into this First Amendment and the Disbursement Agreement Amendment (collectively, the “First Amendment Documents”) to which each is a party and that have been entered into by the Borrower and each of the Wynn Amendment Parties as of the date this representation is being made, and to carry out the transactions contemplated by, and to perform its obligations under or in respect of, the First Amendment Documents to which each is a party;

(b) the execution and delivery of First Amendment Documents and the performance of the obligations of the Borrower and each of the Wynn Amendment Parties under or in respect of the First Amendment Documents to which each is a party and that have been entered into by the Borrower and each of the Wynn Amendment Parties as of the date this representation is being made have been duly authorized by all necessary action on the part of the Borrower and each of the Wynn Amendment Parties;

(c) the execution and delivery of the First Amendment Documents that have been entered into by the Borrower and each of the Wynn Amendment Parties as of the date this representation is being made and the performance of the obligations of the Borrower and each of the Wynn Amendment Parties under or in respect of such First Amendment Documents to which each is a party do not and will not conflict with or violate (i) any provision of the articles of incorporation or bylaws (or similar constituent documents) of the Borrower or any Wynn Amendment Party, (ii) any Requirement of Law, (iii) any order, judgment or decree of any court or other governmental agency binding on the Borrower or any Wynn Amendment Party, or (iv) any indenture, agreement or instrument to which the Borrower or any Wynn Amendment Party is a party or by which the Borrower or any Wynn Amendment Party, or any property of any of them, is bound, and do not and will not require any consent or approval of any Person;

(d) the First Amendment Documents that have been entered into by the Borrower and each of the Wynn Amendment Parties as of the date this representation is being made have been duly executed and delivered by the Borrower and each of the Wynn Amendment Parties party thereto and the Credit Agreement and the other Loan Documents, as amended by the First Amendment Documents, are the legal, valid and binding obligations of the Borrower and each of the Wynn Amendment Parties, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

(e) no event has occurred and is continuing or will result from the execution and delivery of the First Amendment Documents that would constitute a Default or an Event of Default;

(f) since the Closing Date, no event has occurred that has resulted, or could reasonably be expected to result, in a Material Adverse Effect; and

(g) each of the representations and warranties made by the Borrower and the Wynn Amendment Parties in or pursuant to the Loan Documents to which each is a party shall be true and correct in all material respects on and as of the date this representation is being made, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

7. Effectiveness of this First Amendment. This First Amendment shall be effective only if and when (i) executed by the Borrower, the Wynn Amendment Parties and the Administrative Agent, on behalf of the Lenders, and (ii) the Disbursement Agreement Amendment shall have been executed by all parties thereto.

8. Acknowledgments. By executing this First Amendment, each of the Wynn Amendment Parties (a) consents to the First Amendment Documents and the issuance of the Senior Unsecured Debt, (b) acknowledges that, notwithstanding the execution and delivery of the First Amendment Documents or the issuance of the Senior Unsecured Debt, the obligations of each of the Wynn Amendment Parties under the Loan Documents to which they are a party (including the Guarantee, the Completion Guaranty Collateral Account Agreement, the Completion Guaranty and the Security Agreement) are not impaired or affected, and such Loan Documents continue in full force and effect, and (c) affirms and ratifies, to the extent it is a party thereto, the Loan Documents.

9. Miscellaneous. **THIS FIRST AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW)**. This First Amendment may be executed in one or more duplicate counterparts and when signed by all of the parties listed below shall constitute a single binding agreement. Except as amended hereby, all of the provisions of the Credit Agreement and the other Loan Documents shall remain in full force and effect except that each reference to the "Credit Agreement", or words of like import in any Loan Document, shall mean and be a reference to the Credit Agreement as amended hereby. This First Amendment shall be deemed a "Loan Document" as defined in the Credit Agreement. Section 10.12 of the Credit Agreement shall apply to this First Amendment and all past and future amendments to the Credit Agreement and other Loan Documents as if expressly set forth therein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this First Amendment to be duly executed by their officers or officers of their sole ultimate members thereunto duly authorized as of the day and year first above written.

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

WYNN GOLF, LLC,
a Nevada limited liability company

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

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

WYNN SUNRISE, LLC,
a Nevada limited liability company

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

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

WORLD TRAVEL, LLC,
a Nevada limited liability company

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

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

[Signature Page to First Amendment to Credit Agreement]

LAS VEGAS JET, LLC,
a Nevada limited liability company

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

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

WYNN SHOW PERFORMERS, LLC,
a Nevada limited liability company

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

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

KEVYN, LLC,
a Nevada limited liability company

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

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

[Signature Page to First Amendment to Credit Agreement]

WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

WYNN COMPLETION GUARANTOR, LLC,
a Nevada limited liability company

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

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as the Administrative Agent
on behalf of the Lenders

By: /s/ Mary Kay Coyle
Name: Mary Kay Coyle
Title: Managing Director

By: /s/ Steven Lapham
Name: Steven Lapham
Title: Managing Director

[Signature Page to First Amendment to Credit Agreement]

EXHIBIT A
FIFTH AMENDMENT
TO MASTER DISBURSEMENT AGREEMENT

**FIFTH AMENDMENT
TO MASTER DISBURSEMENT AGREEMENT**

THIS FIFTH AMENDMENT TO MASTER DISBURSEMENT AGREEMENT (this "Amendment") is made and entered into as of April 9, 2007, by and among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "Company"), DEUTSCHE BANK TRUST COMPANY AMERICAS, as the Bank Agent (the "Bank Agent"), and DEUTSCHE BANK TRUST COMPANY AMERICAS, as the Disbursement Agent (the "Disbursement Agent"), with respect to the following:

Recitals

A. Disbursement Agreement. The undersigned are parties to that certain Master Disbursement Agreement, dated as of December 14, 2004 (as amended by that certain First Amendment to Master Disbursement Agreement, dated as of April 26, 2005, that certain Second Amendment to Master Disbursement Agreement, dated as of June 29, 2005, that certain Third Amendment to Master Disbursement Agreement, dated as of March 15, 2006, that certain Fourth Amendment to Master Disbursement Agreement, dated as of August 15, 2006, and as further amended, amended and restated, supplemented or otherwise modified from time to time, the "Disbursement Agreement"), among the Company, the Bank Agent, U.S. Bank National Association, as the indenture trustee (the "Indenture Trustee"), and the Disbursement Agent. The defined terms used herein and not otherwise defined herein shall have the meanings given in the Disbursement Agreement.

B. Right to Amend Disbursement Agreement Without Consent of Indenture Trustee. The Bank Agent, the Disbursement Agent and the Company have the right to amend the Disbursement Agreement as set forth therein without the Indenture Trustee's consent.

C. Amendment. The undersigned desire to amend the Disbursement Agreement to reflect certain agreements of the parties hereto, all as more particularly set forth herein.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agree as follows:

1. AMENDMENTS.

a. Section 2.2.7 of the Disbursement Agreement is amended by deleting the words ", which release shall be effected as a dividend from the Completion Guarantor to the Company" from the seventeenth and eighteenth lines thereof.

- b. Section 2.9.2 of the Disbursement Agreement is deleted in its entirety and replaced with the words “[INTENTIONALLY OMITTED].”
- c. Section 3.2.25 of the Disbursement Agreement is amended by replacing the words “Three Hundred Million Dollars (\$300,000,000) therein with the words “Five Hundred Million Dollars (\$500,000,000).”
- d. Section 4.4.5 of the Disbursement Agreement is deleted in its entirety and replaced with the words “[INTENTIONALLY OMITTED].”
- e. The definition of “Available Funds” set forth in Exhibit A of the Disbursement Agreement is amended by inserting the following immediately prior to the period at the end of such definition:
 - , plus (x) the amount of any Senior Unsecured Debt (as defined in the Bank Credit Agreement) that could be incurred by the Company pursuant to Section 7.2(n) of the Bank Credit Agreement at such time.

2. FINAL COMPLETION OF THE PHASE I PROJECT. Notwithstanding anything to the contrary contained in the Disbursement Agreement, as of the effective date of this Amendment, Final Completion of the Phase I Project and Phase I Final Completion shall be deemed to have been achieved and the Final Completion Date with respect to the Phase I Project shall be deemed to have occurred.

3. MISCELLANEOUS. Except as set forth in this Amendment, all other terms and provisions of the Disbursement Agreement remain unmodified and in full force and effect. This Amendment shall be construed and enforced in accordance with the laws of the State of New York. In the event that any term or provision contained herein is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the fact that such term or provision is invalid, void or otherwise unenforceable shall in no way affect the validity or enforceability of any other term or provision contained herein. This Amendment may be executed in any number of identical counterparts.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first written above.

COMPANY:

WYNN LAS VEGAS, LLC,
a Nevada limited liability company

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

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

By: /s/ Marc Schorr
Name: Marc Schorr
Title: Chief Operating Officer

BANK AGENT:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ Mary Kay Coyle
Name: Mary Kay Coyle
Title: Managing Director

By: /s/ Steven Lapham
Name: Steven Lapham
Title: Managing Director

[Signature Page to Fifth Amendment to Disbursement Agreement]

DISBURSEMENT AGENT:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ Mary Kay Coyle

Name: Mary Kay Coyle

Title: Managing Director

By: /s/ Steven Lapham

Name: Steven Lapham

Title: Managing Director

[Signature Page to Fifth Amendment to Disbursement Agreement]

**Certification of the Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Stephen A. Wynn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2007

/s/ STEPHEN A. WYNN

**Stephen A. Wynn
Chairman of the Board
and Chief Executive Officer
(Principal Executive Officer)**

**Certification of the Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, John Strzemp, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2007

/s/ JOHN STRZEMP

**John Strzemp
Executive Vice President and
Chief Financial Officer
(Principal Financial Officer)**

**Certification of CEO and CFO Pursuant to
18 U.S.C. Section 1350, as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q of Wynn Resorts, Limited (the "Company") for the quarter ended June 30, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Stephen A. Wynn, as Chief Executive Officer of the Company and John Strzemp, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ STEPHEN A. WYNN

Name: _____
Title: **Stephen A. Wynn
Chairman and Chief Executive Officer
(Principal Executive Officer)**

Date: August 9, 2007

/s/ JOHN STRZEMP

Name: _____
Title: **John Strzemp
Executive Vice President and
Chief Financial Officer
(Principal Financial Officer)**

Date: August 9, 2007

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