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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, 2003

OR

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

For the transition period _____ to _____

Commission File No. 000-50028

WYNN RESORTS, LIMITED

(Exact name of Registrant as specified in its charter)

NEVADA	**46-0484987**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**

3145 Las Vegas Boulevard South—Las Vegas, Nevada 89109
(Address of principal executive office) (Zip Code)

(702) 733-4444
(Registrant's telephone number, including area code)

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

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule12b-2 of the 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 August 5, 2003**
Common stock, $0.01 par value	82,351,957

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WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONSOLIDATED BALANCE SHEETS
(amounts in thousands, except share data)
(unaudited)

	June 30, 2003	December 31, 2002
ASSETS		
Current assets:		
Cash and cash equivalents	$ 149,451	$ 109,644
Restricted cash and investments	36,512	—
Receivables, net	59	184
Inventories	212	212
Prepaid expenses	2,351	2,010
Total current assets	188,585	112,050
Restricted cash and investments	609,803	792,877
Property and equipment, net	584,065	420,496
Water rights	6,400	6,400
Trademark	1,000	1,000
Deferred financing costs	56,578	60,159
Other assets	7,285	5,619
Total assets	$1,453,716	$1,398,601
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of long-term debt	$ 40	$ 38
Accounts and construction payables	30,852	9,702
Accrued interest	8,076	8,159
Accrued compensation and benefits	2,306	1,359
Accrued expenses and other current liabilities	891	888
Total current liabilities	42,165	20,146
Construction retention	7,211	506
Long-term debt	383,775	382,153
Total liabilities	433,151	402,805
Minority interest	2,490	4,183
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value $0.01; authorized 40,000,000 shares; zero shares issued and outstanding	—	—
Common stock, par value $0.01; authorized 400,000,000 shares; 82,162,234 and 78,972,511 shares issued and outstanding	822	790
Additional paid-in capital	1,113,241	1,065,649
Deferred compensation—restricted stock	(14,515)	(14,771)
Accumulated other comprehensive income	265	—
Deficit accumulated from inception during the development stage	(81,738)	(60,055)
Total stockholders' equity	1,018,075	991,613
Total liabilities and stockholders' equity	$1,453,716	$1,398,601

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

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

	Three Months Ended June 30,		Six Months Ended June 30,		From Inception to June 30,
	2003	2002	2003	2002	2003
Revenues:					
Airplane	$ 123	$ 39	$ 173	$ 513	$ 1,966
Art gallery	80	52	152	117	466
Retail	79	48	148	97	412
Water	3	3	5	5	37
Total revenue	285	142	478	732	2,881
Expenses:					
Pre-opening costs	11,184	6,153	20,126	8,833	62,840
Depreciation and amortization	2,180	2,158	4,353	4,598	25,495
(Gain) / Loss on sale of assets	—	—	(5)	95	368
Selling, general and administrative	150	128	252	266	1,249
Facility closure expenses	—	—	—	—	1,579
Cost of water	13	14	34	31	133
Cost of retail sales	35	29	74	59	201
Loss from incidental operations	258	175	497	250	2,360
Total expenses	13,820	8,657	25,331	14,132	94,225
Operating loss	(13,535)	(8,515)	(24,853)	(13,400)	(91,344)
Other income (expense):					
Interest expense, net	(2,285)	(284)	(3,934)	(453)	(5,877)
Interest income	2,531	634	5,411	797	12,924
Other income, net	246	350	1,477	344	7,047
Minority interest	612	281	1,693	281	2,559
Net loss accumulated during the development stage	$ (12,677)	$ (7,884)	$ (21,683)	$ (12,775)	$ (81,738)
Basic and diluted earnings per common share:					
Net income:					
Basic	$ (0.16)	$ (0.20)	$ (0.28)	$ (0.32)	$ (1.73)
Diluted	$ (0.16)	$ (0.20)	$ (0.28)	$ (0.32)	$ (1.73)
Weighted average common shares outstanding:					
Basic	78,164	39,816	78,000	39,611	47,230
Diluted	78,164	39,816	78,000	39,611	47,230

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

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATED STATEMENTS OF CASH FLOWS
(amounts in thousands)
(unaudited)

	Six Months Ended June 30,		From Inception to June 30,
	2003	2002	2003
Cash flows from operating activities:			
Net loss accumulated during the development stage	$ (21,683)	$ (12,775)	$ (81,738)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:			
Depreciation and amortization	4,353	4,598	25,495
Minority interest	(1,693)	(281)	(2,559)
Amortization of deferred compensation	1,500	—	1,634
Amortization of deferred financing costs	628	—	628
(Gain) / loss on sale of assets	(5)	95	368
Incidental operations	—	1,971	6,510
Increase (decrease) in cash from changes in:			
Receivables, net	125	177	8,192
Inventories and prepaid expenses	(341)	93	(1,402)
Accounts payable and accrued expenses	(46)	6,316	3,156
Total adjustments	4,521	12,969	42,022
Net cash provided by (used in) operating activities	(17,162)	194	(39,716)
Cash flows from investing activities:			
Acquisition of Desert Inn Resort and Casino, net of cash acquired	—	—	(270,718)
Capital expenditures, net of construction payables	(132,000)	(28,770)	(282,800)
Restricted cash and investments	146,562	(1,912)	(646,315)
Other assets	(1,401)	(1,288)	(7,980)
Proceeds from sale of equipment	5	8,007	9,563
Net cash provided by (used in) investing activities	13,166	(23,963)	(1,198,250)
Cash flows from financing activities:			
Equity contributions	—	173,494	675,007
Equity distributions	—	—	(110,482)
Proceeds from issuance of common stock	45,000	—	536,844
Third party fees	(204)	—	(37,558)
Macau minority contributions	—	2,597	5,050
Proceeds from issuance of long-term debt	—	—	506,334
Principal payments of long-term debt	(18)	(18)	(153,603)
Payment of deferred financing costs	(975)	(3,712)	(64,175)
Proceeds from issuance of related party loan	—	—	100,000
Principal payments of related party loan	—	—	(70,000)
Net cash provided by financing activities	43,803	172,361	1,387,417
Cash and cash equivalents:			
Increase in cash and cash equivalents	39,807	148,592	149,451
Balance, beginning of period	109,644	39,268	—
Balance, end of period	$ 149,451	$ 187,860	$ 149,451

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

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization and Basis of Presentation

Organization

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries (where applicable), "Wynn Resorts" or the "Company"), was formed in June 2002 to offer shares of its common stock for sale to the public in an initial public offering that was consummated in October 2002. Wynn Resorts' predecessor, Valvino Lamore, LLC ("Valvino"), was formed in April 2000 as a Nevada limited liability company to acquire land and design, develop and finance a new resort casino/hotel project in Las Vegas formerly named "Le Rêve" and recently re-named "Wynn Las Vegas."

In June 2000, Valvino purchased the Desert Inn Resort and Casino (the "Desert Inn") for approximately $270 million plus an adjustment for working capital, and later purchased additional lots located in and around the Desert Inn golf course for an additional $47.8 million. Valvino closed the operations of the Desert Inn hotel and casino after approximately ten weeks to focus on the design and development of Wynn Las Vegas, and has demolished some of the buildings that constituted the Desert Inn in anticipation of the construction of Wynn Las Vegas on part of the Desert Inn site. The remaining Desert Inn structures have been converted into offices and will continue to be used as offices at least through the completion of constructing Wynn Las Vegas. Valvino continued to operate the Desert Inn golf course through June 2002.

In June 2002, Valvino, through its majority (82.5%) owned 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. The Company's first casino resort in Macau is referred to herein as "Wynn Macau."

On September 24, 2002, Wynn Resorts became the parent company of Valvino when all the members of Valvino contributed 100% of their membership interests in Valvino to Wynn Resorts in exchange for 40,000,000 shares of the common stock of Wynn Resorts. Hereafter, all references to "Wynn Resorts", or the "Company" refer to Wynn Resorts and its subsidiaries, or Valvino and its subsidiaries, as Wynn Resorts' predecessor company.

On October 25, 2002, the Company completed the initial public offering of approximately $450 million of its common stock (before underwriting discounts and commissions) and its subsidiaries, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. concurrently issued $370 million aggregate principal amount of 12% second mortgage notes (the "Notes") and obtained commitments for a $750 million senior secured revolving credit facility, a $250 million delay draw senior secured term loan facility and a $188.5 million FF&E facility. These funds are being, and will continue to be, used to fund construction of Wynn Las Vegas and to provide funds for investment in Wynn Macau in addition to the $23.8 million already invested in Wynn Macau. Approximately $1.8 billion of these funds have been obtained specifically for constructing and equipping of Wynn Las Vegas.

On November 11, 2002, the underwriters of the initial public offering exercised in full a 3,219,173 share overallotment option, resulting in additional net proceeds of approximately $38.9 million, net of the underwriting discounts and commissions of approximately $2.9 million.

On June 20, 2003, the Company entered into a strategic business alliance with Société des Bains de Mer et du Cercle des Etrangers à Monaco, a société anonyme Monegasque organized under the laws of the Principality of Monaco ("SBM"), that has an exclusive concession to operate casinos in Monaco. In connection therewith, the

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Company sold 3,000,000 shares of its common stock to SBM for $45 million in a privately negotiated, all-cash transaction.

The Company's efforts have been devoted principally to: (i) the design, development, financing and construction of Wynn Las Vegas and (ii) the design, pre-construction, preliminary financing and land acquisition efforts related to the anticipated project in Macau.

The financial position and operating results of World Travel, LLC and Las Vegas Jet, LLC, subsidiaries engaged principally in the ownership and operation of a corporate aircraft, are included in the Company's financial statements. Through a separate subsidiary, the Company also operates an art gallery displaying works from The Wynn Collection, which consists of artwork from the personal art collection of Stephen A. and Elaine Wynn.

Basis of Presentation

As a development stage company, the Company has spent significant amounts of money in connection with its development activities, primarily in the acquisition of land and other assets, in the design, development, financing and construction of Wynn Las Vegas, and in negotiation of the concession arrangement as well as the predevelopment design, preliminary financing and land acquisition for Wynn Macau. The Company has not commenced principal operations and therefore revenues are not significant. Consequently, as is customary for a development stage company, the Company has incurred losses in each period from inception to June 30, 2003. Management expects these losses to continue until planned principal operations have commenced. However, as a development stage company, the Company has risks that may impact its ability to become an operating enterprise or to remain in existence. The Company is subject to many rules and regulations in both the construction and development phases and in operating gaming facilities, including, but not limited to, receiving the appropriate permits for particular construction activities, securing a Nevada state gaming license for the ownership and operation of Wynn Las Vegas, maintaining ongoing suitability requirements in Nevada and Macau, as well as fulfilling the requirements of Macau's largely untested regulatory framework. The completion of the Wynn Las Vegas and Wynn Macau projects is dependent upon compliance with these rules and regulations. Management anticipates Wynn Las Vegas will cost approximately $2.4 billion to design and construct, including the cost of 212 acres of land, capitalized interest, pre-opening expenses and financing fees. In addition, the Company is currently obligated to open its first casino resort in Macau by December 2006, and to invest at least 4 billion patacas (equivalent to approximately US $514.8 million at the June 30, 2003 rate of exchange) in Macau by June 2009.

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. Direct and indirect subsidiaries of the Company include Valvino, Wynn Resorts Funding, LLC; Wynn Design & Development, LLC; Wynn Resorts Holdings, LLC; Wynn Las Vegas, LLC; Wynn Completion Guarantor, LLC; Wynn Las Vegas Capital Corp.; World Travel, LLC; Las Vegas Jet, LLC; Rambas Marketing Company, LLC; Palo, LLC; Toasty, LLC; Worldwide Wynn, LLC; Kevyn, LLC; Desert Inn Water Company, LLC; Desert Inn Improvement Company; Wynn Group Asia, Inc.; Wynn Resorts International, Ltd.; Wynn Resorts (Macau) Holdings, Ltd.; Wynn Resorts (Macau), Limited; and Wynn Macau, S.A. All significant intercompany accounts and transactions have been eliminated.

Certain amounts in the 2002 consolidated financial statements have been reclassified to conform to the presentation for 2003. These reclassifications had no effect on the previously reported net loss.

The accompanying consolidated financial statements included herein have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. 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

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

pursuant to such rules and regulations, however 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, 2003 are not necessarily indicative of results to be expected for the full fiscal year. These financial statements should be read in conjunction with the consolidated financial statements and notes thereto of the Company as of and for the year ended December 31, 2002, included in the Company's Annual Report on Form 10-K, as amended.

2. Earnings Per Share

Earnings per share are calculated in accordance with Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings Per Share." SFAS No. 128 provides for the reporting of "basic", or undiluted earnings per share ("EPS"), and "diluted" EPS. Basic EPS is computed by dividing net income by the weighted average number of shares outstanding during the period. Diluted EPS reflects the addition of potentially dilutive securities. For the three and six month periods ended June 30, 2002, the Company had no potentially dilutive securities and for all periods presented, the Company has recorded net losses. Accordingly, for the three and six month periods ended June 30, 2003, and for the period from inception to, June 30, 2003, the assumed exercise of stock options was anti-dilutive. As a result, basic EPS is equal to diluted EPS for all periods presented. Potentially dilutive securities that were excluded from the calculation of diluted EPS at June 30, 2003 because to include them would have been anti-dilutive, totaled 2,603,061.

3. Employee Stock-Based Compensation

As of June 30, 2003, the Company has a stock-based employee compensation plan to provide stock compensation for directors, officers and key employees. As permitted by SFAS No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure, an amendment of FASB Statement No. 123," the Company continues to apply the provisions of Accounting Principles Board ("APB") Opinion No. 25 and related interpretations in accounting for its employee stock-based compensation. Accordingly, compensation expense is recognized only to the extent that the market value at the date of grant exceeds the exercise price. The following table illustrates the effect on the net loss if the Company had applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" to stock-based employee compensation (amounts in thousands).

	Three Months Ended June 30, 2003	Six Months Ended June 30, 2003	Period from Inception to June 30, 2003
Net loss as reported	$ (12,677)	$ (21,683)	$ (81,738)
Less: total stock-based employee compensation expenses determined under the fair-value based method for all awards	(233)	(318)	(627)
Proforma net loss	$ (12,910)	$ (22,001)	$ (82,365)
Basic and diluted loss per share:			
As reported	$ (0.16)	$ (0.28)	$ (1.73)
Proforma	$ (0.17)	$ (0.28)	$ (1.74)

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Supplemental Disclosure of Cash Flow Information

Cash paid for interest for the six months ended June 30, 2003 and 2002, and for the period from inception to June 30, 2003 totaled approximately $36.9 million, $346,000 and $45.2 million, respectively. Interest capitalized during the same periods amounted to $39.1 million, $0, and $58.9 million, respectively.

Amortization of deferred compensation capitalized into construction in progress for the six months ended June 30, 2003 and 2002, and for the period from inception to June 30, 2003 totaled approximately $1.6 million, $0, and $1.8 million, respectively.

The change in fair value of interest rate swaps accounted for as cash flow hedges for the six months ended June 30, 2003 and 2002, and for the period from inception to June 30, 2003 totaled approximately $265,000, $0 and $265,000, respectively.

Equipment purchases financed by debt totaled $28.5 million for the period from inception to June 30, 2003.

Advances and loans converted to contributed capital amounted to $32.8 million for period from inception to June 30, 2003.

During the period from inception to June 30, 2003, the Company acquired the Desert Inn Water Company, LLC and $6.4 million of receivables originally recorded as due from a related party on the balance sheet were reclassified as water rights owned by the Company.

During the period from inception to June 30, 2003, the Company reduced the recorded amount of land by approximately $1.4 million representing the amount of excess liabilities accrued at the date of the Desert Inn Resort & Casino purchase.

5. Related Party Transactions

Prior to August 2002, the Company periodically incurred costs on behalf of Mr. Wynn and certain other officers of the Company, including costs with respect to personal use of the corporate aircraft. These balances were settled at regular intervals, usually monthly. The last outstanding balance was settled in August 2002, and the Company terminated the arrangements pursuant to which costs were incurred and later reimbursed. Currently, Mr. Wynn and other officers have deposits with the Company to prepay any such items. These deposits are replenished on an ongoing basis as needed. At June 30, 2003 and December 31, 2002, the Company’s net liability to Mr. Wynn and other officers was approximately $38,000 and $35,000, respectively.

The Company originally leased The Wynn Collection from Mr. and Mrs. Wynn at a monthly rate equal to the gross revenue received by the gallery each month, less direct expenses, subject to a monthly cap. In August 2002, the lease terms were amended to reduce the rental paid to Mr. and Mrs. Wynn to one-half of the net revenue, if any, of the gallery. Under the August 2002 amendment Mr. and Mrs. Wynn were required to reimburse the Company for the gallery’s net losses. From inception to May 31, 2003, the gallery incurred $103,293 of net losses that were reimbursed by Mr. and Mrs. Wynn and, accordingly, the Company did not make any lease payments during this period.

Effective June 1, 2003, the lease terms were further amended. Under the terms of the June 1, 2003 amendment, Mr. and Mrs. Wynn agreed to lease The Wynn Collection to the Company for an annual fee of $1, and the Company is entitled to retain all revenues from the public display of The Wynn Collection and the

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

related merchandising revenues. The Company is responsible for all expenses incurred in exhibiting and safeguarding The Wynn Collection, including the cost of insurance (including terrorism insurance) and taxes relating to the rental of The Wynn Collection. The Company incurred a net loss of approximately $20,000 for the three and six months ended June 30, 2003, from the operation of the art gallery for the month of June 2003. Principally because of the increased cost of insurance, the Company anticipates that the gallery will operate at a loss prior to the opening of Wynn Las Vegas.

The Company also leases office space in Macau from a minority shareholder of Wynn Macau, S.A. on a month-to-month basis for approximately $5,500 per month.

6. Property and Equipment

Property and equipment as of June 30, 2003 and December 31, 2002, consist of the following (amounts in thousands):

	2003	2002
Land	$288,422	$288,422
Buildings and improvements	15,879	15,879
Parking garage	1,041	1,041
Airplane	38,000	38,000
Furniture, fixtures and equipment	4,462	4,192
Construction in progress	257,842	90,189
	605,646	437,723
Less: accumulated depreciation	(21,581)	(17,227)
	$584,065	$420,496

Construction in progress includes interest and other costs capitalized in conjunction with the Wynn Las Vegas project.

7. Long-Term Debt

Long-term debt as of June 30, 2003 and December 31, 2002, consists of the following (amounts in thousands):

	2003	2002
12% Second Mortgage Notes, net of original issue discount of approximately $24.5 million and $26.1 million, respectively, due November 1, 2010; effective interest at approximately 12.9%	$345,542	$343,900
$188.5 Million FF&E Facility; interest at LIBOR plus 4%; (approximately 5.1% and 5.4%, respectively)	38,000	38,000
Note payable—Land Parcel; at 8%	273	291
	383,815	382,191
Current portion of long-term debt	(40)	(38)
	$383,775	$382,153

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company seeks to manage interest rate risk associated with variable rate borrowings through balancing fixed-rate and variable-rate borrowings and the use of derivative financial instruments designated as cash flow hedges. The Company accounts for derivative financial instruments in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", as amended. Derivative financial instruments are recognized as assets or liabilities, with changes in fair value affecting net income (loss) or comprehensive income (loss) as applicable.

In May 2003 and June 2003, the Company entered into two interest rate swap arrangements to hedge the underlying interest rate risk on a total of $825 million of expected future borrowings under its $750 million senior secured revolving credit facility (the "Revolver") and its $250 million delay draw term loan facility (the "Term Loan", and together with the Revolver, the "Credit Facilities"). Borrowings under the Revolver and Term Loans will incur interest at LIBOR plus 4% and LIBOR plus 5.5%, respectively, and mature in October 2008 and October 2009, respectively.

Under the interest rate swap arrangements, the Company will receive payments at a variable rate of LIBOR and pay a fixed rate of 2.653% under the May 2003 swap agreement and 2.690% under the June 2003 swap agreement on the notional amounts set forth in the two swap instruments. These notional amounts gradually increase from approximately $12.4 million to $325 million during the period from March 1, 2004 through December 1, 2006, on the May 2003 swap instrument, and from approximately $60 million to $500 million during the period from October 26, 2004 through December 26, 2006, on the June 2003 swap instrument. These graduated notional amounts are expected to correspond with the amounts and timing of borrowings under the Credit Facilities. The interest rate swaps are expected to be effective as hedging instruments as long as sufficient LIBOR-based borrowings are outstanding under the Credit Facilities, and effectively fix the interest rate on borrowings under the Revolver at approximately 6.653% and 6.690%, respectively, and at approximately 8.153% and 8.190%, respectively on borrowings under the Term Loans. Any ineffectiveness will be recorded in the Company's consolidated income statements as additional interest expense.

As of June 30, 2003, the Company recorded in other assets the fair value of the net effect of these two interest rate swaps of approximately $265,000. Since there was no ineffectiveness in the hedging relationship, the corresponding change in fair value of equal amount is reported in other comprehensive income for the three and six-month periods ended June 30, 2003.

8. Stockholders' Equity

Effective April 1, 2003, the Company granted to its President 189,723 shares of the Company's common stock that are restricted until May 31, 2005 at which time the shares become fully vested. The market value of the stock on the effective date of grant was $14.91 per share. As a result, the grant is valued at approximately $2.8 million, which will be amortized to compensation expense over the vesting period.

On June 20, 2003, the Company entered into a strategic business alliance with SBM that provides for, among other things, a mutual exchange of management expertise and the development of cross-marketing initiatives between SBM and the Company. Under an exclusive concession arrangement with the Principality of Monaco, SBM owns and operates Le Casino de Monte-Carlo, Le Cafe de Paris, and Sun Casinos. SBM also owns and operates the Hotel de Paris, the Hotel Hermitage, the Monte Carlo Beach Hotel, the Centre des Thermes Marins (Spa) and Monte-Carlo Sporting Club. In connection with the strategic alliance, the Company sold 3,000,000 shares of its common stock to SBM for $45 million in a privately negotiated, all cash transaction. In return, SBM has agreed, subject to certain exceptions, to refrain from transferring its shares prior to April 1, 2005, and will be entitled to certain registration rights thereafter.

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Recent Accounting Pronouncements

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." This statement amends and clarifies financial accounting and reporting for derivative instruments and hedging activities under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", by requiring that contracts with comparable characteristics be accounted for similarly to result in more consistent reporting of contracts as either derivatives or hybrid instruments. This statement is effective for contracts entered into or modified after June 30, 2003. Management has not yet determined the impact of this statement on the Company's consolidated financial position or results of operations.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." This statement establishes standards for an issuer's classification and measurement of certain financial instruments with characteristics of both liabilities and equity and requires that such financial instruments generally be classified as a liability as those instruments embody obligations of the issuer. This statement is effective for financial instruments entered into or modified after May 31, 2003, and is otherwise effective beginning the interim period beginning after June 15, 2003. Management has not yet determined the impact of this statement on the Company's consolidated financial position or results of operations.

10. Commitments and Contingencies

Construction Contracts

The Company entered into an agreement with a construction contractor for guaranteed maximum price construction services, effective as of June 4, 2002, and amended by Change Order No. 1, effective as of August 12, 2002 (as amended, the "Construction Agreement"). The Construction Agreement covers approximately $919.3 million of the approximate $1.4 billion budgeted cost to construct Wynn Las Vegas, subject to increases based on, among other items, changes in the scope of the work. The Construction Agreement provides that the guaranteed maximum price will be increased and the deadline for the completion of construction extended on account of certain circumstances. The guaranteed maximum price also provides for an "owner contingency" of approximately $7.6 million to cover various items, including delays and scope changes resulting from the Company's actions.

Effective June 6, 2002, the Company also entered into an agreement with a construction contractor for the design and construction of a parking structure for a maximum cost of $9.9 million, subject to specified exceptions. In addition, effective February 18, 2003 the Company entered into an agreement with a construction contractor for the construction of the golf course for a maximum cost of $16.6 million. Other construction contracts and committed construction purchase orders at June 30, 2003, totaled approximately $177.1 million. As a result, a total of approximately $1.1 billion has been committed to the construction of Wynn Las Vegas as of June 30, 2003. Of this amount, approximately $192 million has been spent through June 30, 2003. Future committed costs at June 30, 2003, under the Wynn Las Vegas construction contracts, therefore, total approximately $930.9 million.

Macau

Wynn Macau, S.A. has entered into a 20-year concession agreement with the government of Macau permitting it to construct and operate one or more casinos in Macau. The concession agreement obligates Wynn Macau, S.A. to invest 4 billion patacas (approximately US $514.8 million as of June 30, 2003) in one or more casino projects in Macau by June 2009 and to commence operations of its first permanent casino resort in Macau

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no later than December 2006. If Wynn Macau, S.A. does not invest 4 billion patacas by June 2009, it is obligated to invest the remaining amount in projects related to its gaming operations in Macau that the Macau government approves, or in projects of public interest designated by the Macau government.

The Company intends to invest additional capital in Wynn Macau as part of the financing of the Macau opportunity, in addition to the approximately $23.8 million already invested. While the Company has additional capital available from a portion of the net proceeds received from the initial public offering of its common stock (including the overallotment option exercise), the Company intends to use the net proceeds from the offering of $200 million aggregate principal amount of 6% Convertible Subordinated Debentures (see Note 11) to help finance Wynn Macau as well as for general corporate purposes, including possibly financing potential future acquisitions or other investments. The minority investors in Wynn Macau are obligated, subject to certain limitations, to make additional capital contributions in proportion to their economic interests (17.5% in the aggregate) to fund the construction, development and other activities of Wynn Macau, S.A. It is expected that significant additional financing will be needed to fund the development, construction and operation of one or more casinos in Macau. Wynn Macau, S.A. will not close its land acquisition or begin construction or operation of any casino in Macau until a number of objectives and conditions are met, including: 1) obtaining sufficient financing to commence construction of Wynn Macau, 2) obtaining the ability to extend credit to gaming customers and enforce gaming debts in Macau and 3) obtaining certain relief related to Macau tax regulations. We believe the necessary legislative and regulatory changes will be introduced in the fourth quarter of 2003. However, we cannot assure you that such proposed legislative and regulatory changes will be introduced or, if introduced, will be enacted.

Wynn Macau, S.A. has also obtained the services of architects and designers, has begun discussions to arrange the additional financing that would be required to complete Wynn Macau, and is considering different alternatives, including debt financing or additional equity financing at the Wynn Macau, S.A. level or at the level of Wynn Macau S.A.'s intermediary holding companies. At the present time, Wynn Macau, S.A. has not determined the amount of financing that will be required. Wynn Macau, S.A. currently has not received any commitments relating to financing from any third party. Except for Wynn Resorts, we do not expect financing for any such project to be provided by or through any of the issuers or guarantors of the Notes or any other indebtedness relating to the Wynn Las Vegas project.

Wynn Macau, S.A. is required under the Macau concession agreement to obtain a $700 million pataca (approximately US $90.1 million as of June 30, 2003) bank guarantee for the period from the execution of the concession agreement until March 31, 2007. The amount of this required guarantee will be reduced to 300 million patacas (approximately US $38.6 million as of June 30, 2003) for the period from April 1, 2007 until 180 days after the end of the term of the concession agreement. Wynn Macau, S.A. currently has an uncollateralized bank guarantee from Banco National Ultramarino, S.A. in the required amount which must be replaced by another guarantee suitable under the concession agreement when Wynn Macau commences construction of its first casino resort. Wynn Macau, S.A. pays a commission to the bank in the amount of 0.50% per year of the guarantee amount. The purpose of this bank guarantee is to guarantee Wynn Macau, S.A.'s performance under the concession agreement, including the payment of premiums, fines and any indemnity for failure to perform the concession agreement.

Entertainment Services

The Company has entered into long-term agreements with a creative production company and its affiliated production services company for the licensing, creation, development and executive production of Wynn Las Vegas' anticipated water-based entertainment production (the "Show"), whereby the Company is required to pay certain up-front creation and licensing fees, pay production costs and, upon opening of the production, pay a

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royalty of 10% of net ticket revenues and retail sales and 50% of the Show and retail profits with the production company as calculated in accordance with the terms of the agreements. The terms of each of the agreements is ten years after the opening date of the Show, which will coincide with the opening of Wynn Las Vegas, with five-year renewal options.

The Company also has an option with respect to the development of a second production for Wynn Las Vegas or for another project, which will require the payment of an additional $1 million to exercise.

At June 30, 2003 and December 31, 2002, other assets include $6.2 million and $4.8 million respectively, of amounts paid for creation and development costs in conjunction with the agreement.

Self-insurance

The Company is self-insured for medical and workers' compensation up to a maximum of $40,000 per year for each insured person under the medical plan and $250,000 for each workers' compensation claim.

Employment Agreements

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

Litigation

The Company is a defendant in various lawsuits relating to routine matters incidental to its business. As with all litigation, no assurance can be provided as to the outcome of the following matters and the Company notes that litigation inherently involves significant costs.

Valvino is currently involved in litigation related to its ownership and development of the former Desert Inn golf course and the residential lots around the golf course. Valvino acquired some, but not all, of the residential lots located in the interior of and around the former Desert Inn golf course when it acquired the former Desert Inn Resort & Casino from Starwood Hotels & Resorts Worldwide, Inc. Valvino later acquired all of the remaining lots located in the interior of, and some of the remaining lots around, the former Desert Inn golf course. In total, Valvino acquired 63 of the 75 residential lots, with Clark County having acquired two of the lots through eminent domain in 1994 as part of the widening of Desert Inn Road. The residential lots, previously known collectively as the Desert Inn Country Club Estates, were subject to various conditions, covenants and restrictions recorded against the lots in 1956 and amended from time to time since then.

On October 31, 2000, Ms. Stephanie Swain, as trustee of the Mark Swain Revocable Trust, filed an action in Clark County District Court against Valvino and the then directors of the Desert Inn Country Club Estates Homeowners' Association. Subsequently, the other remaining homeowners were joined in this lawsuit and asserted claims against Valvino. The plaintiffs are seeking various forms of declaratory relief concerning the continued existence and governance of the homeowners' association. In addition, the plaintiffs have challenged the termination in June 2001 of the conditions, covenants and restrictions recorded against the residential lots. The plaintiffs also seek to establish certain easement rights that Ms. Swain and the other homeowners claim to

possess. Specifically, the remaining homeowners seek to establish implied easement rights to enter upon the golf course for exercise and other leisure purposes, and to use the perimeter roadways for entrance and exit purposes. Additionally, plaintiffs claim that they are entitled to maintain their view of the golf course property. At least two of the plaintiffs also have alleged the existence of an equitable implied restriction prohibiting any alternative commercial development of the golf course. Due to plaintiffs' failure to properly frame all of the issues and to assert claims against all necessary parties, Valvino filed an action seeking declaratory and other equitable relief and to finally resolve all issues relating to its real property. Valvino also asserted claims for damages based upon a number of legal theories, including abuse of process. This action was consolidated with the action filed by Ms. Swain. Two subsequent actions were filed, one by Ms. Swain against certain homeowners' association officers and directors and one by Valvino seeking declaratory and injunctive relief similar to the original action. Because the issues in the subsequent actions are present in the original action, both of the subsequent actions have been stayed pending the outcome of the original action. In addition, three of Valvino's subsidiaries that now own the golf course land and several of the residential lots, have been substituted into the original action as counter-defendants and plaintiffs.

The trial in this matter is scheduled for October 2003. The court has, nonetheless, entered several preliminary injunction orders concerning the parties' respective property rights. Among other things, the court has ordered that Valvino is free to develop the golf course and the remainder of its property as it deems fit, subject to all applicable legal restraints. In that regard, Valvino was permitted to remove all homes and structures on its properties surrounding the golf course and those located on the Country Club Lane cul-de-sac, which ran to the interior of the golf course. Valvino has removed all structures that were on its lots, together with the cul-de-sac, and has relandscaped the property to blend into the existing golf course. The court has also entered an order prohibiting Ms. Swain from filing a lis pendens against the golf course property and expunging the lis pendens that was filed against the residential lots. A lis pendens is a notice filed on public records to warn all persons that the title to certain property is in litigation and that the effect of such litigation will be binding on the owner of the property. The court has also permitted construction of Wynn Las Vegas utilities in part of Country Club Lane, resulting in temporary closure of one of three access gates for the plaintiffs. The court has also permitted Wynn Las Vegas to begin construction of a golf course maintenance facility on some of the former residential lots.

The plaintiffs have sought, and successfully obtained, a preliminary injunction to compel Valvino to subsidize security to homeowners who reside near the project. However, the Nevada Supreme Court reversed this ruling on appeal and vacated the injunction.

Discovery in this case is currently ongoing. While no assurances can be made with respect to any litigation, Valvino is vigorously contesting all of the homeowners' claims and will continue to do so. However, if the plaintiffs prevail on their claims and the conditions, covenants and restrictions on the lots remain in effect, the Company may have to adjust its current plans for the construction of the Wynn Las Vegas golf course by redesigning some of the holes located on the periphery of the course. In addition, if the court finds that there is an implied equitable restriction on the golf course lots, any future development of the golf course parcel for an alternative use may be restricted.

Several of the remaining homeowners have also filed two separate actions seeking judicial review and/or a petition for a writ of mandamus and/or prohibition against Clark County and the Clark County Commissioners in Clark County District Court. One action concerns the Clark County Planning Commission's approval of Valvino's application for a use permit, and a related roadway dedication agreement between Clark County and Valvino. Valvino is not a party to this action, but is required as a condition of the dedication agreement to defend and indemnify Clark County. The other action concerns the Clark County Planning Commission's approval of Valvino's application for design review of the maintenance facility. Valvino and Wynn Resorts, Limited are

parties to this action. Both of these actions are in the initial stages of litigation. Valvino intends to vigorously contest the homeowners' claims.

11. Subsequent Events

On July 7, 2003, Wynn Resorts consummated a private placement under Rule 144A of the Securities Act of 1933, as amended, of $200 million aggregate principal amount of 6% Convertible Subordinated Debentures due 2015 (the 'Debentures"). Subsequently, on July 30, 2003, Wynn Resorts completed the sale of an additional $50 million aggregate principal amount of the Debentures to the initial purchasers of the Debentures pursuant to the full exercise of an option granted to the initial purchasers. Wynn Resorts will pay interest on the Debentures on January 15 and July 15 of each year, beginning January 15, 2004. The Company contributed a total of approximately $44 million of the net proceeds of the sale to a newly formed subsidiary, Wynn Resorts Funding, LLC, which purchased U.S. government securities to secure the payment of three years of scheduled interest payments as required by the indenture governing the Debentures.

Each $1,000 principal amount of the Debentures is convertible at each holder's option into 43.4782 shares of the Company's common stock (subject to adjustment as provided in the indenture governing the Debentures); a conversion rate equivalent to a conversion price of $23.00 per share. The Company may redeem some or all of the debentures for cash on or after July 20, 2007 at prices specified in the indenture governing the Debentures. In addition, the holders may require the Company to repurchase all or a portion of their Debentures, subject to certain exceptions, following a change of control in the Company. If any holder requires the repurchase of the debentures, the Company may elect to pay the repurchase price in cash or shares of its common stock or a combination thereof.

The Debentures are guaranteed by Wynn Resorts Funding, LLC and Wynn Resorts, Limited has guaranteed the obligations of Wynn Resorts Funding, LLC. However, other than with respect to three years of scheduled interest payments, the Debentures are subordinated unsecured obligations and rank junior in right of payment to all existing and future senior indebtedness of the Company, and equally with any existing and future subordinated indebtedness.

The Company has also agreed to file a shelf registration statement with respect to the resale of the Debentures, the guarantees and the common stock issuable upon conversion of the Debentures, to become effective within 250 days after July 7, 2003.

12. Consolidating Financial Information of Guarantors and Issuers

The following consolidating financial statements present information related to Wynn Resorts (the "Parent"), Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp (the "Issuers") of the Notes, the guarantors (other than Wynn Resorts) and non-guarantors as of June 30, 2003 and December 31, 2002, for the three and six-month periods ended June 30, 2003 and 2002 and for the period from inception to June 30, 2003.

Guarantors of the Notes (other than Wynn Resorts) are Valvino, Wynn Design & Development, LLC, Wynn Resorts Holdings, LLC, Palo, LLC, Desert Inn Water Company, LLC, World Travel, LLC and Las Vegas Jet, LLC. In October 2002, Valvino transferred certain of its assets, including its equity interests in certain of its subsidiaries such as Wynn Group Asia, Inc.; Kevyn, LLC; Rambas Marketing Co., LLC; Toasty, LLC and World Wide Wynn, LLC which do not guarantee the Notes, to Wynn Resorts. In addition, Valvino transferred certain of its assets, including its equity interests in Las Vegas Jet, LLC and World Travel, LLC directly to Wynn Las Vegas. Because these transfers were between entities under common control, in accordance with SFAS No. 141,

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"Business Combinations," the assets and liabilities of the entities acquired have been recorded by the acquiring subsidiary at the carrying value at the time of the acquisition and the operating results of the entities are included in the operating statements of the Company from the earliest period presented.

The following condensed consolidating financial statements are presented in the provided form because: (i) the Issuers and guarantors are wholly owned subsidiaries of the Company; (ii) the guarantees are considered to be full and unconditional, that is, if the issuers fail to make a scheduled payment, the guarantors are obligated to make the scheduled payment immediately and, if they don't, any holder of the Notes may immediately bring suit directly against the guarantors for payment of all amounts due and payable; and (iii) the guarantees are joint and several.

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CONSOLIDATING BALANCE SHEET INFORMATION
AS OF JUNE 30, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
ASSETS						
Current assets:						
Cash and cash equivalents	$ 130,143	$ 8,918	$ (1,797)	$ 12,187	$ —	$ 149,451
Restricted cash and investments	—	36,512	—	—	—	36,512
Receivables, net	—	1	52	6	—	59
Inventories	—	—	212	—	—	212
Prepaid expenses	592	138	1,566	55	—	2,351
Total current assets	130,735	45,569	33	12,248	—	188,585
Restricted cash and investments	—	556,415	2,788	50,600	—	609,803
Property and equipment, net	84	416,830	164,059	3,092	—	584,065
Water rights	—	—	—	6,400	—	6,400
Trademark	—	1,000	—	—	—	1,000
Deferred financing costs	975	55,603	—	—	—	56,578
Investment in subsidiaries	585,228	11,925	551,868	—	(1,149,021)	—
Other assets	—	7,072	7	206	—	7,285
Intercompany balances	372,170	(473,086)	158,727	(57,811)	—	—
Total assets	$ 1,089,192	$ 621,328	$ 877,482	$ 14,735	$ (1,149,021)	$ 1,453,716
LIABILITIES AND STOCKHOLDERS' EQUITY						
Current liabilities:						
Current portion of long-term debt	$ —	$ —	$ 40	$ —	$ —	$ 40
Accounts and construction payable	5	2,082	28,646	119	—	30,852
Accrued interest	—	8,076	—	—	—	8,076
Accrued compensation and benefits	469	976	808	53	—	2,306
Accrued expenses and other	—	—	883	8	—	891
Total current liabilities	474	11,134	30,377	180	—	42,165
Construction retention	—	—	7,211	—	—	7,211
Long-term debt	—	383,542	233	—	—	383,775
Total liabilities	474	394,676	37,821	180	—	433,151
Minority interest	—	—	—	—	2,490	2,490
Commitments and contingencies						
Stockholders' equity:						
Common stock	822	—	—	18	(18)	822
Additional paid-in capital	1,113,241	237,075	899,017	30,027	(1,166,119)	1,113,241
Deferred compensation—restricted stock	(6,224)	—	(8,291)	—	—	(14,515)
Accumulated other comprehensive income	—	265	—	—	—	265
Deficit accumulated from inception during the development stage	(19,121)	(10,688)	(51,065)	(15,490)	14,626	(81,738)
Total stockholders' equity	1,088,718	226,652	839,661	14,555	(1,151,511)	1,018,075
Total liabilities and stockholders' equity	$ 1,089,192	$ 621,328	$ 877,482	$ 14,735	$ (1,149,021)	$ 1,453,716

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CONSOLIDATING BALANCE SHEET INFORMATION
AS OF DECEMBER 31, 2002
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
ASSETS						
Current assets:						
Cash and cash equivalents	$ 79,234	$ 7,508	$ (1,178)	$ 24,080	$ —	$ 109,644
Receivables, net	—	12	166	6	—	184
Inventories	—	—	212	—	—	212
Prepaid expenses	344	93	1,518	55	—	2,010
Total current assets	79,578	7,613	718	24,141	—	112,050
Restricted cash and investments	—	742,605	23	50,249	—	792,877
Property and equipment, net	—	251,881	168,309	306	—	420,496
Water rights	—	—	—	6,400	—	6,400
Trademark	—	1,000	—	—	—	1,000
Deferred financing costs	—	60,159	—	—	—	60,159
Investment in subsidiaries	593,212	11,925	551,868	—	(1,157,005)	—
Other assets	—	5,599	20	—	—	5,619
Intercompany balances	379,758	(454,927)	132,236	(57,067)	—	—
Total assets	$ 1,052,548	$ 625,855	$ 853,174	$ 24,029	$ (1,157,005)	$ 1,398,601
LIABILITIES AND STOCKHOLDERS' EQUITY						
Current liabilities:						
Current portion of long-term debt	$ —	$ —	$ 38	$ —	$ —	$ 38
Accounts and construction payable	9	3,099	6,468	126	—	9,702
Accrued interest	—	8,159	—	—	—	8,159
Accrued compensation and benefits	186	381	792	—	—	1,359
Accrued expenses and other	—	—	880	8	—	888
Total current liabilities	195	11,639	8,178	134	—	20,146
Construction retention	—	—	506	—	—	506
Long-term debt	—	381,900	253	—	—	382,153
Total liabilities	195	393,539	8,937	134	—	402,805
Minority interest	—	—	—	—	4,183	4,183
Commitments and contingencies						
Stockholders' equity:						
Common stock	790	—	—	18	(18)	790
Additional paid-in capital	1,065,649	237,075	899,017	30,027	(1,166,119)	1,065,649
Deferred compensation—restricted stock	(4,895)	—	(9,876)	—	—	(14,771)
Deficit accumulated from inception during the development stage	(9,191)	(4,759)	(44,904)	(6,150)	4,949	(60,055)
Total stockholders' equity	1,052,353	232,316	844,237	23,895	(1,161,188)	991,613
Total liabilities and stockholders' equity	$ 1,052,548	$ 625,855	$ 853,174	$ 24,029	$ (1,157,005)	$ 1,398,601

WYNN RESORTS, LIMITED AND SUBSIDIARIES
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CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
THREE MONTHS ENDED JUNE 30, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Revenues:						
Airplane	$ —	$ —	$ 695	$ —	$ (572)	$ 123
Art gallery	—	—	80	—	—	80
Retail	—	—	79	—	—	79
Royalty	1,500	—	—	—	(1,500)	—
Water	—	—	—	12	(9)	3
Total revenues	1,500	—	854	12	(2,081)	285
Expenses:						
Pre-opening costs	4,879	3,465	1,382	2,000	(542)	11,184
Depreciation and amortization	1	13	2,166	—	—	2,180
Selling, general and administrative	—	—	175	1,505	(1,530)	150
Cost of water	—	—	9	13	(9)	13
Cost of retail sales	—	—	35	—	—	35
Loss from incidental operations	—	74	184	—	—	258
Total expenses	4,880	3,552	3,951	3,518	(2,081)	13,820
Operating loss	(3,380)	(3,552)	(3,097)	(3,506)	—	(13,535)
Other income (expense):						
Interest expense, net	—	(2,279)	(6)	—	—	(2,285)
Interest income	252	2,096	4	179	—	2,531
Equity in loss from Macau	(2,886)	—	—	—	2,886	—
Other income (expense), net	(2,634)	(183)	(2)	179	2,886	246
Minority interest	—	—	—	—	612	612
Net loss accumulated during the development stage	$ (6,014)	$ (3,735)	$ (3,099)	$ (3,327)	$ 3,498	$ (12,677)

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THREE MONTHS ENDED JUNE 30, 2002
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(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Revenues:						
Airplane	$ —	$ —	$ 924	$ —	$ (885)	$ 39
Art gallery	—	—	52	—	—	52
Retail	—	—	48	—	—	48
Water	—	—	—	18	(15)	3
Total revenues	—	—	1,024	18	(900)	142
Expenses:						
Pre-opening costs	—	470	3,689	2,852	(858)	6,153
Depreciation and amortization	—	—	2,158	—	—	2,158
Selling, general and administrative	—	—	131	27	(30)	128
Cost of water	—	—	12	14	(12)	14
Cost of retail sales	—	—	29	—	—	29
Loss from incidental operations	—	—	175	—	—	175
Total expenses	—	470	6,194	2,893	(900)	8,657
Operating loss	—	(470)	(5,170)	(2,875)	—	(8,515)
Other income (expense):						
Interest expense, net	—	—	(284)	—	—	(284)
Interest income	—	3	613	18	—	634
Equity in loss from Macau	—	—	(2,533)	—	2,533	—
Other income (expense), net	—	3	(2,204)	18	2,533	350
Minority interest	—	—	—	—	281	281
Net loss accumulated during the development stage	$ —	$ (467)	$ (7,374)	$ (2,857)	$ 2,814	$ (7,884)

WYNN RESORTS, LIMITED AND SUBSIDIARIES
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SIX MONTHS ENDED JUNE 30, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Revenues:						
Airplane	$ —	$ —	$ 1,569	$ —	$ (1,396)	$ 173
Art gallery	—	—	152	—	—	152
Retail	—	—	148	—	—	148
Royalty	6,067	—	—	—	(6,067)	—
Water	—	—	—	28	(23)	5
Total revenues	6,067	—	1,869	28	(7,486)	478
Expenses:						
Pre-opening costs	8,512	6,388	2,949	3,615	(1,338)	20,126
Depreciation and amortization	1	23	4,329	—	—	4,353
(Gain) / Loss on sale of assets	—	—	(5)	—	—	(5)
Selling, general and administrative	—	—	307	6,072	(6,127)	252
Cost of water	—	—	21	34	(21)	34
Cost of retail sales	—	—	74	—	—	74
Loss from incidental operations	—	149	348	—	—	497
Total expenses	8,513	6,560	8,023	9,721	(7,486)	25,331
Operating loss	(2,446)	(6,560)	(6,154)	(9,693)	—	(24,853)
Other income (expense):						
Interest expense, net	—	(3,923)	(11)	—	—	(3,934)
Interest income	500	4,554	4	353	—	5,411
Equity in loss from Macau	(7,984)	—	—	—	7,984	—
Other income (expense), net	(7,484)	631	(7)	353	7,984	1,477
Minority interest	—	—	—	—	1,693	1,693
Net loss accumulated during the development stage	$ (9,930)	$ (5,929)	$ (6,161)	$ (9,340)	$ 9,677	$ (21,683)

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CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
SIX MONTHS ENDED JUNE 30, 2002
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Revenues:						
Airplane	$ —	$ —	$ 1,609	$ —	$ (1,096)	$ 513
Art gallery	—	—	117	—	—	117
Retail	—	—	97	—	—	97
Water	—	—	—	35	(30)	5
Total revenues	—	—	1,823	35	(1,126)	732
Expenses:						
Pre-opening costs	—	846	6,223	2,806	(1,042)	8,833
Depreciation and amortization	—	—	4,153	445	—	4,598
(Gain) / Loss on sale of assets	—	—	26	69	—	95
Selling, general and administrative	—	—	246	80	(60)	266
Cost of water	—	—	24	31	(24)	31
Cost of retail sales	—	—	59	—	—	59
Loss from incidental operations	—	—	250	—	—	250
Total expenses	—	846	10,981	3,431	(1,126)	14,132
Operating loss	—	(846)	(9,158)	(3,396)	—	(13,400)
Other income (expense):						
Interest expense, net	—	—	(453)	—	—	(453)
Interest income	—	3	776	18	—	797
Equity in loss from Macau	—	—	(2,533)	—	2,533	—
Other income (expense), net	—	3	(2,210)	18	2,533	344
Minority interest	—	—	—	—	281	281
Net loss accumulated during the development stage	$ —	$ (843)	$ (11,368)	$ (3,378)	$ 2,814	$ (12,775)

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
FROM INCEPTION TO JUNE 30, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Revenues:						
Airplane	$ —	$ —	$ 7,619	$ —	$ (5,653)	$ 1,966
Art gallery	—	—	466	—	—	466
Retail	—	—	412	—	—	412
Royalty	6,067	—	—	—	(6,067)	—
Water	—	—	—	182	(145)	37
Total revenues	6,067	—	8,497	182	(11,865)	2,881
Expenses:						
Pre-opening costs	13,789	11,801	35,327	7,323	(5,400)	62,840
Depreciation and amortization	1	32	23,391	2,071	—	25,495
(Gain) / Loss on sale of assets	—	—	299	69	—	368
Selling, general and administrative	—	—	1,066	6,450	(6,267)	1,249
Facility closure expenses	—	—	1,579	—	—	1,579
Cost of water	—	—	71	260	(198)	133
Cost of retail sales	—	—	201	—	—	201
Loss from incidental operations	—	241	2,119	—	—	2,360
Total expenses	13,790	12,074	64,053	16,173	(11,865)	94,225
Operating loss	(7,723)	(12,074)	(55,556)	(15,991)	—	(91,344)
Other income (expense):						
Interest expense, net	—	(4,937)	(940)	—	—	(5,877)
Interest income	669	6,323	5,431	501	—	12,924
Equity in loss from Macau	(12,067)	—	—	—	12,067	—
Other income (expense), net	(11,398)	1,386	4,491	501	12,067	7,047
Minority interest	—	—	—	—	2,559	2,559
Net loss accumulated during the development stage	$ (19,121)	$ (10,688)	$ (51,065)	$ (15,490)	$ 14,626	$ (81,738)

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION
SIX MONTHS ENDED JUNE 30, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Cash flows from operating activities:						
Net loss accumulated during the development stage	$ (9,930)	$ (5,929)	$ (6,161)	$ (9,340)	$ 9,677	$ (21,683)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:						
Depreciation and amortization	1	23	4,329	—	—	4,353
Minority interest	—	—	—	—	(1,693)	(1,693)
Amortization of deferred compensation	1,500	—	—	—	—	1,500
Amortization of deferred financing costs	—	628	—	—	—	628
(Gain) / Loss on sale of assets	—	—	(5)	—	—	(5)
Equity in loss from Macau	7,984	—	—	—	(7,984)	—
Increase (decrease) in cash from changes in:						
Receivables, net	—	11	114	—	—	125
Inventories and prepaid expenses	(248)	(45)	(48)	—	—	(341)
Accounts payable and accrued expenses	279	(385)	14	46	—	(46)
Total adjustments	9,516	232	4,404	46	(9,677)	4,521
Net cash provided by (used in) operating activities	(414)	(5,697)	(1,757)	(9,294)	—	(17,162)
Cash flows from investing activities:						
Capital expenditures, net of construction payables	(85)	(129,050)	(79)	(2,786)	—	(132,000)
Restricted cash and Investments	—	149,678	(2,765)	(351)	—	146,562
Other assets	—	(1,208)	13	(206)	—	(1,401)
Intercompany balances	7,587	(12,313)	3,982	744	—	—
Proceeds from sale of equipment	—	—	5	—	—	5
Net cash provided by (used in) investing activities	7,502	7,107	1,156	(2,599)	—	13,166
Cash flows from financing activities:						
Proceeds from issuance of common stock	45,000	—	—	—	—	45,000
Third party fees	(204)	—	—	—	—	(204)
Principal payments of long-term debt	—	—	(18)	—	—	(18)
Deferred financing costs	(975)	—	—	—	—	(975)
Net cash provided by (used in) financing activities	43,821	—	(18)	—	—	43,803
Cash and cash equivalents:						
Increase (decrease) in cash and cash equivalents	50,909	1,410	(619)	(11,893)	—	39,807
Balance, beginning of period	79,234	7,508	(1,178)	24,080	—	109,644
Balance, end of period	$ 130,143	$ 8,918	$ (1,797)	$ 12,187	$ —	$ 149,451

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION
SIX MONTHS ENDED JUNE 30, 2002
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Cash flows from operating activities:						
Net loss accumulated during the development stage	$ —	$ (843)	$ (11,368)	$ (3,378)	$ 2,814	$ (12,775)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:						
Depreciation and amortization	—	—	4,153	445	—	4,598
Minority interest	—	—	—	—	(281)	(281)
(Gain) / Loss on sale of assets	—	—	26	69	—	95
Equity in loss from Macau	—	—	2,533	—	(2,533)	—
Incidental operations	—	—	1,971	—	—	1,971
Increase (decrease) in cash from changes in:						
Receivables, net	—	—	178	(1)	—	177
Inventories and prepaid expenses	—	—	95	(2)	—	93
Accounts payable and accrued expenses	—	(32)	3,452	2,896	—	6,316
Total adjustments	—	(32)	12,408	3,407	(2,814)	12,969
Net cash provided by (used in) operating activities	—	(875)	1,040	29	—	194
Cash flows from investing activities:						
Capital expenditures, net of construction payables	—	(341)	(28,339)	(90)	—	(28,770)
Restricted cash and Investments	—	(1,788)	1	(125)	—	(1,912)
Investment in subsidiaries	—	—	(23,822)	—	23,822	—
Other assets	—	(588)	(682)	—	(18)	(1,288)
Intercompany balances	—	3,641	3,584	(7,225)	—	—
Proceeds from sale of equipment	—	—	—	8,007	—	8,007
Net cash provided by (used in) investing activities	—	924	(49,258)	567	23,804	(23,963)
Cash flows from financing activities:						
Equity contributions	—	—	173,494	23,804	(23,804)	173,494
Macau minority contributions	—	—	—	2,597	—	2,597
Principal payments of long-term debt	—	—	(18)	—	—	(18)
Deferred financing costs	—	—	(3,712)	—	—	(3,712)
Net cash provided by financing activities	—	—	169,764	26,401	(23,804)	172,361
Cash and cash equivalents:						
Increase (decrease) in cash and cash equivalents	—	49	121,546	26,997	—	148,592
Balance, beginning of period	—	(49)	39,317	—	—	39,268
Balance, end of period	$ —	$ —	$ 160,863	$ 26,997	$ —	$ 187,860

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION
FROM INCEPTION TO JUNE 30, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Cash flows from operating activities:						
Net loss accumulated during the development stage	$ (19,121)	$ (10,688)	$ (51,065)	$ (15,490)	$ 14,626	$ (81,738)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:						
Depreciation and amortization	1	32	23,391	2,071	—	25,495
Minority interest	—	—	—	—	(2,559)	(2,559)
Amortization of deferred compensation	1,634	—	—	—	—	1,634
Amortization of deferred financing costs	—	628	—	—	—	628
(Gain) / Loss on sale of fixed assets	—	—	299	69	—	368
Equity in loss from Macau	12,067	—	—	—	(12,067)	—
Incidental operations	—	—	6,510	—	—	6,510
Increase (decrease) in cash from changes in:						
Receivables, net	—	(1)	8,199	(6)	—	8,192
Inventories and prepaid expenses	(592)	(138)	(617)	(55)	—	(1,402)
Accounts payable and accrued expenses	474	11,254	(8,752)	180	—	3,156
Total adjustments	13,584	11,775	29,030	2,259	(14,626)	42,022
Net cash provided by (used in) operating activities	(5,537)	1,087	(22,035)	(13,231)	—	(39,716)
Cash flows from investing activities:						
Acquisition of Desert Inn Resort and Casino, net of cash acquired	—	—	(270,718)	—	—	(270,718)
Capital expenditures, net of construction payables	(85)	(160,745)	(108,875)	(13,095)	—	(282,800)
Restricted cash and Investments	—	(592,927)	(2,788)	(50,600)		(646,315)
Investment in subsidiaries	(597,295)	(11,925)	(551,867)	—	1,161,087	—
Other assets	—	(7,807)	15	(188)	—	(7,980)
Intercompany balances	(372,171)	224,561	96,271	41,322	10,017	—
Proceeds from sale of equipment	—	—	1,646	7,917	—	9,563
Net cash used in investing activities	(969,551)	(548,843)	(836,316)	(14,644)	1,171,104	(1,198,250)
Cash flows from financing activities:						
Equity contributions	596,120	237,075	977,904	35,012	(1,171,104)	675,007
Equity distributions	—	—	(110,482)	—	—	(110,482)
Proceeds from issuance of common stock	536,844	—	—	—	—	536,844
Third party fees	(26,758)	—	(10,800)	—	—	(37,558)
Macau minority contributions	—	—	—	5,050	—	5,050
Proceeds from issuance of long-term debt	—	381,334	125,000	—	—	506,334
Principal payments of long-term debt	—	—	(153,603)	—	—	(153,603)
Deferred financing costs	(975)	(61,735)	(1,465)	—	—	(64,175)
Proceeds from issuance of related party loan	—	—	100,000	—	—	100,000
Principal payments of related party loan	—	—	(70,000)	—	—	(70,000)
Net cash provided by financing activities	1,105,231	556,674	856,554	40,062	(1,171,104)	1,387,417
Cash and cash equivalents:						
Increase (decrease) in cash and cash equivalents	130,143	8,918	(1,797)	12,187	—	149,451
Balance, beginning of period	—	—	—	—	—	—
Balance, end of period	$ 130,143	$ 8,918	$ (1,797)	$ 12,187	$ —	$ 149,451

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

The following discussion should be read in conjunction with, and is qualified in its entirety by, the consolidated financial statements and the condensed notes thereto included elsewhere in this Quarterly Report on Form 10-Q. Certain statements in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" are forward-looking statements. See "Forward-Looking Statements" below.

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 including our opportunity in Macau, as well as other capital spending, financing sources, the effects of regulation (including gaming and tax laws and regulations), expectations concerning future operations, margins, profitability and competition. Any statements contained in this Form 10-Q 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, those relating to completion of our Wynn Las Vegas casino resort on time and within budget, competition in the casino/hotel and resorts industry, doing business in foreign locations such as Macau (including the risks associated with Macau's new and largely untested gaming regulatory framework), new development and construction activities of competitors, our dependence on Stephen A. Wynn and existing management, leverage and debt service (including sensitivity to fluctuations in interest rates), levels of casino spending and vacationing, 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), application for licenses and approvals under applicable jurisdictional laws and regulations (including gaming laws and regulations), the impact that Severe Acute Respiratory Syndrome may continue to have on the travel and leisure industry and the consequences of the US presence in Iraq and any future security alerts and/or terrorist attacks such as the attacks that occurred on September 11, 2001. Further information on potential factors which could affect our financial condition, results of operations and business are included in our filings with the Securities and Exchange Commission. Readers are cautioned not to 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 hereof.

Overview

Wynn Resorts, Limited, a Nevada corporation (together with its subsidiaries (where applicable), "Wynn Resorts" or the "Company", and which may also be referred to as "we", "us" or "our") was formed in June 2002 to offer shares of its common stock for sale to the public in an initial public offering that was consummated in October 2002. Wynn Resorts' predecessor, Valvino Lamore, LLC ("Valvino"), was formed in April 2000 as a Nevada limited liability company to acquire land and design, develop and finance a new resort casino/hotel project formerly named "Le Rêve" and recently re-named "Wynn Las Vegas."

In June 2000, Valvino purchased the Desert Inn Resort and Casino (the "Desert Inn") for approximately $270 million plus an adjustment for working capital, and later purchased additional lots located in and around the Desert Inn golf course for an additional $47.8 million. Valvino closed the operations of the hotel and casino after approximately ten weeks to focus on the design and development of Wynn Las Vegas on part of the Desert Inn site, and has demolished some of the buildings that constituted the Desert Inn in anticipation of the construction of Wynn Las Vegas. The remaining Desert Inn structures have been converted into offices and will continue to

be used as offices at least through the completion of constructing Wynn Las Vegas. Valvino continued to operate the Desert Inn golf course through June 2002.

In June 2002, Valvino, through its majority (82.5%) owned indirect subsidiary, Wynn Resorts (Macau) S.A. ("Wynn Macau, S.A."), entered into a concession agreement with the government of the Macau Special Administrative Region of the People's Republic of China ("Macau"), granting Wynn Macau the right to construct and operate one or more casino gaming properties in Macau. Our first casino resort in Macau is herein referred to as "Wynn Macau."

On September 24, 2002, Wynn Resorts became the parent company of Valvino when all the members of Valvino contributed 100% of their membership interests in Valvino to Wynn Resorts in exchange for 40,000,000 shares of the common stock of Wynn Resorts. Hereafter, all references to the "Company" refer to Wynn Resorts and its subsidiaries, or Valvino and its subsidiaries as Wynn Resorts' predecessor company.

On October 25, 2002, we completed the initial public offering of approximately $450 million of our common stock (before underwriting discounts and commissions) and our subsidiaries Wynn Las Vegas, LLC and Wynn Capital Corp. concurrently issued $370 million aggregate principal amount of 12% second mortgage notes (the "Notes") and obtained commitments for a $750 million senior secured revolving credit facility (the "Revolver"), a $250 million delay draw senior secured term loan facility (the "Term Loans") and a $188.5 million FF&E facility. These funds are being, and will continue to be, used to fund construction of Wynn Las Vegas and to provide funds for investment in Wynn Macau in addition to the $23.8 million already invested in Wynn Macau. Approximately $1.8 billion of these funds have been obtained specifically for constructing and equipping Wynn Las Vegas.

On November 11, 2002, the underwriters of the initial public offering exercised in full a 3,219,173 share overallotment option, resulting in additional net proceeds of approximately $38.9 million, net of the underwriting discounts and commissions of approximately $2.9 million.

On June 20, 2003, we entered into a strategic business alliance with a company having the exclusive concession to operate casinos in Monaco. In connection therewith, we sold 3,000,000 shares of the our common stock to that company for $45 million in a privately negotiated, all-cash transaction.

On July 7, 2003, we completed a private placement under Rule 144A of the Securities Act of 1933, as amended, of $200 million aggregate principal amount of 6% Convertible Subordinated Debentures due 2015 (the "Debentures"). Subsequently, on July 30, 2003, we completed the sale of an additional $50 million aggregate principal amount of the Debentures to the initial purchasers of the Debentures pursuant to the full exercise of an option granted to the initial purchasers.

Our efforts have been devoted principally to: (i) the design, development, financing and construction of Wynn Las Vegas and (ii) the design, pre-construction, preliminary financing and land acquisition efforts related to the anticipated project in Macau. The financial position and operating results of World Travel, LLC and Las Vegas Jet, LLC, subsidiaries engaged principally in the ownership and operation of a corporate aircraft, are included in the Company's financial statements. We also continue to operate an art gallery displaying works from The Wynn Collection, which consists of artwork from the personal collection of Stephen A. and Elaine Wynn.

Development and Construction Activities

Our activities have included arranging the design, development, construction and financing of Wynn Las Vegas and applying for certain permits, licenses and approvals necessary for the development and operation of Wynn Las Vegas. We are constructing and plan to operate Wynn Las Vegas as part of a world-class destination casino resort which, together with the new golf course located behind the hotel, will occupy approximately 192

acres of a 212-acre parcel of land on the Las Vegas Strip in Las Vegas, Nevada. Construction of Wynn Las Vegas began with groundbreaking in October 2002 and we expect Wynn Las Vegas to commence operations in April 2005. The Company is subject to a number of uncertainties relating to the development of the Wynn Las Vegas project, including, but not limited to, the timing of the construction and changes in the guaranteed maximum price under the construction contract due to delays or certain other issues. Construction projects of this nature entail significant risks, and the anticipated costs and construction schedule are based upon budgets, conceptual design documents and schedule estimates. As construction progresses, there is always a possibility that delays and construction change orders may occur. Such delays or change orders could have a material adverse affect on our liquidity and operations. Wynn Las Vegas also will be required to obtain a state gaming license and county gaming and liquor license before it is able to fully commence operations.

On June 24, 2002, Wynn Macau, S.A. entered into a 20-year concession agreement with the government of Macau granting Wynn Macau the right to construct and operate one or more casinos in Macau. The concession agreement obligates Wynn Macau to invest no less than a total of 4 billion patacas (approximately US $ 514.8 million at the June 30, 2003 exchange rate) in Macau-related projects by June 2009, and to commence operations of its first permanent casino resort in Macau no later than December 2006. The Company is subject to a number of uncertainties relating to the development of the Macau project, including risks associated with doing business in foreign locations such as Macau and risks associated with Macau's new and largely untested gaming regulatory framework. If Wynn Macau, S.A. does not invest 4 billion patacas by June 2009, it is obligated to invest the remaining amount in projects related to its gaming operations in Macau that the Macau government approves, or in projects of public interest designated by the Macau government. We have begun to assemble the Wynn Macau management team, Wynn Macau, S.A. will not close its land acquisition or begin construction or operation of any casino in Macau until a number of objectives and conditions are met, including: 1) obtaining sufficient financing to commence construction of Wynn Macau, 2) obtaining the ability to extend credit to gaming customers and enforce gaming debts in Macau and 3) obtaining certain relief related to Macau's tax regulations. We believe the necessary legislative and regulatory changes will be introduced in the fourth quarter of 2003. However, we cannot assure you that such proposed legislative and regulatory changes will be introduced or, if introduced, will be enacted.

As of June 30, 2003, Wynn Macau was owned 82.5% by the Company through a series of wholly-owned and partially owned domestic and foreign subsidiaries, none of which is a guarantor of, or otherwise restricted by, the Notes or the other debt facilities related to Wynn Las Vegas.

Consistent with travel warnings issued by the World Health Organization relating to Severe Acute Respiratory Syndrome, known as SARS, we restricted employee travel to Macau and Hong Kong for the first six months of 2003. However, the World Health Organization has rescinded its Travel Advisory related to Hong Kong and Macau and consequently, restrictions on employee travel to the region have also been rescinded. To date, SARS has not significantly affected the planning of our Macau project. However, a resurgence of SARS could negatively impact business activity in the travel and leisure industry in Asia, which could adversely affect or delay the financing and development of our Macau project.

Results of Operations

We have not commenced principal operations and therefore, as is customary for a development stage company, revenues are not significant. Consequently, as is customary for a development stage company, we have incurred losses in each period from inception to June 30, 2003. Management expects these losses to continue until planned principal operations have commenced. We do not expect that operating results prior to opening Wynn Las Vegas and Wynn Macau will be indicative of operating results thereafter. We cannot assure you that we will be able to operate either Wynn Las Vegas or Wynn Macau at a profit once they are completed.

Results of operations for the three months ended June 30, 2003 compared to the three months ended June 30, 2002.

Our development operations resulted in a net loss for the three months ended June 30, 2003, of approximately $12.7 million, a $4.8 million or 61% increase over the net loss of approximately $7.9 million for the three-month period ended June 30, 2002, due generally to increased development activities.

Total revenues for the three months ended June 30, 2003, of $285,000 increased approximately $143,000 or 101% from total revenues of approximately $142,000 for the three months ended June 30, 2002. The increase is due to increases of $84,000 or 215% over the comparable prior period in aircraft revenues, due primarily to increased personal usage of the corporate aircraft, and $28,000 or 54% and $31,000 or 65% increases over the comparable period in art gallery and retail revenues, respectively, due to increased patronage.

Total expenses for the three months ended June 30, 2003 increased approximately $5.1 million, or 60% to $13.8 million, as compared to $8.7 million for the three months ended June 30, 2002. This increase was primarily due to an approximately $5 million or 82% increase in pre-opening costs to $11.2 million for the three months ended June 30, 2003 from $6.2 million for the three months ended June 30, 2002. The increase in pre-opening costs, which consist primarily of salaries and wages and consulting and legal fees, is directly attributable to an increase in pre-opening activities as compared to the same period in the prior year. We expect pre-opening costs to continue to increase as development of Wynn Las Vegas, and Wynn Macau pre-development activities, progress.

Other income—net for the three months ended June 30, 2003, decreased approximately $104,000 to approximately $246,000 from approximately $350,000 during the three months ended June 30, 2002. Interest expense for the three months ended June 30, 2003, increased approximately $2 million to approximately $2.3 million or 705% over the interest expense of approximately $284,000 for the three months ended June 30, 2002, due primarily to the commitment fees related to certain of the unused outstanding debt facilities entered into in October 2002. Offsetting the increase in interest expense is an increase in interest income for the three months ended June 30, 2003 of approximately $1.9 million or 299% over interest income of approximately $634,000 for the three months ended June 30, 2002 as a result of the significant increase in invested cash from the net proceeds from equity and debt financing activity.

Results of operations for the six months ended June 30, 2003 compared to the six months ended June 30, 2002.

Our development operations resulted in a net loss for the six months ended June 30, 2003, of approximately $21.7 million, a $8.9 million or 70% increase over the net loss of approximately $12.8 million for the six-month period ended June 30, 2002, due generally to increased development activities.

Total revenues for the six months ended June 30, 2003, of $478,000 decreased approximately $254,000 or 35% from total revenues of approximately $732,000 for the six months ended June 30, 2002. We sold our original aircraft in February 2002 and purchased a new aircraft concurrent with the acquisition of World Travel, LLC and Las Vegas Jet, LLC. The new aircraft is not licensed for charter services; consequently, charter revenues, which now consist solely of fees charged for personal usage by certain executive officers, have decreased significantly, thus decreasing aircraft revenues by approximately $340,000 or 66% to $173,000 for the six months ended June 30, 2003 from $513,000 during the six months ended June 30, 2002. Offsetting the decrease in aircraft revenues are increases in revenues from the art gallery and the retail shop of approximately $35,000 and $51,000, respectively, due to increased patronage.

Total expenses for the six months ended June 30, 2003 increased approximately $11.2 million, or 79% to $25.3 million, as compared to $14.1 million for the six months ended June 30, 2002 primarily due to an approximately $11.3 million or 128% increase in pre-opening costs to $20.1 million for the six months ended June 30, 2003 from $8.8 million for the six months ended June 30, 2002. The increase in pre-opening costs,

which consist primarily of salaries and wages and consulting and legal fees, is directly attributable to an increase in pre-opening activities as compared to the same period in the prior year. We expect pre-opening costs to continue to increase as development of Wynn Las Vegas, and Wynn Macau pre-development activities, progress.

Other income—net for the six months ended June 30, 2003, increased approximately $1.1 million to approximately $1.5 million from approximately $344,000 during the six months ended June 30, 2002. Interest expense for the six months ended June 30, 2003, increased approximately $3.5 million to approximately $3.9 million or 768% over the interest expense of approximately $453,000 for the six months ended June 30, 2002, due primarily to the commitment fees related to certain of the unused outstanding debt facilities entered into in October 2002. Offsetting the increase in interest expense is an increase in interest income for the six months ended June 30, 2003 of approximately $4.6 million or 579% over interest income of approximately $797,000 for the six months ended June 30, 2002 as a result of the significant increase in invested cash from the net proceeds from equity and debt financing activity.

Certain trends that may affect development activities and future results of operations

In the near term, our development activities may be impacted by various economic factors, including, among other things, the availability and cost of materials, the availability of labor resources, interest rate levels and, specifically in connection with the Macau opportunity, foreign exchange rates and legislative and regulatory issues relating to gaming and income taxes. The strength and profitability of our business after our casinos open will depend on consumer demand for hotel casino resorts in general and for the type of luxury amenities that they will offer. Adverse changes in consumer preferences, discretionary income and general economic conditions as well as fears of recession, reduced consumer confidence in the economy, continued terrorist activities in the Middle East and a resurgence of SARS, could reduce customer demand for the products and services we will offer, thus imposing practical limits on pricing and harming our operations.

In addition, a recently enacted Nevada statute significantly increased, among other things, gaming taxes by 0.5% and instituted a business payroll tax of 0.65% on all wages. These fee and tax increases will increase our previously estimated tax liabilities and reduce our previously estimated cash flows and net income accordingly.

Liquidity and Capital Resources

Recent Developments

During the second quarter of 2003, we entered into two interest rate swap agreements to hedge the underlying interest rate risk on $825 million of our expected future floating-rate borrowings. See “Quantitative and Qualitative Disclosures About Market Risk” below.

On June 20, 2003, we entered into a strategic business alliance with Société des Bains de Mer et du Cercle des Etrangers à Monaco, a société anonyme Monegasque organized under the laws of the Principality of Monaco (“SBM”) that provides for, among other things, a mutual exchange of management expertise and the development of cross-marketing initiatives between SBM and us. Under an exclusive concession arrangement with the Principality of Monaco, SBM owns and operates Le Casino de Monte-Carlo, Le Cafe de Paris, and Sun Casinos. SBM also owns and operates the Hotel de Paris, the Hotel Hermitage, the Monte Carlo Beach Hotel, the Centre des Thermes Marins (Spa) and Monte-Carlo Sporting Club. In connection with the strategic alliance, we sold 3,000,000 shares of our common stock to SBM for $45 million in a privately negotiated, all cash transaction. In return, SBM has agreed, subject to certain exceptions, to refrain from transferring its shares prior to April 1, 2005, and will be entitled to certain registration rights thereafter.

On July 7, 2003, we consummated a private placement under Rule 144A of the Securities Act of 1933, as amended (the “Securities Act”), of $200 million aggregate principal amount of 6% Convertible Subordinated Debentures due 2015 (the “Debentures”). Subsequently, on July 30, 2003, we completed the sale of

an additional $50 million aggregate principal amount of the Debentures to the initial purchasers of the Debentures pursuant to the full exercise of an option granted to the initial purchasers. We will pay interest on the Debentures on January 15 and July 15 of each year, beginning January 15, 2004. Approximately $44 million of the net proceeds of the offering were contributed to a newly formed subsidiary, Wynn Resorts Funding, LLC, which purchased U.S. government securities and is restricted to secure the payment of three years of scheduled interest payments as required by the indenture governing the Debentures. We intend to use the remaining net proceeds, after underwriters commissions of $7.5 million and other transaction costs, to help finance Wynn Macau and for general corporate purposes, including possibly financing potential future acquisitions or other investments.

Each $1,000 principal amount of the Debentures is convertible, at each holder's option, into 43.4782 shares of our common stock (subject to adjustment as provided on the indenture governing the Debentures), a conversion rate equivalent to a conversion price of $23.00 per share. We may redeem some or all of the Debentures for cash on or after July 20, 2007 at prices specified in the indenture governing the Debentures. In addition, the holders may require us to repurchase all or a portion of their Debentures, subject to certain exceptions, following a change of control in the Company. If any holder requires the repurchase of the Debentures, we may elect to pay the repurchase price in cash or shares of our common stock or a combination thereof.

The Debentures are guaranteed by Wynn Resorts Funding, LLC and Wynn Resorts has guaranteed the obligations of Wynn Resorts Funding, LLC. Other than with respect to three years of scheduled interest payments, the Debentures are subordinated unsecured obligations and rank junior in right of payment to all our existing and future senior indebtedness, and equally with any existing and future subordinated indebtedness.

We have also agreed to file a shelf registration statement with respect to the resale of the Debentures, the guarantees and the common stock issuable upon conversion of the Debentures to become effective within 250 days after July 7, 2003.

Expected Capital Resources and Commercial Commitments

At June 30, 2003, we had approximately $149.5 million of cash and cash equivalents. In addition, we had approximately $646.3 million in restricted cash and investments from the proceeds of the Notes and our initial public offering of common stock. This amount is restricted in accordance with agreements governing our debt facilities, including $80 million restricted for a liquidity reserve and completion guarantee. The restricted cash and investments also includes approximately $2.5 million in cash restricted to collateralize certain construction insurance claims and sales tax deposits. Cash equivalents are comprised of investments in overnight money market funds. Restricted investments are kept in money market funds or relatively short-term, government-backed marketable debt securities as required by agreements governing the Company's debt facilities.

As of June 30, 2003, approximately $759.2 million of the total Wynn Las Vegas project cost of approximately $2.4 billion (including the cost of the land, capitalized interest, pre-opening expenses and all financing fees) had been expended or incurred to fund the development and construction of Wynn Las Vegas. The remaining development and construction costs for Wynn Las Vegas are expected to be funded from a combination of our cash on hand from contributed capital and a majority of the net proceeds of the initial public offering of our common stock and the offering of the Notes, and additional borrowings under our debt facilities. Any delays or change orders with respect to the Wynn Las Vegas project could have a material adverse effect on our liquidity and operations. See "Development and Construction Activities."

As of June 30, 2003, there have been no material changes to the information regarding our expected long-term indebtedness and material commercial commitments previously reported under Item 7 in our Annual Report on Form 10-K for the year ended December 31, 2002.

Financing for the Macau Opportunity

We intend to invest additional capital in Wynn Macau as part of the financing of the Macau opportunity, in addition to the approximately $23.8 million we have already invested. We have additional capital available from a portion of the net proceeds we received from the initial public offering of our common stock (including as a result of the exercise of the overallotment option in connection therewith) and from the sale of the Debentures. We intend to use the net proceeds from the sale of the Debentures (see *Recent Developments* above) to help finance Wynn Macau and for general corporate purposes, including possibly financing potential future acquisitions or other investments. The minority investors in Wynn Macau are obligated, subject to certain limitations, to make additional capital contributions in proportion to their economic interests (17.5% in the aggregate) to fund the construction, development and other activities of Wynn Macau, S.A. We have obtained the services of architects and designers and have begun preliminary discussions to arrange the additional financing that would be required to complete Wynn Macau. Wynn Macau, S.A. will not close its land acquisition or begin construction or operation of any casino in Macau until a number of objectives and conditions are met, including: 1) obtaining sufficient financing to commence construction of Wynn Macau, 2) obtaining the ability to extend credit to gaming customers and enforce gaming debts in Macau and 3) obtaining certain relief related to Macau tax regulations. We believe the necessary legislative and regulatory changes will be introduced in the fourth quarter of 2003. However, we cannot assure you that such proposed legislative and regulatory changes will be introduced, or if introduced, will be enacted.

At the present time, we have not yet determined the amount or composition of financing that will be required to complete the project. If we decide to raise additional equity at the Wynn Resorts level or at the Wynn Macau, S.A. or intermediary holding company level to fund the Macau opportunity, stockholders would suffer direct or indirect dilution of their interests. Wynn Macau, S.A. currently has not received any commitments relating to financing from any third-party. Except for Wynn Resorts, we do not expect financing for any such project to be provided by or through any of the issuers or guarantors of the Notes or any other indebtedness relating to the Wynn Las Vegas project. After construction of Wynn Macau, we intend to satisfy our remaining financial obligations, if any, under our concession agreement through the development of future phased expansions and, possibly, additional casino resorts.

Other Liquidity Matters

New business developments or other unforeseen events may occur, resulting in the need to raise additional funds. For example, we continue to explore opportunities to develop additional gaming or related businesses in Las Vegas or other international or domestic markets such as Illinois, where we recently placed a bid through a joint venture with an Illinois company for the tenth gaming license in Illinois, whether through acquisition, investment or development. Any such development could require us to obtain additional financing. We may also decide to conduct any such development directly through Wynn Resorts or indirectly through a line of subsidiaries separate from the Wynn Las Vegas or Wynn Macau, S.A. entities. In addition, 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 the 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.

Furthermore, if completion of the Wynn Las Vegas project is delayed, then Wynn Las Vegas, LLC's debt service obligations accruing prior to the actual opening of Wynn Las Vegas will increase correspondingly. Following the completion of Wynn Las Vegas, we expect the Wynn Las Vegas entities to fund their operations and capital requirements from operating cash flow and borrowings under the revolving credit facility. We cannot assure you, however, that the Wynn Las Vegas entities' business will generate sufficient cash flow from operations or that future borrowings available to the Wynn Las Vegas entities under the credit facilities will be

sufficient to enable the Wynn Las Vegas entities to service and repay their indebtedness and to fund their other liquidity needs. We may need to refinance all or a portion of the Wynn Las Vegas entities' indebtedness on or before maturity. We cannot assure you that we will be able to refinance any of the indebtedness, including the credit facilities, the FF&E facility or Notes on acceptable terms or at all.

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. Our primary exposure to market risk is interest rate risk associated with the Revolver, the Term Loan facility (collectively, the "Credit Facilities") and the FF&E Facility, each of which bear interest based on floating rates. We will attempt to manage interest rate risk by managing the mix of long-term fixed rate borrowings and variable rate borrowings. The amount of outstanding borrowings under the various debt instruments is expected to increase once the proceeds of the initial public offerings of our common stock and the Notes have been used in the construction of Wynn Las Vegas and as the Macau project evolves. While we are required and have obtained interest rate protection through interest rate swap or other arrangements as described below, 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.

Consistent with our obligation under the Credit Facilities to obtain interest rate protection for at least $325 million of borrowings thereunder, in May 2003 and June 2003, we entered into two interest rate swap arrangements to hedge the underlying interest rate risk on a total of $825 million of our expected future borrowings under our Credit Facilities, which bear interest at LIBOR plus 4% and LIBOR plus 5.5%, on the Revolver and Term Loans, respectively, and mature in October 2008 and October 2009, respectively.

Under these interest rate swap arrangements, we will receive payments at a variable rate of LIBOR and pay a fixed rate of 2.653% under the May 2003 swap agreement and 2.690% under the June 2003 swap agreement on notional amounts set forth in the swap instruments. These notional amounts gradually increase from approximately $12.4 million to $325 million during the period from March 1, 2004 through December 1, 2006, on the May 2003 swap instrument, and from approximately $60 million to $500 million during the period from October 26, 2004 through December 26, 2006, on the June 2003 swap instrument. These graduated notional amounts are designed to correspond with the amounts and timing of our expected borrowings under the Credit Facilities. The interest rate swaps are expected to be effective as hedging instruments as long as sufficient LIBOR-based borrowings are outstanding under the Credit Facilities, and effectively fix the interest rate on borrowings under the Revolver at approximately 6.653% and 6.690%, respectively and at approximately 8.153% and 8.190%, respectively on borrowings under the Term Loans. Any ineffectiveness will increase our recorded interest expense in our consolidated financial statements.

As of June 30, 2003, we recorded in other assets the fair value of the net effect of these two interest rate swaps of approximately $265,000. Since there was no ineffectiveness in the hedging relationship, the corresponding change in fair value of equal amount is reported in other comprehensive income for the three and six-month periods ended June 30, 2006.

We do not use derivative financial instruments, other financial instruments or derivative commodity instruments for trading or speculative purposes.

Inflation and Foreign Currency Risks

We believe that our results of operations are not affected by moderate changes in the inflation rate.

The currency used in our concession agreement with the government of Macau is the Macau pataca. The Macau pataca, which is not a freely convertible currency, is linked to the Hong Kong dollar, and in many cases the two are used interchangeably in Macau. The Hong Kong dollar is linked to the U.S. dollar and the exchange

rate between these two currencies has remained relatively stable over the past several years. However, the exchange linkages of the Hong Kong dollar and the Macau pataca, and the Hong Kong dollar and the U.S. dollar, are subject to potential changes due to, among other things, changes in Chinese governmental policies and international economic and political developments.

Because our payment and expenditure obligations under the concession agreement are in Macau patacas, in the event of unfavorable Macau pataca or Hong Kong dollar rate changes, Wynn Macau, S.A.'s obligations, as denominated in U.S. dollars, would increase. In addition, because we expect that most of the revenue for any casino that Wynn Macau, S.A. operates in Macau will be in Hong Kong dollars, we are subject to foreign exchange risk with respect to the exchange rate between the Hong Kong dollar and the U.S. dollar. We intend to spend any Macau patacas received on local casino operating expenses. Also, if any of our Macau-related entities incur U.S. dollar-denominated debt, fluctuations in the exchange rates of the Macau pataca or the Hong Kong dollar, in relation to the U.S. dollar, could have adverse effects on Wynn Macau, S.A.'s ability to service its debt, its results of operations and its financial condition. We have not yet determined whether we will engage in currency hedging activities to protect against foreign currency risk.

Item 4. Controls and Procedures

(a) *Disclosure Controls and Procedures*. The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective.

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

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

Wynn Resorts, Limited is a defendant in various lawsuits relating to routine matters incidental to our business. As with all litigation, no assurance can be provided as to the outcome of the following matters and we note that litigation inherently involves significant costs.

Valvino is currently involved in litigation related to its ownership and development of the former Desert Inn golf course and the residential lots around the golf course. Valvino acquired some, but not all, of the residential lots located in the interior of and around the former Desert Inn golf course when it acquired the former Desert Inn Resort & Casino from Starwood Hotels & Resorts Worldwide, Inc. Valvino later acquired all of the remaining lots located in the interior of, and some of the remaining lots around, the former Desert Inn golf course. In total, Valvino acquired 63 of the 75 residential lots, with Clark County having acquired two of the lots through eminent domain in 1994 as part of the widening of Desert Inn Road. The residential lots, previously known collectively as the Desert Inn Country Club Estates, were subject to various conditions, covenants and restrictions recorded against the lots in 1956 and amended from time to time since then.

On October 31, 2000, Ms. Stephanie Swain, as trustee of the Mark Swain Revocable Trust, filed an action in Clark County District Court against Valvino and the then directors of the Desert Inn Country Club Estates Homeowners' Association. Subsequently, the other remaining homeowners were joined in this lawsuit and asserted claims against Valvino. The plaintiffs are seeking various forms of declaratory relief concerning the continued existence and governance of the homeowners' association. In addition, the plaintiffs have challenged the termination in June 2001 of the conditions, covenants and restrictions recorded against the residential lots. The plaintiffs also seek to establish certain easement rights that Ms. Swain and the other homeowners claim to possess. Specifically, the remaining homeowners seek to establish implied easement rights to enter upon the golf course for exercise and other leisure purposes, and to use the perimeter roadways for entrance and exit purposes. Additionally, plaintiffs claim that they are entitled to maintain their view of the golf course property. At least two of the plaintiffs also have alleged the existence of an equitable implied restriction prohibiting any alternative commercial development of the golf course. Due to plaintiffs' failure to properly frame all of the issues and to assert claims against all necessary parties, Valvino filed an action seeking declaratory and other equitable relief and to finally resolve all issues relating to its real property. Valvino also asserted claims for damages based upon a number of legal theories, including abuse of process. This action was consolidated with the action filed by Ms. Swain. Two subsequent actions were filed, one by Ms. Swain against certain homeowners' association officers and directors and one by Valvino seeking declaratory and injunctive relief similar to the original action. Because the issues in the subsequent actions are present in the original action, both of the subsequent actions have been stayed pending the outcome of the original action. In addition, three of Valvino's subsidiaries that now own the golf course land and several of the residential lots, have been substituted into the original action as counter-defendants and plaintiffs.

The trial in this matter is scheduled for October 2003. The court has, nonetheless, entered several preliminary injunction orders concerning the parties' respective property rights. Among other things, the court has ordered that Valvino is free to develop the golf course and the remainder of its property as it deems fit, subject to all applicable legal restraints. In that regard, Valvino was permitted to remove all homes and structures on its properties surrounding the golf course and those located on the Country Club Lane cul-de-sac, which ran to the interior of the golf course. Valvino has removed all structures that were on its lots, together with the cul-de-sac, and has relandscaped the property to blend into the existing golf course. The court has also entered an order prohibiting Ms. Swain from filing a lis pendens against the golf course property and expunging the lis pendens that was filed against the residential lots. A lis pendens is a notice filed on public records to warn all persons that the title to certain property is in litigation and that the effect of such litigation will be binding on the owner of the property. The court has also permitted construction of Wynn Las Vegas utilities in part of Country Club Lane,

resulting in temporary closure of one of three access gates for the plaintiffs. The court has also permitted Wynn Las Vegas to begin construction of a golf course maintenance facility on some of the former residential lots.

The plaintiffs sought, and successfully obtained, a preliminary injunction to compel Valvino to subsidize security to homeowners who reside near the project. However, the Nevada Supreme Court reversed this ruling on appeal and vacated the injunction.

Discovery in this case is currently ongoing. While no assurances can be made with respect to any litigation, Valvino is vigorously contesting all of the homeowners' claims and will continue to do so. However, if the plaintiffs prevail on their claims and the conditions, covenants and restrictions on the lots remain in effect, we may have to adjust our current plans for the construction of the Wynn Las Vegas golf course by redesigning some of the holes located on the periphery of the course. In addition, if the court finds that there is an implied equitable restriction on the golf course lots, any future development of the golf course parcel for an alternative use may be restricted.

Several of the remaining homeowners have also filed two separate actions seeking judicial review and/or a petition for a writ of mandamus and/or prohibition against Clark County and the Clark County Commissioners in Clark County District Court. One action concerns the Clark County Planning Commission's approval of Valvino's application for a use permit, and a related roadway dedication agreement between Clark County and Valvino. Valvino is not a party to this action, but is required as a condition of the dedication agreement to defend and indemnify Clark County. The other action concerns the Clark County Planning Commission's approval of Valvino's application for design review of the maintenance facility. Valvino and Wynn Resorts, Limited are parties to this action. Both of these actions are in the initial stages of litigation. Valvino intends to vigorously contest the homeowners' claims.

Item 2. Changes in Securities and Use of Proceeds

On June 20, 2003, we entered into a strategic business alliance with Société des Bains de Mer et du Cercle des Etrangers à Monaco, a société anonyme Monegasque organized under the laws of the Principality of Monaco ("SBM") that is not a U.S. person within the meaning of Regulation S of the Securities Act. The alliance provides for, among other things, a mutual exchange of management expertise and the development of cross-marketing initiatives between SBM and us. Under an exclusive concession with the Principality of Monaco, SBM owns and operates Le Casino de Monte-Carlo, Le Cafe de Paris, and Sun Casinos. SBM also owns and operates the Hotel de Paris, the Hotel Hermitage, the Monte Carlo Beach Hotel, the Centre des Thermes Marins (Spa) and Monte-Carlo Sporting Club. In connection with the strategic alliance, we sold 3,000,000 shares of our common stock to SBM for $45 million in a privately negotiated, all cash transaction consummated outside of the U.S. in reliance on Regulation S of the Securities Act. In return, SBM has agreed, subject to certain exceptions, to refrain from transferring its shares prior to April 1, 2005, and will be entitled to certain registration rights thereafter.

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

The Company's Annual Meeting of Stockholders was held on May 13, 2003. At the meeting, Ronald J. Kramer, John A. Moran and Elaine P. Wynn were re-elected to the Board of Directors to serve for a term of three years until the 2006 Annual Meeting of Stockholders. The result of the stockholder vote for each nominee was 74,474,544 votes cast FOR each nominee and 56,623 abstentions. No votes were cast AGAINST any nominee. The terms of Directors Stephen A. Wynn, Kazuo Okada, Robert J. Miller, Alvin V. Shoemaker, Stanley R. Zax and Allan Zeman did not expire at the meeting and, consequently, these Directors were not nominated for re-election and continue to serve on the Company's Board of Directors.

In addition, a proposal to ratify the appointment of Deloitte & Touche LLP to serve as independent auditors of the Company was approved, with 70,158,360 votes cast FOR, 4,372,707 votes cast AGAINST and 100 abstentions.

Item 6. Exhibits and Reports on Form 8-K

(a) *Exhibits*

EXHIBIT INDEX

Exhibit No.	Description
3.1	Second Amended and Restated Articles of Incorporation of the Registrant. (1)
3.2	Third Amended and Restated Bylaws of the Registrant, as amended. (2)
4.1	Registration Rights Agreement, dated as of June 12, 2003, by and between Wynn Resorts, Limited and Societe des Bains de Mer et du Cercle des Etrangers a Monaco. (3)
*4.2	Indenture, dated as of July 7, 2003, governing the 6% Convertible Subordinated Debentures due 2015 by and among Wynn Resorts, Limited, as obligor, Wynn Resorts Funding, LLC, as guarantor and U.S. National Bank Association, as Trustee (including the Form of 6% Convertible Subordinated Debenture due 2015 and Form of Notation of Guarantee).
*4.3	Registration Rights Agreement, dated as of July 7, 2003, by and among Wynn Resorts, Limited, Wynn Resorts Funding, LLC, Deutsche Bank Securities Inc. and SG Cowen Securities Corporation.
*4.4	Collateral Pledge and Security Agreement, dated as of July 7, 2003, by and between Wynn Resorts Funding, LLC, as the pledgor, and U.S. Bank National Association, as collateral agent and trustee.
*4.5	Supplement No. 1, dated as of July 30, 2003, to the Collateral Pledge and Security Agreement dated as of July 7, 2003, by and between Wynn Resorts Funding, LLC, as pledgor and U.S. Bank National Association, as collateral agent and trustee.
*4.6	Pledge and Security Agreement, dated as of July 7, 2003, by and between Wynn Resorts, Limited, as pledgor, and U.S. Bank National Association, as trustee and collateral agent.
*10.1	Amendment to Multiple Deeds of Trust, Leasehold Deeds of Trust, Assignments of Rents and Leases, Security Agreements and Fixture Filings, dated as of April 23, 2003, made by Wynn Las Vegas, LLC; Wynn Resorts Holdings, LLC; Valvino Lamore, LLC and Palo, LLC to Nevada Title Company, as Trustee for the benefit of Deutsche Bank Trust Company Americas, as Administrative Agent.
*10.2	First Amendment to Credit Agreement and Other Loan Documents, dated as of May 28, 2003, by and between Deutsche Bank Trust Company Americas, as Administrative Agent—Wynn Las Vegas, LLC and the other Wynn Amendment Parties named therein.
*10.3	First Amendment to Second Amended and Restated Art Rental and Licensing Agreement, dated as of June 1, 2003 by and between Wynn Resorts Holding, LLC, Valvino Lamore, LLC, Wynn Resorts, Limited, and Stephen A. Wynn.
10.4	Purchase Agreement, dated as of June 12, 2003, by and between Wynn Resorts, Limited and Societe des Bains de Mer et du Cercle des Etrangers a Monaco. (3)
*10.5	Purchase Agreement, dated as of June 30, 2003, by and between Wynn Resorts, Limited, Wynn Resorts Funding, LLC and Deutsche Bank Securities Inc., as Representative of the initial purchasers named therein.
*31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
*31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
*32.1	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.

* 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).

(2) Previously filed with the Quarterly Report on Form 10-Q filed by the Registrant on December 9, 2002.

(3) Previously filed with the Current Report on Form 8-K filed by the Registrant on June 13, 2003.

(b) *Reports on Form 8K*

On June 5, 2003, the Company filed a Current Report on Form 8-K dated May 28, 2003, announcing that it had amended certain documents relating to its outstanding indebtedness and entered into an interest rate swap agreement to hedge a portion of the underlying interest rate risk of borrowings under its credit facilities.

On June 13, 2003, the Company filed a Current Report on Form 8-K dated June 12, 2003, that attached and incorporated by reference a press release announcing that it had agreed to enter into a strategic business alliance with SBM.

On June 20, 2003, the Company filed a Current Report on Form 8-K dated June 20, 2003, that attached and incorporated by reference a press release announcing that it had entered into a strategic business alliance with SBM and consummated the sale of 3,000,000 shares of its common stock to SBM.

On June 26, 2003, the Company filed a Current Report on Form 8-K dated June 24, 2003, announcing that it had entered into an interest rate swap agreement to hedge an additional portion of the underlying interest rate risk of borrowings under its credit facilities.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

WYNN RESORTS, LIMITED

Dated: August 12, 2003

By: /s/ JOHN STRZEMP

John Strzemp
Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)

Exhibit 4.2

WYNN RESORTS, LIMITED
as obligor

and

WYNN RESORTS FUNDING, LLC
as guarantor

6% CONVERTIBLE SUBORDINATED DEBENTURES DUE 2015

INDENTURE

DATED AS OF JULY 7, 2003

U.S. BANK NATIONAL ASSOCIATION
as trustee

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	(b)	N.A.

* This Cross-Reference Table shall not, for any purpose, be deemed a part of this Indenture.

** N.A. means Not Applicable.

TIA SECTION		INDENTURE SECTION
	(c)	14.1

THIS INDENTURE (the "Indenture") dated as of July 7, 2003 is among Wynn Resorts, Limited, a corporation duly organized under the laws of the State of Nevada (the "Issuer"), Wynn Resorts Funding, LLC, a limited liability company duly organized under the laws of the State of Nevada (the "Guarantor"), and U.S. Bank National Association, a national bank association organized and existing under the laws of the United States, as Trustee (the "Trustee").

In consideration of the promises and the purchase of the Securities (as defined) by the Holders thereof, the parties agree as follows for the benefit of each other and for the equal and ratable benefit of the registered Holders of the Issuer's 6% Convertible Subordinated Debentures due 2015.

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1. DEFINITIONS

"Additional Interest" means all liquidated damages then owing pursuant to Section 2.4 of the Registration Rights Agreement.

"Additional Pledged Securities" has the meaning specified in the Collateral Pledge Agreement.

"Additional Securities" means up to $50,000,000.00 aggregate principal amount of Securities (other than the Initial Securities) issued under this Indenture in accordance with Sections 2.2 hereof, as part of the same series as the Initial Securities.

"Affiliate" means, with respect to any specified person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control" when used with respect to any person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means any Registrar, Paying Agent or Conversion Agent.

"Applicable Procedures" means, with respect to any transfer or exchange of beneficial ownership interests in a Global Security, the rules and procedures of the Depositary, in each case to the extent applicable to such transfer or exchange at the relevant time.

"Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act (as in effect on the date of this Indenture), except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" shall be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by

conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"Board of Directors" means either the board of directors of the Issuer or any committee of the Board of Directors authorized to act for it with respect to this Indenture.

"Business Day" means each day that is not a Legal Holiday.

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

"Capital Stock" or "capital stock" of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, but excluding any debt securities convertible into such equity.

"Cash" or "cash" means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

"Certificated Security" means a Security that is in substantially the form attached hereto as Exhibit A and that does not include the information or the schedule called for by footnotes 1 and 3 thereof.

"Collateral" means, collectively, the "Collateral" as defined in each of the Pledge Agreement and the Collateral Pledge Agreement, and any other property subject to a Lien of the Trustee pursuant to any other Collateral Document.

"Collateral Account" means an account established with the Collateral Agent pursuant to the terms of the Collateral Documents for the deposit of the Pledged Securities to be purchased by the Issuer with a portion of the proceeds from the sale of the Securities.

"Collateral Agent" means, initially, U.S. Bank National Association, a national banking association, as collateral agent pursuant to the Collateral Documents.

"Collateral Documents" means, collectively, the Pledge Agreement, the Collateral Pledge Agreement or any other agreement, instrument, financing statement or other document that evidences, sets forth or limits the Lien of the Trustee in the Collateral.

"Collateral Pledge Agreement" means the Collateral Pledge and Security Agreement, dated as of July 7, 2003, between the Guarantor and the Trustee, as trustee, collateral agent and securities intermediary, with respect to the Securities.

"Common Stock" means the common stock of the Issuer, $0.01 par value, as it exists on the date of this Indenture and any shares of any class or classes of capital stock of the Issuer resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Issuer and which are not subject to redemption by the Issuer; provided, however, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion of Securities shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Conversion Rate" means the number of shares of Common Stock into which each Security is convertible, and shall equal the quotient obtained by dividing $1,000 by the then current Conversion Price, rounded to four decimal places (rounded up if the fifth decimal place is 5 or more, otherwise rounded down), subject to adjustment under certain circumstances as provided in the Indenture.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of the execution of this Indenture is located at 180 East Fifth Street, St. Paul, MN 55101, Attention: Corporate Trust Services, or at any other time at such other address as the Trustee may designate from time to time by notice to the Issuer.

"Credit Agreement" means that certain Credit Agreement, dated as of October 30, 2002, among Wynn Las Vegas, LLC, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., Deutsche Bank Trust Company Americas, Banc of America Securities LLC, Bear, Stearns & Co. Inc., Bear Stearns Corporate Lending Inc., Dresdner Bank AG, New York and Cayman Island Branches, and JP Morgan Chase Bank.

"Default" or "default" means, when used with respect to the Securities, any event which is or, after notice or passage of time or both, would be an Event of Default.

"Designated Senior Indebtedness" means any of the Issuer's Senior Indebtedness, the principal amount of which is $50.0 million or more and that has been designated as "Designated Senior Indebtedness."

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"FF&E Facility" means that certain Loan Agreement, dated as of October 30, 2002, by and among Wynn Las Vegas, LLC, Wells Fargo Bank Nevada, N.A. and the lenders listed on Schedule IA thereto.

"Final Maturity Date" means July 15, 2015.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in (1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, (2) the statements and pronouncements of the Financial Accounting Standards Board, (3) such other statements by such other entity as approved by a significant segment of the accounting profession and (4) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in registration statements filed under the Securities Act and periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

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

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

"Global Security" means each of the permanent Global Securities that is in substantially the form attached hereto as Exhibit A and that includes the information and schedule called for by footnotes 1 and 3 thereof and which is deposited with the Depositary or its custodian and registered in the name of the Depositary or its nominee.

"Guarantor" means the party named as such in the first paragraph of this Indenture and its successors and assigns.

"Hedging Obligations" means, with respect to any specified person, the obligations of such person under (1) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements and (2) other agreements or arrangements designed to protect such person against fluctuations in interest rates.

"Holder" or "Securityholder" means the person in whose name a Security is registered on the Primary Registrar's books.

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

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(3) in respect of banker's acceptances;

(4) representing Capital Lease Obligations;

(5) representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable; or

(6) representing any Hedging Obligations,

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

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

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, together with any interest on the Indebtedness that is more than 30 days past due, in the case of any other Indebtedness;

(3) in the case of a guarantee of Indebtedness, the maximum amount of the Indebtedness guaranteed under such guarantee; and

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

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

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

"Indenture" means this Indenture as amended or supplemented from time to time pursuant to the terms of this Indenture.

"Initial Pledged Securities" has the meaning specified in the Collateral Pledge Agreement.

"Initial Purchasers" means Deutsche Bank Securities Inc. and SG Cowen Securities Corporation.

"Initial Securities" means the first $200,000,000.00 aggregate principal amount of Securities issued under this Indenture on the date hereof.

"Issue Date" of any Security means the date on which such Security was originally issued or deemed issued as set forth on the face of the Security.

"Issuer" means the party named as such in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture, and thereafter "Issuer" shall mean such successor Issuer.

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

"Nasdaq" means the Nasdaq National Market.

"Officer" means the chairman or any co-chairman of the Board of Directors, any vice chairman of the Board of Directors, the chief executive officer, the president, any vice president, the chief financial officer, the secretary or any assistant secretary of the Issuer.

"Officers' Certificate" means a certificate signed by two Officers; provided, however, that for purposes of Sections 4.11 and 6.3, "Officers' Certificate" means a certificate signed by the principal executive officer, principal financial officer or principal accounting officer of the Issuer and by one other Officer.

"Opinion of Counsel" means a written opinion from legal counsel. The counsel may be an employee of or counsel to the Issuer or the Trustee.

"Person" or "person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Pledge Agreement" means the Pledge and Security Agreement, dated as of July 7, 2003, between the Issuer and the Trustee, as trustee and collateral agent, with respect to the Pledged Equity Interests.

"Pledged Equity Interests" has the meaning given in Section 2.1 of the Pledge Agreement.

"Pledged Securities" means the U.S. government obligations to be purchased by the Issuer and held in the Collateral Account in accordance with the Collateral Pledge Agreement.

"Redemption Price" or "redemption price" shall have the meaning set forth in paragraph 5 of the Securities.

"Redemption Date" or "redemption date" shall mean the date specified for redemption of the Securities in accordance with the terms of the Securities and this Indenture.

"Registration Rights Agreement" means the Registration Rights Agreement dated, as of July 7, 2003, by and among the Issuer, the Guarantor and the Initial Purchasers, as such agreement may be amended, modified or supplemented from time to time and, with respect to any Additional Securities, one or more registration rights agreements among the Issuer, the Guarantor and the other parties thereto, as such agreement(s) may be amended, modified or supplemented from time to time, relating to rights given by the Issuer to the purchasers of Additional Securities to register such Additional Securities under the Securities Act.

"Representative" means the (a) indenture trustee or other trustee, agent or representative for any Senior Indebtedness or (b) with respect to any Senior Indebtedness that does not have any such trustee, agent or other representative, (i) in the case of such Senior Indebtedness issued pursuant to an agreement providing for voting arrangements as among the holders or owners of such Senior Indebtedness, any holder or owner of such Senior Indebtedness acting with the consent of the required persons necessary to bind such holders or owners of such Senior Indebtedness and (ii) in the case of all other such Senior Indebtedness, the holder or owner of such Senior Indebtedness.

"Restricted Certificated Security" means a Certificated Security required to bear the restricted legends required by footnote 2 of the form of Security set forth in Exhibit A of this Indenture.

"Restricted Global Security" means a Global Security that is a Restricted Security.

"Restricted Security" means a Security required to bear the restricted legends required by footnote 2 of the form of Security set forth in Exhibit A of this Indenture.

"Rule 144" means Rule 144 under the Securities Act or any successor to such rule.

"Rule 144A" means Rule 144A under the Securities Act or any successor to such rule.

"SEC" means the Securities and Exchange Commission.

"Second Mortgage Note Indenture" means that certain Indenture, dated as of October 30, 2002, governing the 12% Second Mortgage Notes due 2010 by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Desert Inn Water Company, LLC, Wynn Design & Development, LLC, Wynn Resorts Holdings, LLC, Las Vegas Jet, LLC, World Travel, LLC, Palo, LLC, Valvino Lamore, LLC, the Issuer and Wells Fargo Bank, National Association, Inc., as trustee.

"Securities" means the 6% Convertible Subordinated Notes due 2015 or any of them (each, a "Security"), as amended or supplemented from time to time, that are issued under this Indenture. The Initial Securities and the Additional Securities shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Securities shall include the Initial Securities and any Additional Securities.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"Securities Custodian" means the Trustee, as custodian with respect to the Securities in global form, or any successor thereto.

"Security Guarantee" means the Guarantee by the Guarantor of the Issuer's payment obligations under this Indenture and on the Securities, executed pursuant to the provisions of this Indenture.

"Security Guarantee Termination Date" means the Termination Date as such term is defined in the Collateral Pledge Agreement.

"Senior Indebtedness" means the principal of, interest on, fees, costs and expenses in connection with and other amounts due on Indebtedness of the Issuer, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed or guaranteed by the Issuer, unless, in the instrument creating or evidencing or pursuant to which such Indebtedness is outstanding, it is expressly provided that such Indebtedness is not senior in right of payment to the Securities.

Notwithstanding the foregoing, "Senior Indebtedness" shall not include:

(1) Indebtedness or other obligations of the Issuer that by their terms rank equal or junior in right of payment to the Securities;

(2) Indebtedness of the Issuer that by operation of law is subordinate to any of the Issuer's general unsecured obligations;

(3) accounts payable or other liabilities owed or owing by the Issuer to trade creditors, including guarantees thereof or instruments evidencing such liabilities;

(4) amounts owed by the Issuer for compensation to employees or for services rendered to the Issuer;

(5) the Issuer's Indebtedness to any Subsidiary or any other Affiliate of the Issuer or any of such Affiliate's Subsidiaries, as outstanding on June 30, 2003;

(6) capital stock of the Issuer;

(7) Indebtedness evidenced by any guarantee of any Indebtedness ranking equal or junior in right of payment to the Securities; and

(8) Indebtedness which, when incurred and without respect to any election under Section 1111(b) of Title 11 of the United States Code, is without recourse to the Issuer.

"Significant Subsidiary" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1–02 of Regulation S–X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date of this Indenture.

"Subsidiary" means, in respect of any Person, any corporation, association, limited liability company, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"TIA" means the Trust Indenture Act of 1939, as amended, and the rules and regulations thereunder as in effect on the date this Indenture is qualified thereunder, except as provided in Section 13.3, and except to the extent any amendment to the Trust Indenture Act expressly provides for application of the Trust Indenture Act as in effect on another date.

"Trading Day" means a day during which trading in securities generally occurs on Nasdaq or, if the Common Stock is not listed on Nasdaq, on the principal national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the principal other market on which the Common Stock is then traded.

"Trustee" means the party named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture, and thereafter means the successor.

"Trust Officer" means, with respect to the Trustee, any officer assigned to the Corporate Trust Office, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Unrestricted Certificated Security" means a Certificated Security that is not a Restricted Security.

"Unrestricted Global Security" means a Global Security that is not a Restricted Security.

"Voting Stock" of a Person means all classes of Capital Stock or other interests (including partnership and membership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors or managers.

SECTION 1.2. OTHER DEFINITIONS

Term	Defined in Section
"Agent Members"	2.1(b)
"Applicable Stock Price"	4.2
"Bankruptcy Law"	8.1
"Change of Control"	3.7(a)
"Change of Control Purchase Date"	3.7(a)
"Change of Control Purchase Notice"	3.7(c)
"Change of Control Purchase Price"	3.7(a)
"Conversion Agent"	2.3
"Conversion Date"	4.2
"Conversion Price"	4.6
"Custodian"	8.1
"DTC"	2.1(a)
"Depositary"	2.1(a)
"Dividend Adjustment Amount"	4.6(e)
"Dividend Declaration Determination Date"	4.6(e)
"Determination Date"	4.6(d)
"Event of Default"	8.1
"Expiration Date"	4.6(d)
"Expiration Time"	4.6(d)
"Issuer Order"	2.2
"Legal Holiday"	12.9
"Legend"	2.12(a)
"Non-Payment Default"	5.3(b)
"Paying Agent"	2.3
"Payment Blockage Period"	5.3(c)
"Payment Default"	5.3(a)
"Permitted Junior Securities"	5.2
"Pre-Dividend Sale Price"	4.6(e)
"Primary Registrar"	2.3
"Purchase Agreement"	2.1
"Purchased Shares"	4.6(d)

Term	Defined in Section
"QIB"	2.1(a)
"Registrar"	2.3
"Rights Plan"	4.6(c)
"Sale Price"	4.6(f)
"Triggering Distribution"	4.6(d)
"Trigger Event"	4.6(c)

SECTION 1.3. TRUST INDENTURE ACT PROVISIONS

Whenever this Indenture refers to a provision of the TIA, that provision is incorporated by reference in and made a part of this Indenture. The Indenture shall also include those provisions of the TIA required to be included herein by the provisions of the Trust Indenture Reform Act of 1990. The following TIA terms used in this Indenture have the following meanings:

"indenture securities" means the Securities;

"indenture security holder" means a Securityholder;

"indenture to be qualified" means this Indenture;

"indenture trustee" or "institutional trustee" means the Trustee; and "obligor" on the indenture securities means the Issuer or any other obligor on the Securities.

All other terms used in this Indenture that are defined in the TIA, defined by TIA reference to another statute or defined by any SEC rule and not otherwise defined herein have the meanings assigned to them therein.

SECTION 1.4. RULES OF CONSTRUCTION

Unless the context otherwise requires:

(A) a term has the meaning assigned to it;

(B) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(C) words in the singular include the plural, and words in the plural include the singular;

(D) provisions apply to successive events and transactions;

(E) the term “merger” includes a statutory share exchange and the term “merged” has a correlative meaning;

(F) the masculine gender includes the feminine and the neuter;

(G) references to agreements and other instruments include subsequent amendments thereto;

(H) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(I) “or” is not exclusive;

(J) “will” shall be interpreted to express a command; and

(K) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time.

ARTICLE 2
THE SECURITIES

SECTION 2.1. FORM AND DATING

The Securities and the Trustee’s certificate of authentication shall be substantially in the respective forms set forth in Exhibit A, which Exhibit is incorporated in and made part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage. The Issuer shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication. The Securities are being offered and sold by the Issuer pursuant to a Purchase Agreement, dated June 30, 2003 (the “Purchase Agreement”), among the Issuer, the Guarantor and the Initial Purchasers, in transactions exempt from, or not subject to, the registration requirements of the Securities Act.

(a) Restricted Global Securities. All of the Initial Securities are being offered and sold to qualified institutional buyers as defined in Rule 144A (collectively, “QIBs” or individually, each a “QIB”) in reliance on Rule 144A under the Securities Act and shall be issued initially in the form of one or more Restricted Global Securities, which shall be deposited on behalf of the purchasers of the Securities represented thereby with the Trustee, at its Corporate Trust Office, as custodian for the depositary, The Depository Trust Company (“DTC”) (such depositary, or any successor thereto, being hereinafter referred to as the “Depositary”), and registered in the name of its nominee, Cede & Co., duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Restricted Global Securities may from time to time be increased or decreased by adjustments made on the records of the

Securities Custodian as hereinafter provided, subject in each case to compliance with the Applicable Procedures.

(b) Global Securities In General. Each Global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, purchases or conversions of such Securities. Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 hereof and shall be made on the records of the Trustee and the Depositary.

Neither members of, or participants in, the Depositary ("Agent Members") nor any other persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security held on their behalf by the Depositary or under the Global Security, and the Depositary (including, for this purpose, its nominee) may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner and Holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (A) prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or (B) impair, as between the Depositary and its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(c) Book Entry Provisions. The Issuer shall execute and the Trustee shall, in accordance with this Section 2.1(c), authenticate and deliver initially one or more Global Securities that (i) shall be registered in the name of the Depositary, (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions and (iii) shall bear the legend called for by footnote 1 of the form attached hereto as Exhibit A.

SECTION 2.2. EXECUTION AND AUTHENTICATION

An Officer shall sign the Securities for the Issuer by manual or facsimile signature. Typographic and other minor errors or defects in any such facsimile signature shall not affect the validity or enforceability of any Security which has been authenticated and delivered by the Trustee.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall authenticate and make available for delivery (a) Initial Securities for original issue in the aggregate principal amount of up to $200,000,000 and (b) Additional Securities for original issue in the aggregate principal amount of up to $50,000,000, each upon receipt of a written order or orders of the Issuer signed by any Officer of the Issuer (an "Issuer Order"). The Issuer Order shall specify the amount of Securities to be authenticated and the date on which each original issue of Securities is to be authenticated. The aggregate principal amount of Securities outstanding at any time may not exceed $250,000,000 except as provided in Section 2.7.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Issuer to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent shall have the same rights as an Agent to deal with the Issuer or an Affiliate of the Issuer.

The Securities shall be issuable only in registered form without coupons and only in denominations of $1,000 principal amount and any integral multiple thereof.

SECTION 2.3. REGISTRAR, PAYING AGENT, CONVERSION AGENT AND COLLATERAL AGENT

The Issuer shall maintain one or more offices or agencies where Securities may be presented for registration of transfer or for exchange (each, a "Registrar"), one or more offices or agencies where Securities may be presented for payment (each, a "Paying Agent"), one or more offices or agencies where Securities may be presented for conversion (each, a "Conversion Agent") and one or more offices or agencies where notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be served. The Issuer will at all times maintain a Paying Agent, Conversion Agent, Registrar and an office or agency where notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be served in the Borough of Manhattan, The City of New York. One of the Registrars (the "Primary Registrar") shall keep a register of the Securities and of their transfer and exchange.

The Issuer shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Issuer shall notify the Trustee of the name and address of any Agent not a party to this Indenture. If the Issuer fails to maintain a Registrar, Paying Agent, Conversion Agent or agent for service of notices and demands in any place required by this Indenture, or fails to give the foregoing notice, the Trustee shall act as such. The Issuer or any Affiliate of the Issuer may act as Paying Agent (except for the purposes of Section 6.1 and Article 10).

The Issuer hereby initially designates the Trustee as Paying Agent, Registrar, Custodian and Conversion Agent, and each of the Corporate Trust Office of the Trustee and the office or agency of the Trustee in the Borough of Manhattan, The City of New York, one such office or agency of the Issuer for each of the aforesaid

purposes. The Trustee will appoint the Collateral Agent pursuant to the Collateral Documents.

SECTION 2.4. PAYING AGENT TO HOLD MONEY IN TRUST

Prior to 11:00 a.m., New York City time, on each due date of the principal of or accrued and unpaid interest (including Additional Interest), if any, on any Securities, the Issuer shall deposit with a Paying Agent a sum sufficient to pay such principal or interest, if any (including Additional Interest, if any), so becoming due. Subject to Section 5.3, a Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money held by the Paying Agent for the payment of principal of or accrued and unpaid interest (including Additional Interest), if any, on the Securities, and shall notify the Trustee of any default by the Issuer (or any other obligor on the Securities) in making any such payment. If the Issuer or an Affiliate of the Issuer acts as Paying Agent, it shall, before 11:00 a.m., New York City time, on each due date of the principal of, or accrued and unpaid interest (including Additional Interest), if any, on, any Securities, segregate the money and hold it as a separate trust fund. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee, and the Trustee may at any time during the continuance of any default, upon written request to a Paying Agent, require such Paying Agent to pay forthwith to the Trustee all sums so held in trust by such Paying Agent. Upon doing so, the Paying Agent (other than the Issuer) shall have no further liability for the money.

SECTION 2.5. SECURITYHOLDER LISTS

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Primary Registrar, the Issuer shall furnish to the Trustee on or before each semiannual interest payment date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.6. TRANSFER AND EXCHANGE

(a) Subject to compliance with any applicable additional requirements contained in Section 2.12, when a Security is presented to a Registrar with a request to register a transfer thereof or to exchange such Security for an equal principal amount of Securities of other authorized denominations (if any), the Registrar shall register the transfer or make the exchange as requested; provided, however, that every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form and, if applicable, a transfer certificate each in the form included in Exhibit B, and in form satisfactory to the Registrar duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Security for registration of transfer or exchange at an office or agency maintained pursuant to Section 2.3, the Issuer shall execute and the Trustee shall authenticate Securities of a like aggregate principal amount at the Registrar's request. Any exchange or transfer shall be without charge, except that

the Issuer or the Registrar may require payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto, and provided, that this sentence shall not apply to any exchange pursuant to Section 2.10, 2.12(a), 3.6, 3.10, 4.2 (last paragraph) or 13.5.

Neither the Issuer, any Registrar nor the Trustee shall be required to exchange or register a transfer of (i) any Securities or portions thereof in respect of which a Change of Control Purchase Notice has been delivered and not withdrawn by the Holder thereof (except, in the case of the purchase of a Security in part, the portion thereof not to be purchased); (ii) any Securities or portions thereof selected for redemption pursuant to a notice of redemption that has been delivered and not withdrawn (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed); or (iii) any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

All Securities issued upon any transfer or exchange of Securities shall be valid obligations of the Issuer, evidencing the same debt and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

(b) Any Registrar appointed pursuant to Section 2.3 hereof shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Securities upon transfer or exchange of Securities.

(c) The Trustee and the Registrar shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Agent Members or other beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.7. REPLACEMENT SECURITIES

If any mutilated Security is surrendered to the Issuer, a Registrar or the Trustee, or the Issuer, a Registrar and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Issuer, the applicable Registrar and the Trustee such security or indemnity as will be required by them to hold each of them harmless, then, in the absence of notice to the Issuer, such Registrar or the Trustee that such Security has been acquired by a bona fide purchaser, the Issuer shall execute, and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be purchased by the Issuer pursuant to Article 3, the Issuer in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section 2.7, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other reasonable expenses (including the reasonable fees and expenses of the Trustee or the Registrar) in connection therewith.

Every new Security issued pursuant to this Section 2.7 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Issuer, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 2.7 are (to the extent lawful) exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 2.8. OUTSTANDING SECURITIES

Securities outstanding at any time are all Securities authenticated by the Trustee, except for those canceled by it, those converted pursuant to Article 4, those delivered to it for cancellation or surrendered for transfer or exchange and those described in this Section 2.8 as not outstanding.

If a Security is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Issuer receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If a Paying Agent (other than the Issuer or an Affiliate of the Issuer) holds on a Change of Control Purchase Date, Redemption Date or the Final Maturity Date money sufficient to pay the principal of (including premium, if any) and accrued and unpaid interest (including Additional Interest), if any, on Securities (or portions thereof) in respect of which a Change of Control Purchase Notice or notice of redemption has been delivered and not withdrawn payable on that date, then on and after such Change of Control Purchase Date, Redemption Date or the Final Maturity Date, as the case may be, such Securities (or portions thereof, as the case may be) shall cease to be outstanding and interest on them (including Additional Interest), if any, shall cease to accrue.

Subject to the restrictions contained in Section 2.9, a Security does not cease to be outstanding because the Issuer, the Guarantor or an Affiliate of the Issuer holds the Security.

SECTION 2.9. TREASURY SECURITIES

In determining whether the Holders of the required principal amount of Securities have concurred in any notice, direction, waiver or consent, Securities owned by the Issuer, the Guarantor or any other obligor on the Securities or by any Affiliate of the Issuer or of such other obligor shall be disregarded, except that, for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Securities and that the pledgee is not the Issuer, the Guarantor or any other obligor on the Securities or any Affiliate of the Issuer or of such other obligor.

SECTION 2.10. TEMPORARY SECURITIES

Until definitive Securities are ready for delivery, the Issuer may prepare and execute, and, upon receipt of an Issuer Order, the Trustee shall authenticate and deliver, temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Issuer with the consent of the Trustee considers appropriate for temporary Securities. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate and deliver definitive Securities in exchange for temporary Securities.

SECTION 2.11. CANCELLATION

The Issuer at any time may deliver Securities to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent shall forward to the Trustee or its agent any Securities surrendered to them for transfer, exchange, payment or conversion. The Trustee and no one else shall cancel, in accordance with its standard procedures, all Securities surrendered for transfer, exchange, payment, conversion or cancellation and shall deliver the canceled Securities to the Issuer. All Securities which are purchased or otherwise acquired by the Issuer or any of its Subsidiaries prior to the Final Maturity Date may, to the extent permitted by law, be reissued or resold or the Issuer may, at its option, deliver such Securities to the Trustee for cancellation.

SECTION 2.12. LEGEND; ADDITIONAL TRANSFER AND EXCHANGE REQUIREMENTS

(a) If Securities are issued upon the transfer, exchange or replacement of Securities subject to restrictions on transfer and bearing the legends required by footnote 2 of the form of Securities attached hereto as Exhibit A (collectively, the "Legend"), or if a request is made to remove the Legend on a Security, the Securities so issued shall bear the Legend, or the Legend shall not be removed, as the case may be, unless there is delivered to the Issuer and the Registrar such satisfactory evidence, which shall include an Opinion of Counsel if requested by the Issuer or such Registrar, as may

be reasonably required by the Issuer and the Registrar, that neither the Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 under the Securities Act or that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act; provided that no such evidence need be supplied in connection with the sale of such Security pursuant to a registration statement that is effective at the time of such sale. Upon (i) provision of such satisfactory evidence if requested, or (ii) notification by the Issuer to the Trustee and Registrar of the sale of such Security pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Issuer, shall authenticate and deliver a Security that does not bear the Legend. If the Legend is removed from the face of a Security and the Security is subsequently held by an Affiliate of the Issuer, the Legend shall be reinstated.

(b) A Global Security may not be transferred, in whole or in part, to any Person other than the Depositary or a nominee or any successor thereof, and no such transfer to any such other Person may be registered; provided that the foregoing shall not prohibit any transfer of a Security that is issued in exchange for a Global Security but is not itself a Global Security. No transfer of a Security to any Person shall be effective under this Indenture or the Securities unless and until such Security has been registered in the name of such Person. Notwithstanding any other provisions of this Indenture or the Securities, transfers of a Global Security, in whole or in part, shall be made only in accordance with this Section 2.12.

(c) Subject to the succeeding paragraph, every Security shall be subject to the restrictions on transfer provided in the Legend other than a Restricted Global Security. Whenever any Restricted Security other than a Restricted Global Security is presented or surrendered for registration of transfer or for exchange for a Security registered in a name other than that of the Holder, such Security must be accompanied by a certificate in substantially the form set forth in Exhibit B, dated the date of such surrender and signed by the Holder of such Security, as to compliance with such restrictions on transfer. The Registrar shall not be required to accept for such registration of transfer or exchange any Security not so accompanied by a properly completed certificate.

(d) The restrictions imposed by the Legend upon the transferability of any Security shall cease and terminate when such Security has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto) or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision). Any Security as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Security for exchange to the Registrar in accordance with the provisions of this Section 2.12 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144 or any successor provision, by, if requested by the Issuer or the Registrar, an Opinion of Counsel in form reasonably acceptable to the Issuer and addressed to the

Issuer, to the effect that the transfer of such Security has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Security, of like tenor and aggregate principal amount, which shall not bear the restrictive Legend. The Issuer shall inform the Trustee of the effective date of any registration statement registering the Securities under the Securities Act. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned Opinion of Counsel or registration statement.

(e) As used in the preceding two paragraphs of this Section 2.12, the term "transfer" encompasses any sale, pledge, transfer, hypothecation or other disposition of any Security.

(f) The provisions of clauses (i), (ii), (iii) and (iv) below shall apply only to Global Securities:

(i) Notwithstanding any other provisions of this Indenture or the Securities, a Global Security shall not be exchanged in whole or in part for a Security registered in the name of any Person other than the Depositary or one or more nominees or successors thereof, provided that a Global Security may be exchanged for Securities registered in the names of any person designated by the Depositary in the event that (A) the Depositary has notified the Issuer that it is unwilling or unable to continue as Depositary for such Global Security or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor Depositary is not appointed by the Issuer within 90 days, (B) the Issuer has provided the Depositary with written notice that it has decided to discontinue use of the system of book-entry transfer through the Depositary or any successor Depositary or (C) an Event of Default has occurred and is continuing with respect to the Securities. Any Global Security exchanged pursuant to clauses (A) or (B) above shall be so exchanged in whole and not in part, and any Global Security exchanged pursuant to clause (C) above may be exchanged in whole or from time to time in part as directed by the Depositary. Only Restricted Certificated Securities shall be issued in exchange for beneficial interests in Restricted Global Securities, and only Unrestricted Certificated Securities shall be issued in exchange for beneficial interests in Unrestricted Global Securities. Certificated Securities issued in exchange for beneficial interests in Global Securities shall be registered in such names and shall be in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver or cause to be delivered such Certificated Securities to the Persons in whose name such Securities are so registered. Such exchange shall be effected in accordance with the Applicable Procedures.

(ii) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Security or portion thereof to be so exchanged, shall be registered in such names

and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Security, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(iii) Subject to the provisions of clause (v) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(iv) In the event of the occurrence of any of the events specified in clause (i) above, the Issuer will promptly make available to the Trustee a reasonable supply of Certificated Securities in definitive, fully registered form, without interest coupons.

SECTION 2.13. CUSIP NUMBERS

The Issuer in issuing the Securities may use one or more "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of purchase as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a purchase and that reliance may be placed only on the other identification numbers printed on the Securities, and any such purchase shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee of any change in the "CUSIP" numbers.

SECTION 2.14. DEFAULTED INTEREST

If the Issuer defaults in a payment of accrued and unpaid interest (including Additional Interest), if any, on the Securities, it will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Securities. The Issuer will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Security and the date of the proposed payment. The Issuer will fix or cause to be fixed each such special record date and payment date, provided that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the name and at the expense of the Issuer) will mail or cause to be mailed to Holders a

notice that states the special record date, the related payment date and the amount of such interest to be paid.

ARTICLE 3
REDEMPTION AND PURCHASES

SECTION 3.1. REDEMPTION BY THE ISSUER

(a) Optional Redemption. On or after July 20, 2007, the Issuer, at its option, may redeem the Securities in accordance with the provisions of paragraph 5 of the Securities and at the Redemption Prices specified in paragraph 5 of the Securities, together with accrued and unpaid interest (including Additional Interest), if any, up to but not including the Redemption Date, thereon; provided that if a Redemption Date is an interest payment date, the semi-annual payment of interest becoming due on such date shall be payable to the holder of record as of the relevant record date and the Redemption Price shall not include such interest payment.

(b) Notice to Trustee. If the Issuer elects to redeem Securities pursuant to this Section 3.1, it shall notify the Trustee in writing of the Redemption Date, the principal amount of Securities to be redeemed and the Redemption Price. The Issuer shall give the notice to the Trustee provided for in this Section 3.1(b) by an Issuer Order at least 30 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee).

SECTION 3.2. SELECTION OF SECURITIES TO BE REDEEMED

If less than all the Securities are to be redeemed, unless the procedures of the Depositary provide otherwise, the Trustee shall select the Securities to be redeemed on a *pro rata* basis or in accordance with any other method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of any stock exchange or quotation system on which the Securities are then listed or traded). The Trustee shall make the selection at least 15 days but not more than 60 days before the Redemption Date from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the principal amount of Securities that have denominations larger than $1,000.

Securities and portions of them the Trustee selects shall be in principal amounts of $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Issuer promptly of the Securities or portions of Securities to be redeemed.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities that have been converted during a selection of

Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

SECTION 3.3. NOTICE OF REDEMPTION

At least 30 days but not more than 60 days before a Redemption Date, the Issuer shall mail a notice of redemption by first-class mail, postage prepaid, to each Holder of Securities to be redeemed at such Holder's registered address.

The notice shall identify the Securities to be redeemed and shall state:

(1) the Redemption Date;

(2) the Redemption Price;

(3) the Conversion Price;

(4) the name and address of the Paying Agent and Conversion Agent;

(5) that Securities called for redemption may be converted at any time before the close of business on the Redemption Date;

(6) that Holders who want to convert Securities must satisfy the requirements set forth in paragraph 7 of the Securities;

(7) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price therefor, together with all accrued and unpaid interest (including Additional Interest), if any;

(8) if fewer than all the outstanding Securities are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Securities to be redeemed;

(9) that, unless the Issuer defaults in making payment of such Redemption Price, interest on Securities called for redemption will cease to accrue on and after the Redemption Date;

(10) the CUSIP number of the Securities; and

(11) whether the Issuer elects to deliver shares of Common Stock or cash, or a combination of cash and shares of Common Stock. in the event of a conversion by a Holder in connection with the redemption.

At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense, provided that the Issuer makes such request at least three Business Days prior to the date by which such notice of redemption must be given to Holders in accordance with this Section 3.3 and provides the Trustee with all information required for such notice of redemption.

SECTION 3.4. EFFECT OF NOTICE OF REDEMPTION

Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice, except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice, together with accrued and unpaid interest (including Additional Interest), if any, up to but not including the Redemption Date.

SECTION 3.5. DEPOSIT OF REDEMPTION PRICE

Prior to 11:00 a.m. (New York City time) on the applicable Redemption Date the Issuer shall deposit with the Paying Agent (or if the Issuer or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Securities to be redeemed on that date, together with accrued and unpaid interest (including Additional Interest), if any, up to but not including the Redemption Date, thereon, other than Securities or portions of Securities called for redemption that on or prior thereto have been delivered by the Issuer to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Issuer any money not required for that purpose because of conversion of Securities pursuant to Article 4. If such money is then held by the Issuer in trust and is not required for such purpose it shall be discharged from such trust.

SECTION 3.6. SECURITIES REDEEMED IN PART

Upon surrender of a Security that is redeemed in part, the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in principal amount to the unredeemed portion of the Security surrendered.

SECTION 3.7. PURCHASE OF SECURITIES AT OPTION OF HOLDERS UPON CHANGE OF CONTROL

(a) If at any time that Securities remain outstanding there shall occur a Change of Control, Securities shall be purchased by the Issuer at the option of the Holders, in whole or in part, as of the date that is 30 Business Days after the occurrence of the Change of Control (the “Change of Control Purchase Date”) at a purchase price in cash equal to 100% of the principal amount of the Securities, together with accrued and unpaid interest (including Additional Interest), if any, to, but excluding, the Change of Control Purchase Date (the “Change of Control Purchase Price”), subject to satisfaction by or on behalf of any Holder of the requirements set forth in subsection (c) of this Section 3.7.

A “Change of Control” shall be deemed to have occurred if any of the following occurs after the date hereof:

(1) any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) in connection with which all or substantially all of the Issuer's Common Stock is exchanged for, converted into, acquired for or constitutes solely the right to receive, consideration (excluding cash payments for fractional shares) that consists of something other than all or substantially all common equity that:

(a) is listed on, or immediately after the transaction or event will be listed on, a United States national securities exchange, or

(b) is approved, or immediately after the transaction or event will be approved, for quotation on Nasdaq or any similar United States system of automated dissemination of quotations of securities prices; or

(2) the occurrence of any event that constitutes a "change of control" pursuant to (i) the Second Mortgage Note Indenture, (ii) the Credit Agreement and (iii) the FF&E Facility, each as may be amended from time to time, and the occurrence of any event that constitutes a "change of control" or similar term pursuant to any agreement to refinance any such indebtedness and any other Indebtedness of the Issuer or any of its Significant Subsidiaries with a principal amount in excess of $100 million.

(b) Within 10 Business Days after the occurrence of a Change of Control, the Issuer shall mail a written notice of the Change of Control to the Trustee and to each Holder (and to beneficial owners as required by applicable law). The notice shall include the form of a Change of Control Purchase Notice to be completed by the Holder and shall state:

(1) the date of such Change of Control and, briefly, the events causing such Change of Control;

(2) the date by which the Change of Control Purchase Notice pursuant to this Section 3.7 must be given;

(3) the Change of Control Purchase Date;

(4) the Change of Control Purchase Price;

(5) the Holders' right to require the Issuer to purchase the Securities;

(6) the name and address of each Paying Agent and Conversion Agent;

(7) the procedures that the Holder must follow to exercise rights under this Section 3.7;

(8) briefly, the conversion rights of the Securities;

(9) the Conversion Price and any adjustments thereto;

(10) that Securities as to which a Change of Control Purchase Notice has been given may be converted into Common Stock pursuant to Article 4 of this Indenture only to the extent that the Change of Control Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(11) the procedures for withdrawing a Change of Control Purchase Notice, including a form of notice of withdrawal;

(12) that the Holder must satisfy the requirements set forth in the Securities in order to convert the Securities; and

(13) the CUSIP number of the Securities.

If any of the Securities is in the form of a Global Security, then the Issuer shall modify such notice to the extent necessary to accord with the procedures of the Depositary applicable to the repurchase of Global Securities.

(c) A Holder may exercise its rights specified in subsection (a) of this Section 3.7 upon delivery of a written notice (which shall be in substantially the form included in Exhibit A hereto and which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Depositary's customary procedures) of the exercise of such rights (a "Change of Control Purchase Notice") to any Paying Agent at any time prior to the close of business on the Business Day immediately prior to the Change of Control Purchase Date.

The delivery of such Security to any Paying Agent (together with all necessary endorsements) at the office of such Paying Agent shall be a condition to the receipt by the Holder of the Change of Control Purchase Price therefor.

The Issuer shall purchase from the Holder thereof, pursuant to this Section 3.7, a portion of a Security if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of the Indenture that apply to the purchase of all of a Security pursuant to Sections 3.7 through 3.12 also apply to the purchase of such portion of such Security.

Notwithstanding anything herein to the contrary, any Holder delivering to a Paying Agent the Change of Control Purchase Notice contemplated by this subsection (c) shall have the right to withdraw such Change of Control Purchase Notice in whole or in a portion thereof that is a principal amount of $1,000 or in an integral multiple thereof at any time prior to the close of business on the Business Day immediately prior to the Change of Control Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.8.

A Paying Agent shall promptly notify the Issuer of the receipt by it of any Change of Control Purchase Notice or written withdrawal thereof.

Anything herein to the contrary notwithstanding, in the case of Global Securities, any Change of Control Purchase Notice may be delivered or withdrawn and such Securities may be surrendered or delivered for purchase in accordance with the Applicable Procedures as in effect from time to time.

SECTION 3.8. EFFECT OF CHANGE OF CONTROL PURCHASE NOTICE

Upon receipt by any Paying Agent of the Change of Control Purchase Notice specified in Section 3.7(c), the Holder of the Security in respect of which such Change of Control Purchase Notice was given shall (unless such Change of Control Purchase Notice is withdrawn as specified below) thereafter be entitled to receive the Change of Control Purchase Price with respect to such Security. Such Change of Control Purchase Price shall be paid to such Holder promptly following the later of (a) the Change of Control Purchase Date with respect to such Security (provided the conditions in Section 3.7(c) have been satisfied) and (b) the time of delivery of such Security to a Paying Agent by the Holder thereof in the manner required by Section 3.7(c). Securities in respect of which a Change of Control Purchase Notice has been given by the Holder thereof may not be converted into shares of Common Stock pursuant to Article 4 on or after the date of the delivery of such Change of Control Purchase Notice unless such Change of Control Purchase Notice has first been validly withdrawn.

A Change of Control Purchase Notice may be withdrawn by means of a written notice (which may be delivered by mail, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Depositary's customary procedures) of withdrawal delivered by the Holder to a Paying Agent at any time prior to the close of business on the Business Day immediately prior to the Change of Control Purchase Date, specifying the principal amount of the Security or portion thereof (which must be a principal amount of $1,000 or an integral multiple of $1,000 in excess thereof) with respect to which such notice of withdrawal is being submitted.

SECTION 3.9. DEPOSIT OF CHANGE OF CONTROL PURCHASE PRICE

On or before 11:00 a.m. New York City time on the applicable Change of Control Purchase Date, the Issuer shall deposit with the Trustee or with a Paying Agent (other than the Issuer or an Affiliate of the Issuer) an amount of money (in immediately available funds if deposited on such Change of Control Purchase Date) sufficient to pay the aggregate Change of Control Purchase Price of all the Securities or portions thereof that are to be purchased as of such Change of Control Purchase Date. The manner in which the deposit required by this Section 3.9 is made by the Issuer shall be at the option of the Issuer, provided that such deposit shall be made in a manner such that the Trustee

or a Paying Agent shall have immediately available funds on the Change of Control Purchase Date.

If a Paying Agent holds, in accordance with the terms hereof, money sufficient to pay the Change of Control Purchase Price of any Security for which a Change of Control Purchase Notice has been tendered and not withdrawn in accordance with this Indenture then, on the Change of Control Purchase Date, such Security will cease to be outstanding and the rights of the Holder in respect thereof shall terminate (other than the right to receive the Change of Control Purchase Price as aforesaid). The Issuer shall publicly announce the principal amount of Securities purchased as a result of such Change of Control on or as soon as practicable after the Change of Control Purchase Date.

SECTION 3.10. SECURITIES PURCHASED IN PART

Any Security that is to be purchased only in part shall be surrendered at the office of a Paying Agent, and promptly after the Change of Control Purchase Date the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of such authorized denomination or denominations as may be requested by such Holder, in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security so surrendered that is not purchased.

SECTION 3.11. COMPLIANCE WITH SECURITIES LAWS UPON PURCHASE OF SECURITIES

In connection with any offer to purchase or purchase of Securities under Section 3.7, the Issuer shall (a) comply with Rule 13e-4 and Rule 14e-1 (or any successor to either such Rule), if applicable, under the Exchange Act, (b) file the related Schedule TO (or any successor or similar schedule, form or report) if required under the Exchange Act, and (c) otherwise comply with all federal and state securities laws in connection with such offer to purchase or purchase of Securities, all so as to permit the rights of the Holders and obligations of the Issuer under Sections 3.7 through 3.10 to be exercised in the time and in the manner specified therein.

SECTION 3.12. REPAYMENT TO THE ISSUER

To the extent that the aggregate amount of cash deposited by the Issuer pursuant to Section 3.9 exceeds the aggregate Change of Control Purchase Price together with accrued and unpaid interest (including Additional Interest), if any, thereon of the Securities or portions thereof that the Issuer is obligated to purchase, then promptly after the Change of Control Purchase Date the Trustee or a Paying Agent, as the case may be, shall return any such excess cash to the Issuer.

SECTION 3.13. MANDATORY DISPOSITION OR REDEMPTION PURSUANT TO GAMING LAWS

Notwithstanding any other provision hereof, if any Gaming Authority requires a Holder or Beneficial Owner of Securities to be licensed, qualified or found suitable under any applicable Gaming Law and the Holder or Beneficial Owner (1) fails to apply for a license, qualification or finding of suitability within 30 days after being requested to do so (or such lesser period as required by the Gaming Authority), or (2) is notified by a Gaming Authority that it shall not be licensed, qualified or found suitable, the Issuer shall have the right, at its option, to:

(a) require the Holder or Beneficial Owner to dispose of its Securities within 30 days (or such lesser period as required by the Gaming Authority) following the earlier of:

(i) the termination of the period described above for the Holder or Beneficial Owner to apply for a license, qualification or finding of suitability; or

(ii) the receipt of the notice from the Gaming Authority that the Holder or Beneficial Owner shall not be licensed, qualified or found suitable by the Gaming Authority; or

(b) redeem the Securities of the Holder or Beneficial Owner at a redemption price equal to:

(i) the price determined by the Gaming Authority; or

(ii) if the Gaming Authority does not determine a price, the lesser of (A) the principal amount of the Securities and (B) the price that the Holder or Beneficial Owner paid for the Securities,

in each case, together with accrued and unpaid interest (including Additional Interest), if any, on the Securities to the earlier of (1) the date of redemption or such earlier date as is required by the Gaming Authority or (2) the date of the finding of unsuitability by the Gaming Authority, which may be less than 30 days following the notice of redemption. The Issuer shall notify the Trustee in writing of any redemption pursuant to this Section 3.13 as soon as reasonably practicable.

Immediately upon a determination by a Gaming Authority that a Holder or Beneficial Owner of Securities shall not be licensed, qualified or found suitable, the Holder or Beneficial Owner shall not have any further rights with respect to the Securities to:

(a) exercise, directly or indirectly, through any Person, any right conferred by the Securities; or

(b) receive any accrued and unpaid interest (including Additional Interest), if any, or any other distribution or payment with respect to the Securities, or any remuneration in any form from the Issuer for services rendered or otherwise, except the redemption price of the Securities.

The Issuer is not required to pay or reimburse any Holder or Beneficial Owner of Securities who is required to apply for such license, qualification or finding of suitability for the costs relating thereto. Those expenses shall be the obligation of the Holder or Beneficial Owner.

ARTICLE 4
CONVERSION

SECTION 4.1. CONVERSION PRIVILEGE

Subject to the further provisions of this Article 4 and paragraph 7 of the Securities, a Holder of a Security may convert the principal amount of such Security (or any portion thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof) into Common Stock at any time prior to the close of business on the Business Day immediately prior to the Final Maturity Date, subject to prior redemption pursuant to Section 3.1, upon a Change of Control pursuant to 3.7 or as a result of Gaming Authority requirement pursuant to Section 3.13.

A Security in respect of which a Holder has delivered a Change of Control Purchase Notice pursuant to Section 3.7 exercising the option of such Holder to require the Issuer to purchase such Security may be converted only if such Change of Control Purchase Notice is withdrawn by a written notice of withdrawal complying in all respects with each of the provisions of this Indenture relating to such notice and delivered to the Paying Agent prior to the close of business on the Business Day prior to the Change of Control Purchase Date (unless the Issuer shall default in making the Change of Control Purchase Price payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is purchased). The number of shares of Common Stock issuable upon conversion of a Security shall be determined by dividing the principal amount of the Security or portion thereof surrendered for conversion by the Conversion Price in effect on the Conversion Date, as adjusted pursuant hereto. The initial Conversion Price is set forth in paragraph 7 of the Securities and is subject to adjustment as provided in this Article 4.

Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted its Securities to Common Stock, and only to the extent such Securities are deemed to have been converted into Common Stock pursuant to this Article 4.

SECTION 4.2. CONVERSION PROCEDURE

To convert a Security, a Holder must (a) complete and manually sign the conversion notice on the back of the Security or facsimile of the conversion notice and deliver such notice to a Conversion Agent, (b) surrender the Security to a Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and (d) pay any funds related to interest, if required to be paid by such Holder under this Section 4.2 and pay any transfer or similar tax, if required to be paid by such Holder under Section 4.4. The date on which the Holder satisfies all of those requirements is the "Conversion Date." As soon as reasonably practicable after the Conversion Date, the Issuer shall deliver to the Holder through a Conversion Agent a certificate for the number of whole shares of Common Stock issuable upon the conversion and cash in lieu of any fractional shares pursuant to Section 4.3. Anything herein to the contrary notwithstanding, in the case of Global Securities, conversion notices may be delivered and such Securities may be surrendered for conversion in accordance with the Applicable Procedures as in effect from time to time.

The person in whose name the Common Stock certificate is registered shall be deemed to be a stockholder of record on the Conversion Date; provided, however, that no surrender of a Security on any date when the stock transfer books of the Issuer shall be closed shall be effective to constitute the person or persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; provided, further, that such conversion shall be at the Conversion Price in effect on the Conversion Date as if the stock transfer books of the Issuer had not been closed. Upon conversion of a Security, such person shall no longer be a Holder of such Security. No payment or adjustment will be made for dividends or distributions on shares of Common Stock issued upon conversion of a Security.

Securities so surrendered for conversion (in whole or in part) during the period from the close of business on any regular record date to the opening of business on the next succeeding interest payment date shall also be accompanied by payment in funds acceptable to the Issuer of an amount equal to the interest payable on such interest payment date on the principal amount of such Security then being converted, and such interest shall be payable to such registered Holder notwithstanding the conversion of such Security, subject to the provisions of this Indenture relating to the payment of defaulted interest by the Issuer; provided, however, that if the Issuer specifies a Change of Control Purchase Date during the period that is after the record date but prior to the corresponding interest payment date, and such Holder elects to convert those Securities, the Holder will not be required to pay such funds to the Issuer at the time the Holder surrenders those Securities for conversion. Except as otherwise provided in this Section 4.2, no payment or adjustment will be made for accrued and unpaid interest

(including Additional Interest), if any, on a converted Security. If the Issuer defaults in the payment of accrued and unpaid interest (including Additional Interest), if any, payable on such interest payment date, the Issuer shall promptly repay such funds to such Holder.

In lieu of delivery of shares of Common Stock upon notice of conversion of any Securities (for all or any portion of the Securities), the Issuer may elect to pay Holders surrendering Securities an amount in cash per Security (or a portion of a Security) equal to the Applicable Stock Price multiplied by the Conversion Rate in effect on the Conversion Date (appropriately adjusted for application to the portion of the Securities as to which the Issuer has elected to deliver in cash). The "Applicable Stock Price" is equal to the average of the Sale Prices of Common Stock over the three-Trading Day period starting the third Trading Day following the Conversion Date of the Securities appropriately adjusted pursuant to Section 4.6. The Issuer will inform the Holders through the Trustee no later than two Business Days following the Conversion Date of the Issuer's election to deliver shares of Common Stock or to pay cash in lieu of delivery of such shares, unless the Issuer has already informed Holders of the Issuer's election in connection with a Redemption Notice. If the Issuer elects to deliver all of such payment in shares of Common Stock, the shares will be delivered through the Conversion Agent no later than the third Business Day following the determination of the Applicable Stock Price. If the Issuer elects to pay all or a portion of such payment in cash, the payment, including any delivery of the Issuer's Common Stock, will be made to Holders surrendering Securities no later than the tenth Business Day following the applicable Conversion Date. If an Event of Default (other than a default in a cash payment upon conversion of the Securities) has occurred and is continuing, the Issuer shall not pay cash upon conversion of any Securities or portion of a Security (other than cash for fractional shares).

Nothing in this Section 4.2 shall affect the right of a Holder in whose name any Security is registered at the close of business on a record date to receive the accrued and unpaid interest (including Additional Interest), if any, payable on such Security on the related interest payment date in accordance with the terms of this Indenture and the Securities. If a Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the aggregate principal amount of Securities converted.

Upon surrender of a Security that is converted in part, the Issuer shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Security equal in principal amount to the unconverted portion of the Security surrendered.

SECTION 4.3. FRACTIONAL SHARES

The Issuer will not issue fractional shares of Common Stock upon conversion of Securities. In lieu thereof, the Issuer will pay an amount in cash for the current market value of the fractional shares. The current market value of a fractional share shall be determined, (calculated to the nearest $^{1}/_{1000^{th}}$ of a share) by multiplying

the Sale Price (determined as set forth in Section 4.6(f)) of the Common Stock on the Trading Day immediately prior to the Conversion Date by such fractional share and rounding the product to the nearest whole cent.

SECTION 4.4. TAXES ON CONVERSION

If a Holder converts a Security, the Issuer shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon such conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificate representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulation.

SECTION 4.5. ISSUER TO PROVIDE STOCK

The Issuer shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve, out of its authorized but unissued Common Stock, a sufficient number of shares of Common Stock to permit the conversion of all outstanding Securities into shares of Common Stock.

All shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares, shall be duly authorized, validly issued, fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Issuer will endeavor promptly to comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or on Nasdaq or other over-the-counter market or such other market on which the Common Stock is then listed or quoted; provided, however, that if rules of such automated quotation system or exchange permit the Issuer to defer the listing of such Common Stock until (a) the first conversion of the Securities into Common Stock in accordance with the provisions of this Indenture or (b) such other time, the Issuer covenants to list such Common Stock issuable upon conversion of the Securities in accordance with the requirements of such automated quotation system or exchange at such time. Any Common Stock issued upon conversion of a Security hereunder which at the time of conversion was a Restricted Security will also be a Restricted Security.

SECTION 4.6. ADJUSTMENT OF CONVERSION PRICE

The conversion price as stated in paragraph 7 of the Securities (the "Conversion Price") shall be adjusted (without duplication) from time to time by the Issuer as follows:

(a) In case the Issuer shall (i) pay a dividend on its Common Stock in shares of Common Stock, (ii) make a distribution on its Common Stock in shares of Common Stock, (iii) subdivide its outstanding Common Stock into a greater number of shares, or (iv) combine its outstanding Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior thereto shall be adjusted so that the Holder of any Security thereafter surrendered for conversion shall be entitled to receive that number of shares of Common Stock which it would have owned had such Security been converted immediately prior to the happening of such event. An adjustment made pursuant to this subsection (a) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of subdivision or combination.

(b)

(i) In case the Issuer shall distribute to all or substantially all holders of its Common Stock any shares of capital stock of the Issuer (other than Common Stock), evidences of indebtedness, rights or warrants to purchase the Issuer's capital stock or other non-cash assets (the "distributed assets") (including securities of any person other than the Issuer but excluding (1) dividends or distributions to the extent paid in cash, (2) dividends or distributions referred to in subsection (a) of this Section 4.6 and (3) the distribution of rights to all holders of Common Stock pursuant to a Rights Plan adopted before or after the date of this Indenture), then the Conversion Price shall be adjusted by multiplying the Conversion Price in effect immediately prior to the close of business on the record date with respect to such distribution by a fraction:

(1) the numerator of which shall be the Sale Price (as determined in accordance with subsection (f) of this Section 4.6) of the Common Stock for the 10 Trading Days commencing on and including the fifth Trading Day after the date on which "ex-dividend trading" commences for such dividend or distribution on Nasdaq, the New York Stock Exchange or such other national or regional exchange or market on which the Common Stock is then listed or quoted, less the fair market value on the record date of the portion of the distributed assets so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the record date); and

(2) the denominator of which shall be the Sale Price (as determined in accordance with subsection (f) of this Section 4.6) of the Common Stock for the 10 Trading Days commencing on and including the fifth Trading Day after the date on which "ex-dividend trading" commences for such dividend or distribution on Nasdaq, the New York Stock Exchange or such other national or regional exchange or market on which the Common Stock is then listed or quoted.

(ii) Such reduction shall become effective immediately prior to the opening of business on the day following the record date for such distribution. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such

dividend or distribution had not been declared. For purposes of this Section 4.6(b), to the extent securities are distributed, the fair market value of the securities so distributed will be based on the average sale prices (determined in a similar manner to the Sale Price as determined in accordance with subsection (f) of this Section 4.6) of those securities for the 10 Trading Days commencing on and including the fifth Trading Day after the date on which "ex-dividend trading" commences for such dividend or distribution on Nasdaq, the New York Stock Exchange or such other national or regional exchange or market on which the securities are then listed or quoted.

(iii) "Fair market value" shall mean the amount which a willing buyer would pay a willing seller in an arm's length transaction (as determined in good faith by the Board of Directors, whose good faith determination shall be conclusive and which shall be evidenced by an Officers' Certificate delivered to the Trustee). Such adjustment shall be made successively whenever any such distribution is made and shall become effective immediately after the record date for the determination of stockholders entitled to receive such distribution. In the event the then fair market value (as so determined by the Issuer) of the portion of the capital stock, evidences of indebtedness or other non-cash assets so distributed or of such rights or warrants applicable to one share of Common Stock is equal to or greater than the Sale Price on such record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of a Security shall have the right to receive upon conversion the amount of capital stock, evidences of indebtedness or other non-cash assets so distributed or of such rights or warrants such Holder would have received had such Holder converted each Security on such record date. In the event that such distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 4.6(c) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Sale Price of the Common Stock.

(iv) Rights or warrants (other than rights issued pursuant to a Rights Plan) distributed by the Issuer to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Issuer's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 4.6 (and no adjustment to the Conversion Price under this Section 4.6 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Price shall be made under this Section 4.6(c). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other non-cash assets, then the date of the occurrence of any and each such event shall

be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 4.6 was made, (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Price shall be readjusted as if such rights and warrants had not been issued.

(v) With respect to any rights that may be issued or distributed pursuant to any rights plan that the Issuer implements after the date of this Indenture (a "Rights Plan"), upon conversion of the Securities into Common Stock, to the extent that such Rights Plan is in effect upon such conversion, the holders of Securities will receive, in addition to the Common Stock, the rights described therein (whether or not the rights have separated from the Common Stock at the time of conversion), subject to the limitations set forth in any such Rights Plan. Any distribution of rights or warrants pursuant to a Rights Plan complying with the requirements set forth in the immediately preceding sentence of this paragraph shall not constitute a distribution of rights or warrants pursuant to Sections 4.6(a) or (b).

(c)

(i) In case the Issuer shall, by dividend or otherwise, at any time distribute (a "Triggering Distribution") to all or substantially all holders of its Common Stock cash in an aggregate amount that, together with the aggregate amount of (A) any cash and the fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence thereof and which shall be evidenced by an Officers' Certificate delivered to the Trustee) of any other consideration payable in respect of any tender offer by the Issuer or a Subsidiary of the Issuer for Common Stock consummated within the 12 months prior to the date of payment of the Triggering Distribution and in respect of which no Conversion Price adjustment pursuant to this Section 4.6 has been made and (B) all other cash distributions to all or substantially all holders of its Common Stock made within the 12 months prior to the date of payment of the Triggering Distribution and in respect of which no Conversion Price adjustment pursuant to this Section 4.6 has been made, exceeds (such excess over 10%, the "excess amount") an amount equal to 10.0% of the product of the Sale Price (as determined in accordance with subsection (f) of this Section 4.6) on the Business Day (the

"Determination Date") immediately prior to the day on which such Triggering Distribution is declared by the Issuer multiplied by the number of shares of Common Stock outstanding on the Determination Date (excluding shares held in the treasury of the Issuer), the Conversion Price shall be adjusted by multiplying such Conversion Price in effect immediately prior to the Determination Date by a fraction:

(1) the numerator of which shall be the Sale Price (as determined in accordance with subsection (f) of this Section 4.6) on the Determination Date less the sum of the aggregate amount of cash and the aggregate fair market value (determined as aforesaid in this Section 4.6(c)(1)) of the excess amount applicable to one share of Common Stock (determined on the basis of the number of shares of Common Stock outstanding on the Determination Date); and

(2) the denominator of which shall be such Sale Price (as determined in accordance with subsection (f) of this Section 4.6) on the Determination Date.

(ii) Such reduction shall become effective immediately prior to the opening of business on the day following the date on which the Triggering Distribution is paid.

(d) In case any tender offer made by the Issuer or any of its Subsidiaries for Common Stock shall expire and such tender offer (as amended upon the expiration thereof) shall involve the payment of aggregate consideration in an amount (determined as the sum of the aggregate amount of cash consideration and the aggregate fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence thereof and which shall be evidenced by an Officers' Certificate delivered to the Trustee thereof) of any other consideration) that, together with the aggregate amount of (A) any cash and the fair market value (as determined by the Board of Directors, whose determination shall be conclusive evidence thereof and which shall be evidenced by an Officers' Certificate delivered to the Trustee) of any other consideration payable in respect of any other tender offers by the Issuer or any Subsidiary of the Issuer for Common Stock consummated within the 12 months prior to the date of the Expiration Date (as defined below) and in respect of which no Conversion Price adjustment pursuant to this Section 4.6 has been made and (B) all cash distributions to all or substantially all holders of its Common Stock made within the 12 months prior to the Expiration Date and in respect of which no Conversion Price adjustment pursuant to this Section 4.6 has been made, exceeds (such excess over 10%, the "excess consideration") an amount equal to 10.0% of the product of the Sale Price (as determined in accordance with subsection (f) of this Section 4.6) as of the last date (the "Expiration Date") tenders could have been made pursuant to such tender offer (as it may be amended) (the last time at which such tenders could have been made on the Expiration Date is hereinafter sometimes called the "Expiration Time") multiplied by the number of shares of Common Stock outstanding (including tendered shares but excluding any shares held in the treasury of the Issuer) at the Expiration Time, then, immediately prior to the opening of business on the day after the Expiration Date, the Conversion Price shall be adjusted by

multiplying the Conversion Price in effect immediately prior to the close of business on the Expiration Date by a fraction:

(1) the numerator of which shall be the product of the number of shares of Common Stock outstanding (including tendered shares but excluding any shares held in the treasury of the Issuer) at the Expiration Time multiplied by the Sale Price (as determined in accordance with subsection (f) of this Section 4.6) on the Trading Day next succeeding the Expiration Date; and

(2) the denominator of which shall be the sum of (x) the aggregate consideration (determined as aforesaid) payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares and excluding any shares held in the treasury of the Issuer) at the Expiration Time and the Sale Price (as determined in accordance with subsection (f) of this Section 4.6) on the Trading Day next succeeding the Expiration Date.

(ii) Any such reduction shall become effective immediately prior to the opening of business on the day following the Expiration Date. In the event that the Issuer is obligated to purchase shares pursuant to any such tender offer, but the Issuer is permanently prevented by applicable law from effecting any or all such purchases or any or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would have been in effect based upon the number of shares actually purchased. If the application of this Section 4.6(d)(2) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 4.6(d)(2).

(iii) For purposes of this Section 4.6(d), the term "tender offer" shall mean and include both tender offers and exchange offers, all references to "purchases" of shares in tender offers (and all similar references) shall mean and include both the purchase of shares in tender offers and the acquisition of shares pursuant to exchange offers, and all references to "tendered shares" (and all similar references) shall mean and include shares tendered in both tender offers and exchange offers.

(e) If prior to July 20, 2007 the Issuer declares a dividend or distribution to all or substantially all of the holders of Common Stock, to the extent that such dividend or distribution is payable in cash, the Conversion Rate shall be adjusted such that the Conversion Rate equals the number determined by multiplying the Conversion Rate in effect on the Business Day immediately prior to the date of such declaration (the "Dividend Declaration Determination Date") by the following ratio:

$$\frac{\text{(Pre-Dividend Sale Price)}}{\text{(Pre-Dividend Sale Price - Dividend Adjustment Amount)}}$$

The “Pre-Dividend Sale Price” will be calculated as the average Sale Price for the three consecutive Trading Days ending on the date immediately prior to the ex-dividend date for such dividend or distribution. The “Dividend Adjustment Amount” will be calculated as the full amount of the dividend or distribution to the extent payable in cash applicable to one share of Common Stock. If prior to July 20, 2007 the Issuer declares a dividend or distribution to all or substantially all of the holders of Common Stock payable in cash, the Conversion Rate will be adjusted pursuant to this Section 4.6(e) to the extent such dividend or distribution is payable in cash and the Conversion Price will not be adjusted pursuant to any other subsection of this Section 4.6 as a result of such cash dividend.

(f) For the purpose of any computation under subsections (b), (c), (d) and (e) of this Section 4.6, the sale price (the “Sale Price”) per share of Common Stock on any date shall be deemed to be the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date as reported in composite transactions for the Nasdaq or the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on Nasdaq or a United States national or regional securities exchange, as reported by the National Quotation Bureau Incorporated. If no such prices are available, the Sale Price shall be the fair value of a share of Common Stock as determined in good faith by the Board of Directors (which shall be evidenced by an Officers’ Certificate delivered to the Trustee).

(g) In any case in which this Section 4.6 shall require that an adjustment be made following a record date or a Determination Date, Expiration Date or Dividend Declaration Determination Date, as the case may be, established for purposes of this Section 4.6, the Issuer may elect to defer (but only until five Business Days following the filing by the Issuer with the Trustee of the certificate described in Section 4.9) issuing to the Holder of any Security converted after such record date or Determination Date, Expiration Date or Dividend Declaration Determination Date the shares of Common Stock and other capital stock of the Issuer issuable upon such conversion attributable to the Conversion Price prior to adjustment; and, in lieu of the shares the issuance of which is so deferred, the Issuer shall issue or cause its transfer agents to issue due bills or other appropriate evidence prepared by the Issuer of the right to receive such shares. If any distribution in respect of which an adjustment to the Conversion Price is required to be made as of the record date or Determination Date, Expiration Date or Dividend Declaration Determination Date therefor is not thereafter made or paid by the Issuer for any reason, the Conversion Price shall be readjusted to the Conversion Price which would then be in effect if such record date had not been fixed or such effective date or Determination Date, Expiration Date or Dividend Declaration Determination Date had not occurred.

SECTION 4.7. NO ADJUSTMENT

Other than with respect to an adjustment pursuant to Section 4.6(e), no adjustment in the Conversion Price shall be required unless the adjustment would require an increase or decrease of at least 1% in the Conversion Price as last adjusted; provided,

however, that any adjustments which by reason of this Section 4.7 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article 4 shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

No adjustment need be made for issuances of Common Stock pursuant to an Issuer plan for reinvestment of dividends or interest or for a change in the par value or a change to no par value of the Common Stock.

To the extent that the Securities become convertible into the right to receive cash, no adjustment need be made thereafter as to the cash. Interest (including Additional Interest, if any) will not accrue on the cash.

For a transaction that would otherwise result in an adjustment to the Conversion Price, no adjustment need be made so long as the Issuer provides that the Holders of Securities, without converting, will participate in such transaction to the full extent the Holders would participate if Holders converted on the Business Day immediately prior to the transaction.

SECTION 4.8. ADJUSTMENT FOR TAX PURPOSES

The Issuer shall be entitled to make such reductions in the Conversion Price, in addition to those required by Section 4.6, as it in its discretion shall determine to be in the best interest of the Issuer or be advisable in order that any stock dividends, subdivisions of shares, distributions of rights to purchase stock or securities or distributions of securities convertible into or exchangeable for stock hereafter made by the Issuer to its stockholders shall not be taxable; provided, however, that in no event may the Issuer reduce the Conversion Price to be less than the par value of a share of Common Stock.

SECTION 4.9. NOTICE OF ADJUSTMENT

Whenever the Conversion Price is adjusted, the Issuer shall promptly issue a press release and publish a notice of adjustment on the Issuer's website and file with the Trustee an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. Unless and until the Trustee shall receive an Officers' Certificate setting forth an adjustment of the Conversion Price, the Trustee may assume without inquiry that the Conversion Price has not been adjusted and that the last Conversion Price of which it has knowledge remains in effect.

SECTION 4.10. NOTICE OF CERTAIN TRANSACTIONS

In the event that:

(1) the Issuer takes any action which would require an adjustment in the Conversion Price;

(2) the Issuer consolidates or merges with, or transfers all or substantially all of its property and assets to, another corporation and stockholders of the Issuer must approve the transaction; or

(3) there is a dissolution or liquidation of the Issuer,

the Issuer shall mail to Holders and file with the Trustee a notice stating the proposed record or effective date, as the case may be and shall either issue a press release containing the relevant information or make such information available on the Issuer's web site or through another public medium as the Issuer may use at such time. The Issuer shall effect the notice at least ten days before such date. Failure to effect such notice or any defect therein shall not affect the validity of any transaction referred to in clause (1), (2) or (3) of this Section 4.10.

SECTION 4.11. EFFECT OF RECLASSIFICATION, CONSOLIDATION, MERGER OR SALE ON CONVERSION PRIVILEGE

If any of the following shall occur: (a) any reclassification or change of shares of Common Stock issuable upon conversion of the Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination, or any other change for which an adjustment is provided in Section 4.6); (b) any consolidation or merger or combination to which the Issuer is a party other than a merger in which the Issuer is the continuing corporation and which does not result in any reclassification of, or change (other than in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in, outstanding shares of Common Stock; or (c) any sale or conveyance as an entirety or substantially as an entirety of the property and assets of the Issuer, directly or indirectly, to any person, then the Issuer, or such successor, purchasing or transferee corporation, as the case may be, shall, as a condition precedent to such reclassification, change, combination, consolidation, merger, sale or conveyance, execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reclassification, change, combination, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock deliverable upon conversion of such Security immediately prior to such reclassification, change, combination, consolidation, merger, sale or conveyance, assuming such Holder did not exercise its rights of election, if any, as to the kind and amount of securities, cash or other property receivable upon such reclassification, consolidation, merger or sale. Such supplemental indenture shall provide for adjustments of the Conversion Price which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Price provided for in this Article 4. If, in the case of any such consolidation, merger, combination, sale or conveyance, the stock or other securities and property (including

cash) receivable thereupon by a holder of Common Stock include shares of stock or other securities and property of a person other than the successor, purchasing or transferee corporation, as the case may be, in such consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing. The provisions of this Section 4.11 shall similarly apply to successive reclassifications, changes, combinations, consolidations, mergers, sales or conveyances.

In the event the Issuer shall execute a supplemental indenture pursuant to this Section 4.11, the Issuer shall promptly file with the Trustee (x) an Officers' Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or other securities or property (including cash) receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, change, combination, consolidation, merger, sale or conveyance, any adjustment to be made with respect thereto and that all conditions precedent have been complied with and (y) an Opinion of Counsel that all conditions precedent have been complied with, and shall cause notice thereof to be mailed to all Holders within 30 days of such reclassification, consolidation, merger, sale or conveyance.

SECTION 4.12. TRUSTEE'S DISCLAIMER

The Trustee shall have no duty to determine when an adjustment under this Article 4 should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of that fact or the correctness of any such adjustment, and shall be protected in relying upon, an Officers' Certificate including the Officers' Certificate with respect thereto which the Issuer is obligated to file with the Trustee pursuant to Section 4.9. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Issuer's failure to comply with any provisions of this Article 4.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 4.11, but may accept as conclusive evidence of the correctness thereof, and shall be fully protected in relying upon, the Officers' Certificate with respect thereto which the Issuer is obligated to file with the Trustee pursuant to Section 4.11.

ARTICLE 5
SUBORDINATION

SECTION 5.1. AGREEMENT OF SUBORDINATION

The Issuer covenants and agrees, and each Holder of Securities issued hereunder by its acceptance of the Securities likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article 5; and each Person

holding any Security, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees to be bound by such provisions.

The payment of the principal of, premium, if any, and accrued and unpaid interest (including Additional Interest), if any, on all Securities and any other payment in respect of the Securities including on account of the acquisition or redemption of the Securities by the Issuer (including, but not limited to, the Change of Control Purchase Price or the Redemption Price with respect to the Securities subject to purchase in accordance with Article 3 as provided in this Indenture) issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full in cash or payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article 5 shall prevent the occurrence of any default or Event of Default hereunder.

SECTION 5.2. LIQUIDATION; DISSOLUTION; BANKRUPTCY

In the event of any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relating to the Issuer or to its assets, or any liquidation, dissolution or other winding-up of the Issuer, whether voluntary or involuntary, or any assignment for the benefit of creditors or other marshaling of assets or liabilities of the Issuer (except in connection with the consolidation or merger of the Issuer or its liquidation or dissolution following the conveyance, transfer or lease of its properties and assets substantially upon the terms and conditions described in Article 7), the holders of Senior Indebtedness will be entitled to receive payment in full in cash or cash equivalents of all Senior Indebtedness, or provision shall be made for such payment in full, before the Securityholders will be entitled to receive any payment or distribution of any kind or character (other than (i) payments made pursuant to the Collateral Documents, and (ii) any payment or distribution in the form of equity securities or subordinated securities of the Issuer or any successor obligor that, in the case of any such subordinated securities, are subordinated in right of payment to all Senior Indebtedness that may at the time be outstanding to at least the same extent as the Securities are so subordinated (such equity securities or subordinated securities hereinafter being “Permitted Junior Securities”)) on account of principal of, or accrued and unpaid interest (including Additional Interest), if any, on the Securities; and any payment or distribution of assets of the Issuer of any kind or character, whether in cash, property or securities (other than (x) any payments made pursuant to the Collateral Documents or (y) a payment or distribution in the form of Permitted Junior Securities), by set-off or otherwise, to which the Securityholders or the Trustee would be entitled but for the provisions of this Article 5 shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives ratably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness to the

extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

SECTION 5.3. DEFAULT ON DESIGNATED SENIOR INDEBTEDNESS

(a) No payment or distribution of any assets of the Issuer of any kind or character, whether in cash, property or securities (other than (i) any payments made pursuant to the Collateral Documents or (ii) payments in the form of Permitted Junior Securities), may be made by or on behalf of the Issuer on account of principal of or accrued and unpaid interest (including Additional Interest), if any, on the Securities or on account of the purchase, redemption or other acquisition of Securities upon the occurrence of any Payment Default until such Payment Default shall have been cured or waived in writing or shall have ceased to exist or such Designated Senior Indebtedness shall have been discharged or paid in full in cash or cash equivalents. "Payment Default" shall mean a default in payment, whether at scheduled maturity, upon scheduled installment, by acceleration or otherwise, of principal of, or premium, if any, or interest on Designated Senior Indebtedness beyond any applicable grace period.

(b) No payment or distribution of any assets of the Issuer of any kind or character, whether in cash, property or securities (other than (i) any payments made pursuant to the Collateral Documents or (ii) payments in the form of Permitted Junior Securities), may be made by or on behalf of the Issuer on account of principal of or accrued and unpaid interest (including Additional Interest), if any, on the Securities or on account of the purchase, redemption or other acquisition of Securities during a Payment Blockage Period, arising as a result of any default or event of default with respect to any Designated Senior Indebtedness other than any Payment Default pursuant to which the maturity thereof may be accelerated (a "Non-Payment Default") and receipt by the Trustee of written notice thereof from the Trustee or other representative of holders of Designated Senior Indebtedness.

(c) The Payment Blockage Period shall mean the period (each, a "Payment Blockage Period") that will commence upon the date of receipt by the Trustee of written notice from the Trustee or such other representative of the holders of the Designated Senior Indebtedness in respect of which the Non-Payment Default exists and shall end on the earliest of:

(i) 179 days thereafter (provided that any Designated Senior Indebtedness as to which notice was given shall not theretofore have been accelerated);

(ii) the date on which such Non-Payment Default is cured, waived or ceases to exist;

(iii) the date on which such Designated Senior Indebtedness is discharged or paid in full; or

(iv) the date on which such Payment Blockage Period shall have been terminated by written notice to the Trustee or the Issuer from the Trustee or such other representative initiating such Payment Blockage Period,

after which the Issuer will resume making any and all required payments in respect of the Securities, including any missed payments. In any event, not more than one Payment Blockage Period may be commenced during any period of 365 consecutive days. No Non-Payment Default that existed or was continuing on the date of the commencement of any Payment Blockage Period will be, or can be made, the basis for the commencement of a subsequent Payment Blockage Period, unless such Non-Payment Default has been cured or waived for a period of not less than 90 consecutive days subsequent to the commencement of such initial Payment Blockage Period.

SECTION 5.4. WHEN DISTRIBUTION MUST BE PAID OVER

In the event that, notwithstanding the provisions of Sections 5.2 and 5.3, any payment or distribution of any kind or character, whether in cash, property or securities, shall be received by the Trustee or any Securityholder which is prohibited by such provisions, then and in such event such payment shall be held in trust for the benefit of, and shall be paid over and delivered by such Trustee or Securityholder to the Trustee or any other representative of holders of Senior Indebtedness, as their interest may appear, for application to Senior Indebtedness remaining unpaid until all such Senior Indebtedness has been paid in full in cash or cash equivalents after giving effect to any concurrent distribution to or for the holders of Senior Indebtedness.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform only such obligations on the part of the Trustee as are specifically set forth in this Article 5, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders if the Trustee shall pay over or distribute to or on behalf of Securityholders or the Issuer or any other Person money or assets to which any holders of Senior Indebtedness shall be entitled by virtue of this Article 5, except if such payment is made as a result of the willful misconduct or gross negligence of the Trustee.

SECTION 5.5. NOTICE BY THE ISSUER

The Issuer shall promptly notify the Trustee and the Paying Agent of any facts known to the Issuer that would cause a payment of any obligations with respect to the Securities to violate this Article 5, but failure to give such notice shall not affect the subordination of the Securities to the Senior Indebtedness as provided in this Article 5.

SECTION 5.6. SUBROGATION

After all Senior Indebtedness is paid in full and until the Securities are paid in full, Securityholders shall be subrogated (equally and ratably with all other Indebtedness that is equal in right of payment to the Securities) to the rights of holders of

Senior Indebtedness to receive distributions applicable to Senior Indebtedness to the extent that distributions otherwise payable to the Securityholders have been applied to the payment of Senior Indebtedness. A distribution made under this Article 5 to holders of Senior Indebtedness that otherwise would have been made to Securityholders is not, as between the Issuer and Securityholders, a payment by the Issuer on the Securities.

SECTION 5.7. RELATIVE RIGHTS

This Article 5 defines the relative rights of Holders and holders of Senior Indebtedness. Nothing in this Indenture shall: (i) impair, as between the Issuer and Holders, the obligation of the Issuer, which is absolute and unconditional, to pay principal of, and accrued and unpaid interest (including Additional Interest), if any, on the Securities in accordance with their terms; (ii) affect the relative rights of Holders and creditors of the Issuer other than their rights in relation to holders of Senior Indebtedness; or (iii) prevent the Trustee or any Holder from exercising its available remedies upon a Default or Event of Default, subject to the rights of holders and owners of Senior Indebtedness to receive distributions and payments otherwise payable to Holders of Securities. If the Issuer fails because of this Article 5 to pay principal of or accrued and unpaid interest on, or Additional Interest with respect to, a Security on the Final Maturity date, the failure is still a Default or Event of Default.

SECTION 5.8. SUBORDINATION MAY NOT BE IMPAIRED BY THE ISSUER

No right of any holder of Senior Indebtedness to enforce the subordination of the Indebtedness evidenced by the Securities shall be impaired by any act or failure to act by the Issuer or any Holder or by the failure of the Issuer or any Holder to comply with this Indenture.

Without in any way limiting the generality of this Section 5.8, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders, without incurring responsibility to the Trustee or the Holders and without impairing or releasing the subordination provided in this Article 5 or the obligations hereunder of the Holders to the holders of Senior Indebtedness, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness, or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding or secured; (b) sell, exchange, release, foreclose against or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (c) release any Person liable in any manner for the collection of Senior Indebtedness; and (d) exercise or refrain from exercising any rights against the Issuer, and Subsidiary thereof or any other Person.

SECTION 5.9. DISTRIBUTION OR NOTICE TO REPRESENTATIVE

Whenever a distribution is to be made or a notice given to holders of any Senior Indebtedness, the distribution may be made and the notice given to their trustee or representative.

Upon any payment or distribution of assets of the Issuer referred to in this Article 5, the Trustee and the Holders of Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction or upon any certificate of such representative(s) or of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, all holders of the Senior Indebtedness and other Indebtedness of the Issuer, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 5.

SECTION 5.10. RIGHTS OF TRUSTEE AND PAYING AGENT

Notwithstanding the provisions of this Article 5 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment or distribution by the Trustee, and the Trustee and the Paying Agent may continue to make payments on the Securities, unless a responsible officer of the Trustee shall have received at its Corporate Trust Office at least three Business Days prior to the date of such payment written notice of facts that would cause the payment of any obligations with respect to the Securities to violate this Article 5. Only the Issuer or representative may give the notice. Nothing in this Article 5 shall impair the claims of, or payments to, the Trustee under or pursuant to Section 9.7.

The Trustee in its individual or any other capacity may hold Senior Indebtedness with the same rights it would have if it were not Trustee.

SECTION 5.11. SENIOR INDEBTEDNESS ENTITLED TO RELY

The holders of Senior Indebtedness (including, without limitation, Designated Senior Indebtedness) shall have the right to rely upon this Article 5, and no amendment or modification of the provisions contained herein shall diminish the rights of such holders unless such holders shall have agreed in writing thereto.

ARTICLE 6
COVENANTS

SECTION 6.1. PAYMENT OF SECURITIES

The Issuer shall promptly make or cause to be made all payments in respect of the Securities on the dates and in the manner provided in the Securities and this

Indenture. An installment of principal or accrued and unpaid interest (including Additional Interest), if any, shall be considered paid on the date it is due if the Paying Agent (other than the Issuer) holds by 11:00 a.m., New York City time, on that date money, deposited by the Issuer or an Affiliate thereof, sufficient to pay the installment. The Issuer shall, (in immediately available funds) to the fullest extent permitted by law, pay interest on overdue principal (including premium, if any) and overdue installments of interest at the rate borne by the Securities per annum.

Payment of the principal of (and premium, if any) and any accrued and unpaid interest (including Additional Interest), if any, on the Securities shall be made at the office or agency of the Issuer maintained for that purpose in the Borough of Manhattan, The City of New York in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Issuer payment of accrued and unpaid interest (including Additional Interest), if any, may be made by check mailed to the address of the Person entitled thereto as such address appears in the Register; provided further that a Holder with an aggregate principal amount in excess of $1,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions to the Issuer at least 10 Business Days prior to the payment date.

SECTION 6.2. SEC AND OTHER REPORTS

(a) Whether or not required by the rules and regulations of the SEC, including the reporting requirements of Section 13 or 15(d) of the Exchange Act, so long as any Securities are outstanding, the Issuer will furnish to the Trustee:

(i) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Issuer were required to file such forms, including a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” that describes the financial condition and results of operations of the Issuer and its Subsidiaries and, with respect to the annual information only, a report on the consolidated financial statements required by Form 10-K by the Issuer’s independent certified public accountants; and

(ii) all reports that would be required to be filed with the SEC on Form 8-K if the Issuer were required to file such reports.

(b) In addition, whether or not required by the rules and regulation of the SEC, the Issuer will file a copy of all such information with the SEC for public availability (unless the SEC will not accept such a filing) and make such information available to investors or prospective investors who request it in writing.

(c) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee’s receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer’s compliance with any of its

covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 6.3. COMPLIANCE CERTIFICATES

The Issuer shall deliver to the Trustee, within 90 days after the end of each fiscal year of the Issuer (beginning with the fiscal year ending December 31, 2003), an Officers' Certificate stating as to the best of the signer's knowledge whether or not the Issuer and the Guarantor are in compliance with all conditions and covenants on their part contained in this Indenture and stating whether or not, to the best of the signer's knowledge, there has been any default or Event of Default and, if so, the Officers' Certificate shall describe the default or Event of Default and the efforts to remedy the same. For the purposes of this Section 6.3, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

SECTION 6.4. FURTHER INSTRUMENTS AND ACTS

Upon request of the Trustee, the Issuer and the Guarantor each will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

SECTION 6.5. MAINTENANCE OF CORPORATE EXISTENCE

Subject to Section 3.7(a) and Article 7, the Issuer and the Guarantor each will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

SECTION 6.6. RULE 144A INFORMATION REQUIREMENT

Within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the Issuer covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, upon the request of any Holder or beneficial holder of the Securities make available to such Holder or beneficial holder of Securities or any Common Stock issued upon conversion thereof which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of Securities or such Common Stock designated by such Holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act.

SECTION 6.7. STAY, EXTENSION AND USURY LAWS

The Issuer and the Guarantor each covenant (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Issuer or the Guarantor from paying all or

any portion of the principal of, premium, if any, or accrued and unpaid interest (including Additional Interest), if any, on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture, and the Issuer and the Guarantor each (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 6.8. PAYMENT OF ADDITIONAL INTEREST

If Additional Interest is payable by the Issuer pursuant to the Registration Rights Agreement, the Issuer shall deliver to the Trustee a certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Trust Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Issuer has paid Additional Interest directly to the Persons entitled to it, the Issuer shall deliver to the Trustee a certificate setting forth the particulars of such payment.

SECTION 6.9. GUARANTOR'S PERMITTED ACTIVITIES

Until the Security Guarantee Termination Date, the Guarantor shall not, and the Issuer shall not permit the Guarantor to, (a) engage in any business or activity other than those required by the terms of the Collateral Documents and this Indenture or otherwise necessary for the Guarantor to comply with its obligations thereunder, (b) incur any Indebtedness (other than the Security Guarantee) or other liabilities, (c) amend the Guarantor's organizational documents or (d) issue any additional equity interests.

ARTICLE 7
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 7.1. ISSUER MAY CONSOLIDATE, ETC, ONLY ON CERTAIN TERMS

The Issuer shall not consolidate with or merge into any other Person (in a transaction in which the Issuer is not the surviving corporation) or convey, transfer or lease its properties and assets substantially as an entirety to any Person, other than to one or more of its Subsidiaries, unless:

(1) in case the Issuer shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Issuer is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Issuer substantially as an entirety shall be a corporation, limited liability company, partnership, trust or other business entity organized and validly existing under the laws of the United States of America, any State thereof or the District

of Columbia and, if the Issuer is not the surviving corporation, shall expressly assume the due and punctual payment of the principal of and any premium and accrued and unpaid interest (including Additional Interest), if any, on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Issuer to be performed or observed and the conversion rights shall be provided for in accordance with Article 4, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee, by the Person (if other than the Issuer) formed by such consolidation or into which the Issuer shall have been merged or by the Person which shall have acquired the Issuer's assets;

(2) immediately after giving effect to such transaction, no Event of Default or Default, shall have occurred and be continuing; and

(3) the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

SECTION 7.2. SUCCESSOR SUBSTITUTED

Upon any consolidation of the Issuer with, or merger of the Issuer into, any other Person or any conveyance, transfer or lease of the properties and assets of the Issuer substantially as an entirety in accordance with Section 7.1, the successor Person formed by such consolidation or into which the Issuer is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such successor Person had been named as the Issuer herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 8
DEFAULT AND REMEDIES

SECTION 8.1. EVENTS OF DEFAULT

An "Event of Default" shall occur if:

(1) on or before July 15, 2006, the Issuer defaults in the payment of any accrued and unpaid interest (including Additional Interest), if any, on any Security when the same becomes due and payable, whether or not such payment shall be prohibited by the provisions of Article 5 hereof;

(2) after July 15, 2006, the Issuer defaults in the payment of any accrued and unpaid interest (including Additional Interest), if any, on any Security when the same becomes due and payable and the default continues for a period of 30

days, whether or not such payment shall be prohibited by the provisions of Article 5 hereof;

(3) the Issuer defaults in the payment of any principal of (including, without limitation, any premium, if any, on), or Redemption Price or Change of Control Purchase Price on, any Security when the same becomes due and payable (whether at maturity, on a Redemption Date, Change of Control Purchase Date or otherwise), whether or not such payment shall be prohibited by the provisions of Article 5 hereof;

(4) the Issuer or any of its Subsidiaries fails to comply with any of its other agreements in the Securities or the Indenture upon receipt of notice of such default and the Issuer's failure to cure such default, cause such default to be cured, or obtain a waiver thereof, within 60 days after receipt by the Issuer of such notice;

(5) the failure of the Issuer or any of its Subsidiaries to make any payment by the end of any applicable grace period after maturity of Indebtedness, in an amount (taken together with amounts under clause (6) below) in excess of $20 million and continuance of such failure; provided, that if any such failure shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred;

(6) the acceleration of Indebtedness of the Issuer or any of its Subsidiaries in an amount (taken together with amounts under (5)) in excess of $20 million because of a default with respect to such Indebtedness, without, in the case of (5) or (6), such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, for a period of 60 days after written notice to the Issuer by the Trustee or to the Issuer and the Trustee by the holders of not less than 25% in aggregate principal amount of the Securities then outstanding; provided, that if any such acceleration shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred;

(7) final non-appealable judgments not covered by insurance aggregating in excess of $20 million rendered against the Issuer or any of its Subsidiaries, which judgments are not stayed, bonded or discharged within 60 days;

(8) (i) the Issuer or any Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law (A) commences a voluntary case or proceeding, (B) consents to the entry of an order for relief against it in an involuntary case or proceeding, (C) consents to the appointment of a Custodian of it or for all or substantially all of its property or (D) makes a general assignment for the benefit of its creditors, or (ii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (A) is for relief against the Issuer or any Subsidiary in an involuntary case or proceeding, (B) appoints a Custodian of the Issuer or any Subsidiary or for all or substantially all of the property of the Issuer or any Subsidiary or (C) orders the liquidation of the Issuer or any Subsidiary, and in each case the order or decree remains unstayed and in effect for 60 consecutive days;

(9) failure by the Issuer or the Guarantor for 30 days after receipt of written notice from the Trustee to comply with its agreements contained in the Collateral Documents and the Guarantee;

(10) any of the Collateral Documents or the Guarantee cease to be in full force and effect, or enforceable, prior to the expiration in accordance with such Collateral Document or Guarantee's terms; and

(11) the Issuer fails to issue Common Stock upon conversion of Securities in accordance with Article 4, , unless such failure is cured within five days after written notice of default is given to the Company by the Trustee or the Holder of such Security.

The term "Bankruptcy Law" means Title 11 of the United States Code (or any successor thereto) or any similar federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

A default under clause (4) above is not an Event of Default until the Trustee notifies the Issuer, or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding notify the Issuer and the Trustee, in writing of the default, and the Issuer does not cure the default within 60 days after receipt of such notice. The notice given pursuant to this Section 8.1 must specify the default, demand that it be remedied and state that the notice is a "Notice of Default." When any default under this Section 8.1 is cured, it ceases.

The Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to a Trust Officer at the Corporate Trust Office of the Trustee by the Issuer, a Paying Agent, any Holder or any agent of any Holder.

SECTION 8.2. ACCELERATION

If an Event of Default (other than an Event of Default specified in clause (8) of Section 8.1 with respect to the Issuer) occurs and is continuing, the Trustee may, by notice to the Issuer, or the Holders of at least 25% in aggregate principal amount of the Securities then outstanding may, by notice to the Issuer and the Trustee, declare all unpaid principal plus accrued and unpaid interest (including Additional Interest), if any, to the date of acceleration on the Securities then outstanding (if not then due and payable) to be due and payable upon any such declaration, and the same shall become and be immediately due and payable. If an Event of Default specified in clause (8) of Section 8.1 occurs with respect to the Issuer, all unpaid principal of the Securities then outstanding plus accrued and unpaid interest (including Additional Interest), if any, shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Holders of a majority in aggregate principal amount of the Securities then outstanding by notice to the Trustee may rescind an acceleration and its consequences if (a) all existing Events of Default, other than the

nonpayment of the principal of the Securities which has become due solely by such declaration of acceleration, have been cured or waived; (b) to the extent the payment of such interest is lawful, interest (calculated at the rate per annum borne by the Securities) on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; (c) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (d) all payments due to the Trustee and any predecessor Trustee under Section 9.7 have been made. No such rescission shall affect any subsequent default or impair any right consequent thereto.

SECTION 8.3. OTHER REMEDIES

If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy by proceeding at law or in equity to collect the payment of the principal of or accrued and unpaid interest (including Additional Interest), if any, on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

SECTION 8.4. WAIVER OF DEFAULTS AND EVENTS OF DEFAULT

Subject to Sections 8.7 and 13.2, the Holders of a majority in aggregate principal amount of the Securities then outstanding by notice to the Trustee (and without notice to any other Securityholder) may waive an existing default or Event of Default and its consequence, except a default or Event of Default in the payment of the principal of, premium, if any, or accrued and unpaid interest (including Additional Interest), if any, on any Security, a failure by the Issuer to convert any Securities into Common Stock or any default or Event of Default in respect of any provision of this Indenture or the Securities which, under Section 13.2, cannot be modified or amended without the consent of the Holder of each Security affected. When a default or Event of Default is waived, it is cured and ceases.

SECTION 8.5. CONTROL BY MAJORITY

The Holders of a majority in aggregate principal amount of the Securities then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee in good faith determines may be unduly prejudicial to the rights of another Holder or the Trustee, or that may involve the Trustee in personal

liability unless the Trustee is offered indemnity satisfactory to it; provided, however, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 8.6. LIMITATIONS ON SUITS

A Holder may not pursue any remedy with respect to this Indenture or the Securities (except actions for payment of overdue principal or accrued and unpaid interest (including any payments in connection with any optional redemption or Change of Control and Additional Interest, if any) or for the conversion of the Securities pursuant to Article 4) unless:

(1) the Holder gives to the Trustee written notice of a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amount of the then outstanding Securities make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee reasonable indemnity to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities then outstanding.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over such other Securityholder.

SECTION 8.7. RIGHTS OF HOLDERS TO RECEIVE PAYMENT AND TO CONVERT

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of the principal of and accrued and unpaid interest on the Security (including any payments in connection with a redemption pursuant to Section 3.1, Change of Control, and Additional Interest, if any), on or after the respective due dates expressed in the Security and this Indenture, to convert such Security accordance with Article 4 and to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

SECTION 8.8. COLLECTION SUIT BY TRUSTEE

If an Event of Default in the payment of principal or accrued and unpaid interest (including Additional Interest), if any, specified in clause (1), (2) or (3) of Section 8.1 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or another obligor on the Securities for the whole amount of principal and accrued and unpaid interest (including Additional Interest), if any, remaining unpaid, together with, to the extent that payment of such interest is lawful, interest on overdue principal and on overdue installments of interest, in each case at the rate per annum borne by the Securities and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 8.9. TRUSTEE MAY FILE PROOFS OF CLAIM

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuer (or any other obligor on the Securities), its creditors or its property and shall be entitled and empowered to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 9.7, and to the extent that such payment of the reasonable compensation, expenses, disbursements and advances in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or, on behalf of any Holder, to authorize, accept or adopt any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 8.10. PRIORITIES

If the Trustee collects any money pursuant to this Article 8, it shall pay out the money in the following order:

First, to the Trustee for amounts due under Section 9.7;

Second, to the holders of Senior Indebtedness to the extent required by Article 5;

Third, to Holders for amounts due and unpaid on the Securities for principal and accrued and unpaid interest (including Additional Interest), if any,, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and accrued and unpaid interest (including Additional Interest), if any, respectively; and

Fourth, the balance, if any, to the Issuer.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 8.10.

SECTION 8.11. UNDERTAKING FOR COSTS

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 8.11 does not apply to a suit made by the Trustee, a suit by a Holder pursuant to Section 8.7, or a suit by Holders of more than 10% in aggregate principal amount of the Securities then outstanding.

ARTICLE 9
TRUSTEE

SECTION 9.1. DUTIES OF TRUSTEE

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee need perform only those duties as are specifically set forth in this Indenture and no others; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee, however, shall examine any certificates and opinions which by any provision hereof are specifically required to be

delivered to the Trustee to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of subsection (b) of this Section 9.1;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 8.5.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers unless the Trustee shall have received adequate indemnity in its opinion against potential costs and liabilities incurred by it relating thereto.

(e) Every provision of this Indenture that in any way relates to the Trustee is subject to subsections (a), (b), (c) and (d) of this Section 9.1.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

SECTION 9.2. RIGHTS OF TRUSTEE

Subject to Section 9.1:

(a) The Trustee may rely conclusively on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, or both, which shall conform to Section 14.5. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion.

(c) The Trustee may act through its agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection in respect of any such action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office, and such notice references the Securities and this Indenture.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

SECTION 9.3. INDIVIDUAL RIGHTS OF TRUSTEE

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Issuer or an Affiliate of the Issuer with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights. However, the Trustee is subject to Sections 5.10, 9.10 and 9.11.

SECTION 9.4. TRUSTEE'S DISCLAIMER

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Issuer's use of the proceeds from the Securities, and it shall not be responsible for any statement in the Securities other than its certificate of authentication.

SECTION 9.5. NOTICE OF DEFAULT OR EVENTS OF DEFAULT

If a default or an Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Securityholder notice of the default or Event of Default within 90 days after it occurs. However, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is in the interests of Securityholders, except in the case of a default or an Event of Default in payment of the principal of or accrued and unpaid interest (including Additional Interest), if any, on any Security.

SECTION 9.6. REPORTS BY TRUSTEE TO HOLDERS

If such report is required by TIA Section 313, within 60 days after each May 15, beginning with May 15, 2004, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA Section 313(a). The Trustee also shall comply with TIA Section 313(b) and (c).

A copy of each report at the time of its mailing to Securityholders shall be mailed to the Issuer and filed with the SEC and each stock exchange, if any, on which the Securities are listed. The Issuer shall notify the Trustee whenever the Securities become listed on any stock exchange or listed or admitted to trading on any quotation system and any changes in the stock exchanges or quotation systems on which the Securities are listed or admitted to trading and of any delisting thereof.

SECTION 9.7. COMPENSATION AND INDEMNITY

The Issuer shall pay to the Trustee from time to time such compensation as agreed to from time to time by the Issuer and the Trustee in writing for its services (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Issuer shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances incurred or made by it. Such expenses may include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Issuer shall indemnify the Trustee or any predecessor Trustee (which for purposes of this Section 9.7 shall include its officers, directors, employees and agents) for, and hold it harmless against, any and all loss, liability or expense including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), (including reasonable legal fees and expenses) incurred by it in connection with the

acceptance or administration of its duties under this Indenture or any action or failure to act as authorized or within the discretion or rights or powers conferred upon the Trustee hereunder including the reasonable costs and expenses of the Trustee and its counsel in defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall notify the Issuer promptly of any claim asserted against the Trustee for which it may seek indemnity. The Issuer need not pay for any settlement effected without its prior written consent, which shall not be unreasonably withheld.

The Issuer need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by it resulting from its negligence or bad faith.

To secure the Issuer's payment obligations in this Section 9.7, the Trustee shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee, except such money or property held in trust to pay the principal of and accrued and unpaid interest (including Additional Interest), if any, on the Securities. The obligations of the Issuer under this Section 9.7 shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in clause (8) of Section 8.1 occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law. The provisions of this Section shall survive the termination of this Indenture.

SECTION 9.8. REPLACEMENT OF TRUSTEE

The Trustee may resign by so notifying the Issuer. The Holders of a majority in aggregate principal amount of the Securities then outstanding may remove the Trustee by so notifying the Trustee and may, with the Issuer's written consent (which consent shall not be unreasonably withheld), appoint a successor Trustee. The Issuer may remove the Trustee if:

(1) the Trustee fails to comply with Section 9.10;

(2) the Trustee is adjudged a bankrupt or an insolvent;

(3) a receiver or other public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall promptly appoint a successor Trustee. The resignation or removal of a Trustee shall not be effective until a successor Trustee shall have delivered the written acceptance of its appointment as described below.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Holders of 10% in aggregate principal amount of the Securities then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee at the expense of the Issuer.

If the Trustee fails to comply with Section 9.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Immediately after that, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee and be released from its obligations (exclusive of any liabilities that the retiring Trustee may have incurred while acting as Trustee) hereunder, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail notice of its succession to each Holder.

A retiring Trustee shall not be liable for the acts or omissions of any successor Trustee after its succession.

Notwithstanding replacement of the Trustee pursuant to this Section 9.8, the Issuer's obligations under Section 9.7 shall continue for the benefit of the retiring Trustee.

SECTION 9.9. SUCCESSOR TRUSTEE BY MERGER, ETC

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets (including the administration of this Indenture) to, another corporation, the resulting, surviving or transferee corporation, without any further act, shall be the successor Trustee, provided such transferee corporation shall qualify and be eligible under Section 9.10. Such successor Trustee shall promptly mail notice of its succession to the Issuer and each Holder.

SECTION 9.10. ELIGIBILITY; DISQUALIFICATION

The Trustee shall always satisfy the requirements of paragraphs (1), (2) and (5) of TIA Section 310(a). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least $50,000,000. If at any time the Trustee shall cease to satisfy any such requirements, it shall resign immediately in the manner and with the effect specified in this Article 9. The Trustee shall be subject to the provisions of TIA Section 310(b). Nothing herein shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b).

SECTION 9.11. PREFERENTIAL COLLECTION OF CLAIMS AGAINST ISSUER

The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

ARTICLE 10
SATISFACTION AND DISCHARGE OF INDENTURE

SECTION 10.1. SATISFACTION AND DISCHARGE OF INDENTURE

This Indenture shall cease to be of further effect (except as to any surviving rights of conversion, registration of transfer or exchange of Securities herein expressly provided for and except as further provided below), and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (ii) Securities for whose payment money or shares of Common Stock has theretofore been deposited in trust and thereafter repaid or returned to the Issuer as provided in Section 10.3) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.7 and (ii) Securities for whose payment money or shares of Common Stock has theretofore been deposited in trust and thereafter repaid or returned to the Issuer as provided in Section 10.3) have become due and payable, whether at the Final Maturity Date, or any Redemption Date or Change of Control Purchase Date, or upon conversion or otherwise, and the Issuer has irrevocably deposited or caused to be irrevocably deposited cash or Common Stock, as applicable hereunder, with the Trustee or a Paying Agent (other than the Issuer or any of its Affiliates) or Conversion Agent (other than the Issuer or any of its Affiliates) as trust funds or property in trust for the purpose of and in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and accrued and unpaid interest (including Additional Interest), if any, to the date of such deposit (in the case of Securities which have become due and payable);

(2) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer; and

(3) the Issuer has delivered to the Trustee an Officers' Certificate and, if the Trustee so requests, an Opinion of Counsel, each stating that all conditions precedent herein relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee under Section 9.7 shall survive and, if money or shares of Common Stock shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the provisions of Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.12, 3.2, 3.3, 3.4, 3.5, 3.6, 3.8, 3.9, 3.10, 3.11, 3.12 and 14.6, Articles 4 and 11, the last paragraph of Section 6.2 and this Article 10, shall survive until the Securities have been paid in full.

SECTION 10.2. APPLICATION OF TRUST MONEY

Subject to the provisions of Section 10.3, the Trustee, a Paying Agent or Conversion Agent shall hold in trust, for the benefit of the Holders, all money and Common Stock deposited with it pursuant to Section 10.1 and shall apply the deposited money and Common Stock in accordance with this Indenture and the Securities to the payment of the principal of and accrued and unpaid interest (including Additional Interest), if any, on the Securities. Money and Common Stock so held in trust shall not be subject to the subordination provisions of Article 5.

SECTION 10.3. REPAYMENT TO ISSUER

The Trustee and each Paying Agent and Conversion Agent shall promptly pay or return, as appropriate, to the Issuer upon request any excess money or shares of Common Stock (i) deposited with them pursuant to Section 10.1 and (ii) held by them at any time.

The Trustee and each Paying Agent and Conversion Agent shall pay to the Issuer upon request any money or shares of Common Stock held by them for the payment of principal or accrued and unpaid interest (including Additional Interest), if any, that remains unclaimed for two years after a right to such money or Common Stock has matured; provided, however, that the Trustee or such Paying Agent or Conversion Agent, before being required to make any such payment or transfer, may at the expense of the Issuer cause to be mailed to each Holder entitled to such money or Common Stock notice that such money or Common Stock remains unclaimed and that after a date specified therein, which shall be at least 30 days from the date of such mailing, any unclaimed balance of such money or shares of Common Stock then remaining will be repaid or returned to the Issuer. After payment or return to the Issuer, Holders entitled to money or shares of Common Stock must look to the Issuer for payment as general creditors unless an applicable abandoned property law designates another person.

SECTION 10.4. REINSTATEMENT

If the Trustee or any Paying Agent or Conversion Agent is unable to apply any money or shares of Common Stock in accordance with Section 10.2 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.1 until such time as the Trustee or such Paying Agent or Conversion Agent is permitted to apply all such money or shares of Common Stock in accordance with Section 10.2; provided, however, that if the Issuer has made any payment of the principal of or accrued and unpaid interest (including Additional Interest), if any, on any Securities because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive any such payment from the money or Common Stock held by the Trustee or such Paying Agent.

ARTICLE 11
SECURITY

SECTION 11.1. SECURITY

(a) Concurrently with the execution herewith, (i) the Issuer shall enter into the Pledge Agreement and comply with the terms and provisions thereof and (ii) the Issuer shall cause the Guarantor to, and the Guarantor shall, (a) enter into the Collateral Pledge Agreement and comply with the terms and provisions thereof and (b) purchase the Initial Pledged Securities to be pledged to the Collateral Agent for the benefit of the Trustee and the ratable benefit of the Holders in such amount as will be sufficient, accounting for scheduled interest and principal payments of such Initial Pledged Securities, as computed by the Issuer and verified for mathematical accuracy by Deloitte & Touche LLP, independent public accountants, or another nationally recognized firm of independent public accountants selected by the Issuer, to provide for cash payment in full of the first six scheduled interest payments when due on the Securities (i.e., sufficient to provide cash payment in full of scheduled interest payments when due during the period from the date hereof up to and including July 15, 2006). The Initial Pledged Securities shall be pledged by the Guarantor to the Collateral Agent for the benefit of the Trustee and the ratable benefit of the Holders and shall be held by the Collateral Agent in the Collateral Account pending disposition pursuant to the Collateral Pledge Agreement.

(b) On each relevant Issue Date (if such Issue Date is different from the date hereof), the Issuer shall cause the Guarantor to, and the Guarantor shall, (i) enter into a supplement to the Collateral Pledge Agreement and comply with the terms and provisions thereof and (ii) purchase the Additional Pledged Securities to be pledged to the Collateral Agent for the benefit of the Trustee and the ratable benefit of the Holders in such amount as will be sufficient, accounting for scheduled interest and principal payments of such Additional Pledged Securities, as computed by the Issuer and verified for mathematical accuracy by Deloitte & Touche LLP, independent public accountants,

or another nationally recognized firm of independent public accountants selected by the Issuer, to provide for cash payment in full of the first six scheduled interest payments when due on the Securities issued on such Issue Date (i.e., sufficient to provide for cash payment in full of scheduled interest payments when due during the period from such Issue Date up to and including July 15, 2006). The Additional Pledged Securities shall be pledged by the Guarantor to the Collateral Agent for the benefit of the Trustee and the ratable benefit of the Holders and shall be held by the Collateral Agent in the Collateral Account pending disposition pursuant to the Collateral Pledge Agreement.

(c) Each Holder, by its acceptance of a Security, consents and agrees to the terms of the Collateral Documents (including, without limitation, the provisions providing for foreclosure and release of the Collateral thereunder) as the same may be in effect or may be amended from time to time in writing by the parties thereto (provided that no amendment that would materially adversely affect the rights of the Holders may be effected without the consent of each Holder affected thereby), and authorizes and directs the Trustee and the Collateral Agent to enter into the Collateral Documents and to perform its respective obligations and exercise its respective rights thereunder in accordance therewith. Each of the Issuer and the Guarantor will do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Collateral Documents, to assure and confirm to the Trustee and the Collateral Agent the security interest in the Collateral contemplated hereby, by the Collateral Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Securities secured hereby, according to the intent and purpose herein expressed. Each of the Issuer and the Guarantor shall take, or shall cause to be taken, upon request of the Trustee or the Collateral Agent, any and all actions reasonably required to cause the Collateral Documents to create and maintain, as security for the obligations of the Issuer under this Indenture and the Securities as provided in the Collateral Documents, valid and enforceable first priority perfected liens in and on all the Collateral described therein, in favor of the Collateral Agent for the benefit of the Trustee and the ratable benefit of the Holders, superior to and prior to the rights of third Persons and subject to no other Liens.

(d) The release of any Collateral pursuant to any Collateral Document will not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent such Collateral is released pursuant to this Indenture and the Collateral Documents. To the extent applicable, the Issuer shall cause Section 314(d) of the TIA relating to the release of property or securities from the Liens and security interests of the Collateral Documents and relating to the substitution therefor of any property or securities to be subjected to the Liens and security interests of the Collateral Documents to be complied with. Any certificate or opinion required by Section 314(d) of the TIA may be made by an Officer of the Issuer, except in cases where Section 314(d) of the TIA requires that such certificate or opinion be made by an independent Person, which Person shall be an independent engineer, appraiser or other expert selected by the Issuer.

(e) Each of the Issuer and the Guarantor shall cause Section 314(b) of the TIA, relating to opinions of counsel regarding the Liens under the Collateral Documents, to be complied with. The Trustee may, to the extent permitted by Section 7.01 and 7.02 hereof, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such Opinions of Counsel.

(f) The Trustee and the Collateral Agent each may, in its sole discretion and without the consent of the Holders, on behalf of the Holders, take all reasonable actions it deems necessary or appropriate in order to (i) enforce any of the terms of the Collateral Documents and (ii) collect and receive any and all amounts payable in respect of the obligations of the Issuer thereunder. The Trustee and the Collateral Agent shall have the power to institute and maintain such suits and proceedings as the Trustee and the Collateral Agent may reasonably deem expedient to preserve or protect their interests and the interests of the Holders in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders, the Collateral Agent or the Trustee).

(g) Beyond the exercise of reasonable care in the custody and preservation thereof, the Trustee and the Collateral Agent shall have no duty as to any Collateral in their possession or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto, and the Trustee and the Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Trustee and the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in their possession if the Collateral is accorded treatment substantially equal to that which they accord their own property or property held in similar accounts and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of the Collateral Agent, any carrier, forwarding agency or other agent or bailee selected by the Trustee in good faith.

(h) The Trustee shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or otherwise, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Issuer or the Guarantor, as the case may be, to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Trustee shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture or the Collateral Documents by the Issuer, the Guarantor or the Collateral Agent.

ARTICLE 12
NOTE GUARANTEE

SECTION 12.1. GUARANTEE

Subject to this Article 12, the Guarantor hereby unconditionally guarantees to each Holder of a Security authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Securities or the obligations of the Issuer hereunder or thereunder, that:

(a)

(i) the principal of, premium and accrued and unpaid interest (including Additional Interest), if any, on the Securities will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and accrued and unpaid interest (including Additional Interest), if any, on the Securities, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(ii) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantor will be obligated to pay the same immediately. The Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantor hereby agrees that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Securities or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Security Guarantee will not be discharged until the earlier of (i) the complete performance of each of the Issuer and the Guarantor of the obligations contained in the Securities and this Indenture and (ii) the Security Guarantee Termination Date.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantor or any custodian, trustee, liquidator or other similar

official acting in relation to either the Issuer or the Guarantor, any amount paid by either to the Trustee or such Holder, this Security Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(d) The Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 8 hereof for the purposes of this Security Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 8 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purpose of this Security Guarantee.

SECTION 12.2. LIMITATION ON GUARANTOR LIABILITY

The Guarantor, and by its acceptance of Securities, each Holder, hereby confirms that it is the intention of all such parties that the Security Guarantee of the Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Security Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantor hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 12, result in the obligations of such Guarantor under its Security Guarantee not constituting a fraudulent transfer or conveyance.

SECTION 12.3. EXECUTION AND DELIVERY OF SECURITY GUARANTEE

To evidence its Security Guarantee set forth in Section 12.1, the Guarantor hereby agrees that a notation of such Security Guarantee substantially in the form attached as Exhibit E hereto will be endorsed by an Officer of such Guarantor on each Security authenticated and delivered by the Trustee and that this Indenture will be executed on behalf of the Guarantor by one of its Officers.

The Guarantor hereby agrees that its Security Guarantee set forth in Section 12.1 will remain in full force and effect notwithstanding any failure to endorse on each Security a notation of such Security Guarantee.

If an Officer whose signature is on this Indenture or on the Security Guarantee no longer holds that office at the time the Trustee authenticates the Security on

which a Security Guarantee is endorsed, the Security Guarantee will be valid nevertheless.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Security Guarantee set forth in this Indenture on behalf of the Guarantor.

SECTION 12.4. GUARANTOR MAY NOT CONSOLIDATE, ETC.

Except as provided in the Collateral Documents, the Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not the Guarantor is the surviving Person) another Person, other than the Issuer or another Guarantor.

SECTION 12.5. RELEASE OF SECURITY GUARANTEE

The Security Guarantee will be released and the Guarantor shall be relieved of any obligations under the Security Guarantee on the Security Guarantee Termination Date in connection with the termination of the Collateral Documents. Until the Guarantor is released from its obligations under its Security Guarantee, the Guarantor will remain liable for the full amount of principal of and accrued and unpaid interest (including Additional Interest), if any, on the Securities and for the other obligations of any Guarantor under this Indenture as provided in this Article 12.

ARTICLE 13
AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 13.1. WITHOUT CONSENT OF HOLDERS

The Issuer, the Guarantor and the Trustee may amend or supplement this Indenture or the Securities without notice to or consent of any Securityholder:

(a) to comply with Sections 4.11, 7.1 and 7.2;

(b) to add to the covenants of the Issuer for the equal and ratable benefit of the Securityholders or to surrender any right, power or option conferred upon the Issuer;

(c) to cure any ambiguity, omission, defect or inconsistency in the Indenture, to correct or supplement any provision in the Indenture, or to make any other provisions with respect to matters or questions arising under the Indenture, so long as the interests of Holders are not adversely affected in any material respect under the Indenture;

(d) to appoint a successor Trustee;

(e) to provide any additional Events of Default;

(f) to increase the Conversion Rate, provided the increase will not adversely affect the interests of Holders of Securities in any material respect;

(g) to make any other change that does not adversely affect the rights of any Securityholder;

(h) to comply with the provisions of the TIA; and

(i) to modify the provisions of the Indenture or the Collateral Documents relating to the pledge of securities in a manner that does not adversely affect the interests of the Holders of Securities;

provided that any amendment described in clause (c) above made solely to conform the provisions of the Indenture to the description of the Securities contained in the offering memorandum dated June 30, 2003 of the Issuer with respect to the Securities will not be deemed to adversely affect the interests of Holders of the Securities.

SECTION 13.2. WITH CONSENT OF HOLDERS

The Issuer, the Guarantor and the Trustee may amend or supplement this Indenture or the Securities with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding. The Holders of at least a majority in aggregate principal amount of the Securities then outstanding may waive compliance in a particular instance by the Issuer with any provision of this Indenture or the Securities without notice to any Securityholder. However, notwithstanding the foregoing but subject to Section 13.4, without the written consent of each Securityholder affected, an amendment, supplement or waiver, including a waiver pursuant to Section 8.4, may not:

(a) change the stated maturity of any payment of principal of, or any premium on, any Securities, or reduce the principal amount or the interest rate of any Security, or change any place of payment where, or the coin or currency in which, any Security or any premium is payable, or impair the right to institute suit for the enforcement of any such payment on or after the maturity thereof (or, in the case of redemption or repayment, on or after the redemption date or the repayment date, as the case may be) or adversely affect the conversion or repurchase provisions in the Indenture;

(b) change the Final Maturity Date of the principal of, or time or manner of payment of interest on, any Security;

(c) reduce the principal amount of, or any premium or accrued and unpaid interest (including Additional Interest), if any, on, any Security;

(d) reduce the amount of principal payable upon acceleration of the maturity of any Security;

(e) change the place or currency of payment of principal of, or any premium or accrued and unpaid interest (including Additional Interest), if any, on, any Security;

(f) impair the right to institute suit for the enforcement of any payment on or after the maturity thereof (or, in the case of redemption or repayment, on or after the Redemption Date or the repayment date, as the case may be), or with respect to, any Security;

(g) reduce the percentage in principal amount of the outstanding Securities, the consent of whose Holders is required for any such modification, or the consent of whose Holders is required for any waiver of compliance with certain provisions of the Indenture or certain defaults thereunder and their consequences provided for in the Indenture;

(h) modify the Redemption Price pursuant to Article 3 in a manner adverse to Holders;

(i) modify the Change in Control Purchase Price of any Security pursuant to Article 3 in a manner adverse to Holders;

(j) adversely affect the right of Holders to convert Securities other than as provided in or under Article 4 of this Indenture;

(k) modify the Security Guarantee of Article 12 in a manner adverse to the Holders of Securities;

(l) reduce the percentage of the aggregate principal amount of the outstanding Securities whose Holders must consent to a modification or amendment;

(m) reduce the percentage of the aggregate principal amount of the outstanding Securities necessary for the waiver of compliance with certain provisions of this Indenture or the waiver of certain defaults under this Indenture;

(n) modify any of the provisions of this Section or Section 8.4, except to increase any such percentage or to provide that certain provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Security affected thereby; and

(o) release the Guarantor from any of its obligations under the Security Guarantee other than in accordance with the terms of the Indenture and Collateral Documents.

In addition to the foregoing, any amendment to, or waiver of, the provisions of the Indenture relating to subordination pursuant to Article 5 that adversely affects the rights of the Holders of the Securities will require the consent of the Holders of at least 75% in aggregate principal amount of Securities then outstanding.

It shall not be necessary for the consent of the Holders under this Section 13.2 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 13.2 becomes effective, the Issuer shall mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver. An amendment or supplement under this Section 13.2 or under Section 13.1 may not make any change that adversely affects the rights under Article 5 of any holder of an issue of Senior Indebtedness unless the holders of that issue, pursuant to its terms, consent to the change.

Notwithstanding anything to the contrary herein, at any time after the Security Guarantee Termination Date, the signature of the Guarantor shall not be required to effect any amendment, supplement or waiver under this Article 13.

SECTION 13.3. COMPLIANCE WITH TRUST INDENTURE ACT

Every amendment to or supplement of this Indenture or the Securities shall comply with the TIA as in effect at the date of such amendment or supplement.

SECTION 13.4. REVOCATION AND EFFECT OF CONSENTS

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

SECTION 13.5. NOTATION ON OR EXCHANGE OF SECURITIES

If an amendment, supplement or waiver changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

SECTION 13.6. TRUSTEE TO SIGN AMENDMENTS, ETC

The Trustee shall sign any amendment or supplemental indenture authorized pursuant to this Article 13 if the amendment or supplemental indenture does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does,

the Trustee may, in its sole discretion, but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be entitled to receive and, subject to Section 9.1, shall be fully protected in relying upon, an Opinion of Counsel stating that such amendment or supplemental indenture is authorized or permitted by this Indenture. The Issuer, whether on its on behalf or as owner of the equity interests of the Guarantor, may not sign an amendment or supplement indenture until the Board of Directors approves it.

SECTION 13.7. EFFECT OF SUPPLEMENTAL INDENTURES

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE 14
MISCELLANEOUS

SECTION 14.1. TRUST INDENTURE ACT CONTROLS

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the TIA through operation of Section 318(c) thereof, such imposed duties shall control.

SECTION 14.2. NOTICES

Any demand, authorization notice, request, consent or communication shall be given in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by delivery in person or mail by first-class mail, postage prepaid, or by guaranteed overnight courier) to the following facsimile numbers.

If to the Issuer and/or the Guarantor, to:

c/o Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, NV 89109
Facsimile: (702) 733-4596
Attention: Marc H. Rubinstein, General Counsel

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
300 South Grand Ave., Suite 3400
Los Angeles, CA 90071
Facsimile: (213) 687-5600
Attention: Jerome L. Coben

if to the Trustee, to:

U.S. Bank National Association
180 East Fifth Street
St. Paul, MN 55101
Facsimile No.: (651) 244-0711
Attention: Corporate Trust Services

The Issuer, the Guarantor or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if set via facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA Section 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuer mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

SECTION 14.3. COMMUNICATIONS BY HOLDERS WITH OTHER HOLDERS

Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Issuer, the Guarantor, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

SECTION 14.4. CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT

Upon any request or application by the Issuer to the Trustee to take any action under this Indenture, the Issuer shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 14.5 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) if the Trustee so requests, an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 14.5 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

SECTION 14.5. STATEMENTS REQUIRED IN CERTIFICATE OR OPINION

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA Section 314(a)(4)) must comply with the provisions of TIA Section 314(e) and must include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

SECTION 14.6. RECORD DATE FOR VOTE OR CONSENT OF SECURITYHOLDERS

The Issuer (or, in the event deposits have been made pursuant to Section 10.1, the Trustee) may set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, which record date shall not be more than forty-five (45) days prior to the date of the commencement of solicitation of such action. Notwithstanding the provisions of Section 13.4, if a record date is fixed, those persons who were Holders of Securities at the close of business on such record date (or their duly designated proxies), and only those persons, shall be entitled to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.

SECTION 14.7. RULES BY TRUSTEE, PAYING AGENT, REGISTRAR AND CONVERSION AGENT

The Trustee may make reasonable rules for action by or at a meeting of Holders. Any Registrar, Paying Agent or Conversion Agent may make reasonable rules for its functions.

SECTION 14.8. NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND EQUITY HOLDERS

No past, present or future director, officer, employee, incorporator, organizer, equity holder or member of the Issuer, any Subsidiary or any Guarantor, or any of their subsidiaries, as such, shall have any liability for any obligations of either the Issuer or the Guarantor under the Security, the Security Guarantees, this Indenture, the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Security.

SECTION 14.9. LEGAL HOLIDAYS

A “Legal Holiday” is a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York and the state in which the Corporate Trust Office is located are not required to be open. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 14.10. GOVERNING LAW

THE INDENTURE, THE SECURITIES AND THE SECURITY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

SECTION 14.11. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer, the Guarantor, any of the Issuer’s Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 14.12. SUCCESSORS

All agreements of the Issuer in this Indenture and the Securities shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors.

All agreements of the Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 13.5.

SECTION 14.13. SEVERABILITY

In case any provision in this Indenture or in the Securities is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 14.14. MULTIPLE COUNTERPARTS

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 14.15. TABLE OF CONTENTS, HEADINGS, ETC

The table of contents, cross-reference table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 14.16. REGISTRATION RIGHTS AGREEMENT

Certain Holders of Securities may be entitled to certain registration rights with respect to such Securities pursuant to, and subject to the terms of, the Registration Rights Agreement.

(Remainder of page intentionally left blank)

SIGNATURES

ISSUER:

WYNN RESORTS, LIMITED

/s/ RONALD J. KRAMER

Ronald J. Kramer
President

GUARANTOR:

WYNN RESORTS FUNDING, LLC

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

/s/ RONALD J. KRAMER

Ronald J. Kramer
President

TRUSTEE:

U.S. BANK NATIONAL ASSOCIATION

/s/ FRANK P. LESLIE III

Authorized Signatory

EXHIBIT A
[FORM OF FACE OF SECURITY]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO WYNN RESORTS, LIMITED OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND, UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DEFINITIVE FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.][1]

[THIS SECURITY, THE GUARANTEE AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NONE OF THIS SECURITY, THE GUARANTEE, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY OR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.]

[THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY OR AFFILIATE THEREOF, (B) FOR SO

1 These paragraphs should be included only if the Security is a Global Security.

LONG AS THE SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN MENTIONED TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR, OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE AND THE COMPANY. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.][2]

[THE HOLDER OF THIS SECURITY IS ENTITLED TO THE BENEFITS OF A REGISTRATION RIGHTS AGREEMENT (AS SUCH TERM IS DEFINED IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF) AND, BY ITS ACCEPTANCE HEREOF, AGREES TO BE BOUND BY AND TO COMPLY WITH THE PROVISIONS OF SUCH REGISTRATION RIGHTS AGREEMENT.][2]

2 These paragraphs to be included only if the Security is a Restricted Security.

EXHIBIT A

WYNN RESORTS, LIMITED

CUSIP: 983134 AA 5 R-_____

6% CONVERTIBLE SUBORDINATED DEBENTURE DUE 2015

Wynn Resorts, Limited, a Nevada corporation (the "Company," which term shall include any successor corporation under the Indenture referred to on the reverse hereof), for value received, promises to pay to CEDE & CO., or registered assigns, the principal sum of _____ ($_____) on July 15, 2015.

Interest Payment Dates: July 15 and January 15

Record Dates: July 1 and January 1

This Security is convertible as specified on the other side of this Security. Additional provisions of this Security are set forth on the other side of this Security.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

WYNN RESORTS, LIMITED

By: _____

Name:
Title:

Dated: _____

Trustee's Certificate of Authentication: This is one of the Securities referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By:

_____

Authorized Signatory

[FORM OF REVERSE SIDE OF SECURITY]

WYNN RESORTS, LIMITED
6% CONVERTIBLE SUBORDINATED DEBENTURES DUE 2015

1. INTEREST

Wynn Resorts, Limited, a Nevada corporation (the "Company," which term shall include any successor corporation under the Indenture hereinafter referred to), promises to pay interest on the principal amount of this Security at the rate of 6% per annum. The Company shall pay interest semiannually on July 15 and January 15 of each year, commencing January 15, 2004. Interest on the Securities shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from July 7, 2003; provided, however, that if there is not an existing default in the payment of interest and if this Security is authenticated between a record date referred to on the face hereof and the next succeeding interest payment date, interest shall accrue from such interest payment date. Interest will be computed on the basis of a 360-day year of twelve 30-day months. Any reference herein to interest accrued or payable as of any date shall include any Additional Interest accrued or payable on such date as provided in the Registration Rights Agreement.

2. METHOD OF PAYMENT

The Company shall pay accrued and unpaid interest (including Additional Interest), if any, on this Security (except defaulted interest) to the person who is the Holder of this Security at the close of business on July 1 and January 1, as the case may be, immediately prior to the related interest payment date. The Holder must surrender this Security to a Paying Agent to collect payment of principal. The Company will pay principal and accrued and unpaid interest (including Additional Interest), if any, in money of the United States that at the time of payment is legal tender for payment of public and private debts. The Company may, however, pay principal and accrued and unpaid interest (including Additional Interest), if any, in respect of any Certificated Security by check or wire payable in such money; provided, however, that a Holder with an aggregate principal amount in excess of $1,000,000 will be paid by wire transfer in immediately available funds at the election of such Holder if such Holder has provided wire transfer instructions to the Company. The Company may mail an interest check to the Holder's registered address. Notwithstanding the foregoing, so long as this Security is registered in the name of a Depositary or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee.

3. PAYING AGENT, REGISTRAR AND CONVERSION AGENT

Initially, U.S. Bank National Association (the "Trustee", which term shall include any successor trustee under the Indenture hereinafter referred to) will act as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar or Conversion Agent without notice to the Holder. The Company or any of its Subsidiaries may, subject to certain limitations set forth in the Indenture, act as Paying Agent or Registrar.

4. INDENTURE, LIMITATIONS

This Security is one of a duly authorized issue of Securities of the Company designated as its 6% Convertible Subordinated Debentures due 2015 (the "Securities"), issued under an Indenture dated as of July 7, 2003 (together with any supplemental indentures thereto, the "Indenture"), among the Company, Wynn Resorts Funding, LLC (the "Guarantor") and the Trustee. The terms of this Security include those stated in the Indenture and those required by or made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended, as in effect on the date of the Indenture. This Security is subject to all such terms, and the Holder of this Security is referred to the Indenture and said Act for a statement of them. Capitalized terms herein are used as defined in the Indenture unless otherwise defined herein.

The Securities are subordinated unsecured (except as described in the Indenture and in the Collateral Documents) obligations of the Company limited to up to $250,000,000 aggregate principal amount (subject to Section 2.2 of the Indenture).

5. REDEMPTION

There is no sinking fund for the Securities. On or after July 20, 2007, the Securities are redeemable at the option of the Company at any time as a whole, or from time to time in part, at the redemption prices set out below (the "Redemption Prices"), together with accrued and unpaid interest to, but excluding, the Redemption Date. However, if a Redemption Date is an interest payment date, the semi-annual payment of interest becoming due on such date shall be payable to the holder of record as of the relevant record date and the redemption price shall not include such interest payment.

The table below shows redemption prices of a Security per $1,000 principal amount if redeemed during the periods described below.

Period	Redemption Price
Beginning July 20, 2007 and ending on July 14, 2008	103.600%
Beginning July 15, 2008 and ending on July 14, 2009	103.000%
Beginning July 15, 2009 and ending on July 14, 2010	102.400%
Beginning July 15, 2010 and ending on July 14, 2011	101.800%
Beginning July 15, 2011 and ending on July 14, 2012	101.200%
Beginning July 15, 2012 and ending on July 14, 2013	100.600%
Beginning July 15, 2013 and thereafter	100.000%

Notice of redemption will be mailed by first-class mail at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at its registered address. Securities in denominations larger than $1,000 may be redeemed in part, but only in whole multiples of $1,000. On and after the Redemption Date, subject to the deposit with the Paying Agent of funds sufficient to pay the Redemption Price plus accrued and unpaid interest (including Additional Interest), if any, accrued to, but excluding, the Redemption Date, interest shall cease to accrue on Securities or portions of them called for redemption.

6. PURCHASE OF NOTES AT OPTION OF HOLDER UPON A CHANGE OF CONTROL

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase all or any part specified by the Holder (so long as the principal amount of such part is $1,000 or an integral multiple of $1,000 in excess thereof) of the Securities held by such Holder on the date that is 30 Business Days after the occurrence of a Change of Control, in cash, at a purchase price equal to 100% of the principal amount thereof together with accrued and unpaid interest (including Additional Interest), if any, up to, but excluding, the Change of Control Purchase Date. The Holder shall have the right to withdraw any Change of Control Purchase Notice (in whole or in a portion thereof that is $1,000 or an integral multiple of $1,000 in excess thereof) at any time prior to the close of business on the Business Day immediately prior to the Change of Control Purchase Date by delivering a written notice of withdrawal to the Paying Agent in accordance with the terms of the Indenture.

7. CONVERSION

A Holder of a Security may convert the principal amount of such Security (or any portion thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof) into Common Stock at any time prior to the close of business on the Business Day immediately prior to the Final Maturity Date, at the Conversion Price then in effect; provided, however, that, if such Security is called for redemption or submitted or presented for purchase pursuant to Article 3 of the Indenture, such conversion right shall terminate at the close of business on the Redemption Date or at the close of business on the Business Day immediately prior to the Change of Control Purchase Date, as the case may be, for such Security or such earlier date as the Holder presents such Security for redemption or for purchase (unless the Company shall default in making the redemption payment or Change of Control Purchase Price payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is redeemed or purchased, as the case may be).

The initial Conversion Price is $23.00 per share, subject to adjustment under certain circumstances as provided in the Indenture. The number of shares of Common Stock issuable upon conversion of a Security is determined by dividing the principal amount of the Security or portion thereof converted by the Conversion Price in effect on the Conversion Date, as adjusted pursuant to the Indenture. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the Sale Price (as defined in the Indenture) of the Common Stock on the Trading Day immediately prior to the Conversion Date.

To convert a Security, a Holder must (a) complete and manually sign the conversion notice on the back of the Security or facsimile of the conversion notice and deliver such notice to a Conversion Agent, (b) surrender the Security to a Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by a Registrar or a Conversion Agent, and (d) pay any funds related to interest, if required to be paid by such Holder under Section 4.2 of the Indenture and pay any transfer or similar tax, if required to be paid by such Holder under Section 4.4 of the Indenture. A Holder may convert a portion of a Security equal to $1,000 or any integral multiple thereof.

A Security in respect of which a Holder had delivered a Change of Control Purchase Notice exercising the option of such Holder to require the Company to purchase such Security may be converted only if the Change of Control Purchase Notice is withdrawn in accordance with the terms of the Indenture.

In lieu of delivery of shares of Common Stock upon notice of conversion of any Securities (for all or any portion of the Securities), the Company may elect to pay Holders surrendering Securities an amount in cash per Security (or a portion of a Security) equal to the Applicable Stock Price multiplied by the Conversion Rate in effect on the Conversion Date. The “Applicable Stock Price” is equal to the average of the Sale Prices of Common Stock over the three-Trading Day period starting the third Trading Day following the Conversion Date of the Securities appropriately adjusted pursuant to Section 4.6 of the Indenture. The Company will inform the Holders through the Trustee no later than two Business Days following the Conversion Date of the Company’s election to deliver shares of Common Stock or to pay cash in lieu of delivery of such shares, unless the Company has already informed Holders of the Company’s election in connection with a Redemption Notice. If the Company elects to deliver all of such payment in shares of Common Stock, the shares will be delivered through the Conversion Agent no later than the third Business Day following the determination of the Applicable Stock Price. If the Company elects to pay all or a portion of such payment in cash, the payment, including any delivery of the Common Stock, will be made to Holders surrendering Securities no later than the tenth Business Day following the applicable Conversion Date. If an Event of Default (other than a default in a cash payment upon conversion of the Securities) has occurred and is continuing, the Company shall not pay cash upon conversion of any Securities or portion of a Security (other than cash for fractional shares).

8. SUBORDINATION

The payment of principal of and accrued and unpaid interest on the Securities will be subordinated in right of payment, as set forth in the Indenture, to the prior payment in full in cash or payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness, whether outstanding at the date of this Indenture or thereafter incurred.

9. DENOMINATIONS, TRANSFER, EXCHANGE

The Securities are in registered form, without coupons, in denominations of $1,000 and integral multiples of $1,000. A Holder may register the transfer of or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or other

governmental charges that may be imposed in relation thereto by law or permitted by the Indenture.

10. PERSONS DEEMED OWNERS

The Holder of a Security may be treated as the owner of it for all purposes.

11. UNCLAIMED MONEY

If money for the payment of principal or accrued and unpaid interest (including Additional Interest), if any, remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Company at its written request, subject to applicable unclaimed property law. After that, Holders entitled to money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

12. AMENDMENT, SUPPLEMENT AND WAIVER

Subject to certain exceptions, the Indenture or the Securities may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding, and an existing default or Event of Default and its consequence or compliance with any provision of the Indenture or the Securities may be waived in a particular instance with the consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. Without the consent of or notice to any Holder, the Company and the Trustee may amend or supplement the Indenture or the Securities to, among other things, cure any ambiguity, defect or inconsistency or make any other change that does not adversely affect the rights of any Holder. In addition to the foregoing, any amendment to, or waiver of, the provisions of the Indenture relating to subordination pursuant to Article 5 thereof that adversely affects the rights of the Holders of the Securities will require the consent of the Holders of at least 75% in aggregate principal amount of Securities then outstanding.

13. SUCCESSOR ENTITY

When a successor corporation assumes all the obligations of its predecessor under the Securities and the Indenture in accordance with the terms and conditions of the Indenture, the predecessor corporation (except in certain circumstances specified in the Indenture) shall be released from those obligations.

14. DEFAULTS AND REMEDIES

If an Event of Default occurs and is continuing (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization), then in every such case, unless the principal of all of the Securities shall have already become due and payable, either the Trustee or the Holders of 25% in aggregate principal amount of Securities then outstanding may declare all the Securities to be due and payable immediately in the manner and with the effect provided in the Indenture. Holders of Securities may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Securities. Subject to certain limitations, Holders of a majority in

aggregate principal amount of the Securities then outstanding may direct the Trustee in its exercise of any trust or power. If an Event of Default occurs as a result of certain events of bankruptcy, insolvency or reorganization of the Company, unpaid principal of the Securities then outstanding shall become due and payable immediately without any declaration or other act on the part of the Trustee or any Holder, all as and to the extent provided in the Indenture. The Trustee may withhold from Holders of Securities notice of any continuing Default or Event of Default (except a Default in payment of principal or interest), if it determines that withholding notice is in their interest. The Company is required to file periodic reports with the Trustee as to the absence of defaults or Events of Default interest.

15. TRUSTEE DEALINGS WITH THE COMPANY

U.S. Bank National Association, the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from and perform services for the Company or an Affiliate of the Company, and may otherwise deal with the Company or an Affiliate of the Company, as if it were not the Trustee.

16. NO RECOURSE AGAINST OTHERS

No past, present or future director, officer, employee, incorporator, organizer, equity holder or member of the Company, any Subsidiary or any Guarantor, or any of their subsidiaries, as such, shall have any liability for any obligations of either the Company or the Guarantor under this Security, the Security Guarantees, the Indenture, the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting this Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of this Security.

17. AUTHENTICATION

This Security shall not be valid until the Trustee or an authenticating agent manually signs the certificate of authentication on the other side of this Security.

18. ABBREVIATIONS AND DEFINITIONS

Customary abbreviations may be used in the name of the Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and UGMA (= Uniform Gifts to Minors Act).

All terms defined in the Indenture and used in this Security but not specifically defined herein are defined in the Indenture and are used herein as so defined.

19. INDENTURE TO CONTROL; GOVERNING LAW

In the case of any conflict between the provisions of this Security and the Indenture, the provisions of the Indenture shall control. The Indenture, the Securities and the Security Guarantee will be governed by and construed in accordance with the laws of the State of

New York, including, without limitation, Section 5-1401 of the New York General Obligations Law.

The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture. Requests may be made to: Wynn Resorts, Limited, 3145 Las Vegas Boulevard South, Las Vegas, NV, 89109, Facsimile: (702) 733-4444, Attention: Vice President – Investor Relations.

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

_____

(Print or type assignee's name, address and zip code)

and irrevocably appoint

_____

agent to transfer this Security on the books of the Company. The agent may substitute another to act for him or her.

Your Signature:

Date: _____ _____

(Sign exactly as your name appears on the other side of this Security)

*Signature guaranteed by:

By: _____

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* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

CONVERSION NOTICE

To convert this Security into Common Stock of the Company, check the box: ☐

To convert only part of this Security, state the principal amount to be converted (must be $1,000 or a integral multiple of $1,000): $_____.

If you want the stock certificate made out in another person's name, fill in the form below:

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

_____

(Print or type assignee's name, address and zip code)

Your Signature:

Date: _____ _____

(Sign exactly as your name appears on the other side of this Security)

*Signature guaranteed by:

By: _____

* The signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

OPTION TO ELECT REPURCHASE
UPON A CHANGE OF CONTROL

To: Wynn Resorts, Limited

The undersigned registered owner of this Security hereby irrevocably acknowledges receipt of a notice from Wynn Resorts, Limited (the "Company") as to the occurrence of a Change of Control with respect to the Company and requests and instructs the Company to purchase the entire principal amount of this Security, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Security at the Change of Control Purchase Price, together with accrued and unpaid interest (including Additional Interest, if any) to, but excluding, such date, to the registered Holder hereof.

Dated: _____

_____

_____

Signature(s)

Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

_____

Signature Guaranty

Principal amount to be purchased
(in an integral multiple of $1,000, if less than all):

_____

NOTICE: The signature to the foregoing Election must correspond to the name as written upon the face of this Security in every particular, without alteration or any change whatsoever.

SCHEDULE OF EXCHANGES OF NOTES[3]

The following exchanges, repurchases or conversions of a part of this global Security have been made:

Principal Amount of this Global Security Following Such Decrease Date of Exchange (or Increase)	Authorized Signatory of Securities Custodian	Amount of Decrease in Principal Amount of this Global Security	Amount of Increase in Principal Amount of this Global Security

[3] This schedule should be included only if the Security is a Global Security.

EXHIBIT C

[FORM OF NOTATION OF GUARANTEE]

For value received, Wynn Resorts Funding, LLC (the "Guarantor") (which term includes any successor Person under the Indenture) has unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture dated as of July 7, 2003 (the "Indenture") among Wynn Resorts, Limited, (the "Company"), the Guarantor and U.S. Bank National Association, as trustee (the "Trustee"), (a) the due and punctual payment of the principal of, premium and accrued and unpaid interest (including Additional Interest), if any, on the Securities (as defined in the Indenture), whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal of and accrued and unpaid interest (including Additional Interest), if any, on the Securities, if lawful, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantor to the Holders of Securities and to the Trustee pursuant to the Security Guarantee and the Indenture are expressly set forth in Article 12 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Security Guarantee. Each Holder of a Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee, on behalf of such Holder, to take such action as may be necessary or appropriate to effectuate the subordination as provided in the Indenture and (c) appoints the Trustee attorney-in-fact of such Holder for such purpose; provided, however, that the Indebtedness evidenced by this Security Guarantee shall cease to be so subordinated and subject in right of payment upon any defeasance of this Security in accordance with the provisions of the Indenture.

WYNN RESORTS FUNDING, LLC

By: _____

Name:
Title:

Exhibit 4.3

REGISTRATION RIGHTS AGREEMENT

Dated as of July 7, 2003

among

Wynn Resorts, Limited,

Wynn Resorts Funding, LLC

and

Deutsche Bank Securities Inc.

and

SG Cowen Securities Corporation

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "Agreement") is made and entered into this 7th day of July, 2003, among Wynn Resorts, Limited, a Nevada corporation (the "Company"), Wynn Resorts Funding, LLC, a Nevada limited liability company (the "Guarantor"), and Deutsche Bank Securities Inc. and SG Cowen Securities Corporation (collectively, the "Initial Purchasers").

This Agreement is made pursuant to that certain Purchase Agreement, dated June 30, 2003, among the Company, the Guarantor and the Initial Purchasers (the "Purchase Agreement"), which provides for the sale by the Company to the Initial Purchasers of up to $250,000,000 aggregate principal amount (including $50,000,000 aggregate principal amount of Debentures as to which the Initial Purchasers may exercise their option set forth in Section 2(b) of the Purchase Agreement) of the Company's 6% Convertible Subordinated Debentures due 2015 (the "Debentures"), guaranteed by the Guarantor (the "Subsidiary Guarantee"). The Company will also guarantee the Guarantor's obligations under the Subsidiary Guarantee (together with the Subsidiary Guarantee, the "Guarantee"). In order to induce the Initial Purchasers to enter into the Purchase Agreement and in satisfaction of a condition to the Initial Purchasers' obligations thereunder, the Company and the Guarantor have agreed to provide to the Initial Purchasers and their direct and indirect transferees and assigns the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the closing under the Purchase Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

1. Definitions.

As used in this Agreement, the following capitalized defined terms shall have the following meanings:

"1933 Act" shall mean the Securities Act of 1933, as amended from time to time, and the rules and regulations of the SEC promulgated thereunder.

"1934 Act" shall mean the Securities Exchange Act of l934, as amended from time to time, and the rules and regulations of the SEC promulgated thereunder.

"Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Closing Date" shall mean the Closing Time as defined in the Purchase Agreement.

"Common Stock" shall mean common stock of the Company.

"Company" shall have the meaning set forth in the preamble to this Agreement and also includes the Company's successors.

"Debentures" shall have the meaning set forth in the preamble to this Agreement.

"Depositary" shall mean The Depository Trust Company, or any other depositary appointed by the Company; provided, however, that any such depositary must have an address in The Borough of Manhattan, The City of New York.

"Effectiveness Period" shall have the meaning set forth in Section 2.1(a) hereof.

"Effectiveness Target Date" shall mean the two hundred fiftieth (250^{th}) day after the Closing Date.

"Event Date" shall have the meaning set forth in Section 2.4 hereof.

"Filing Date" shall mean the one hundred sixtieth (160^{th}) day after the Closing Date.

"Guarantee" shall have the meaning set forth in the preamble to this agreement.

"Guarantor" shall have the meaning set forth in the preamble to this agreement.

"Holder" shall mean an Initial Purchaser, for so long as it owns any Registrable Securities, and each of its successors, assigns and direct and indirect transferees who become registered owners of Registrable Securities under the Indenture.

"Indenture" shall mean the Indenture relating to the Securities, dated as of July 7, 2003, among the Company, the Guarantor and U.S. Bank, National Association, as trustee, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Initial Purchasers" shall have the meaning set forth in the preamble to this Agreement.

"Liquidated Damages" shall have the meaning set forth in Section 2.4 hereof.

"Majority Holders" shall mean the Holders of a majority of the aggregate principal amount of Registrable Securities outstanding; provided that, for purpose of this definition, a Holder of shares of Common Stock issued upon conversion of the Debentures that constitute Registrable Securities shall be deemed, for the purposes of this definition, to hold the aggregate principal amount of Debentures from which such Common Stock was converted.

"NASD" shall mean the National Association of Securities Dealers, Inc.

"Person" shall mean an individual, partnership, corporation, limited liability company, joint venture, trust or unincorporated organization, or a government or agency or political subdivision thereof.

"Prospectus" shall mean the prospectus included in any Registration Statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement, and all other amendments and supplements to any such prospectus, including post-effective amendments, and in each case including all material incorporated or deemed to be incorporated by reference therein.

"Purchase Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Registrable Securities" shall mean the Securities, until such securities have been converted or exchanged and, at all times subsequent to any conversion or exchange, any securities into which or for which such securities have been converted or exchanged, and any security with respect thereto upon any stock dividend, split, merger or similar event; provided, however, that any Securities shall cease to be Registrable Securities when (i) a Registration Statement with respect to such Securities shall have been declared effective under the 1933 Act and such Securities shall have been disposed of pursuant to such Registration Statement, (ii) such Securities shall have been sold to the public pursuant to Rule l44 (or any similar provision then in force, but not Rule 144A) under the 1933 Act, (iii) the two-year anniversary of the Closing Date, or (iv) such Securities shall have ceased to be outstanding.

"Registration Default" shall have the meaning set forth in Section 2.4 hereof.

"Registration Expenses" shall mean any and all expenses incident to performance of or compliance by the Company and the Guarantor with this Agreement, including without limitation: (i) all SEC, stock exchange or NASD registration and filing fees, (ii) all fees and expenses incurred in connection with compliance with state or other securities or blue sky laws and compliance with the rules of the NASD (including fees and disbursements of counsel for any underwriters or Holders in connection with qualification of any Registrable Securities under state or other securities or blue sky laws and any filing with and review by the NASD), (iii) all expenses of any Persons in preparing or assisting the Company and the Guarantor in preparing, word processing, printing and distributing any Registration Statement, any Prospectus, any amendments or supplements thereto, any underwriting agreements, securities sales agreements, certificates representing the Securities and other documents relating to the performance of and compliance with this Agreement, (iv) all fees and expenses incurred in connection with the listing, if any, of any of the Registrable Securities on any securities exchange or exchanges or on any quotation system, (v) all rating agency fees, (vi) all fees and disbursements relating to the qualification of the Indenture under applicable securities laws, (vii) the fees and disbursements of counsel for the Company and the Guarantor and the fees and expenses of independent public accountants for the Company and the Guarantor, including the expenses of any special audits or "cold comfort" letters required by or incident to such performance and compliance, (viii) the fees and expenses of a "qualified independent underwriter" as defined by Conduct Rule 2720 of the NASD (if required by the NASD rules) and the fees and disbursements of its counsel, (ix) the fees and expenses of the Trustee, any registrar, any depositary, any paying agent, any escrow agent or any custodian, in each case including their respective counsel, (x) the reasonable fees and disbursements of one law firm representing the Initial Purchasers and the Holders of Registrable Securities and (xi) any fees and disbursements of the underwriters customarily paid by issuers or sellers of securities and the fees and expenses of any special experts retained by the Company and/or the Guarantor in connection with any Registration Statement, but excluding underwriting discounts and commissions and any transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a Holder.

"Registration Statement" shall mean any registration statement of the Company and the Guarantor pursuant to the provisions of Section 2 of this Agreement that covers all of the

Registrable Securities held by Holders that have provided the information required pursuant to the terms of Section 2.1(d) hereof on an appropriate form under Rule 415 under the 1933 Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated or deemed to be incorporated by reference therein.

"SEC" shall mean the United States Securities and Exchange Commission or any successor agency thereto.

"Securities" shall mean the Debentures, the Guarantee and the shares of Common Stock issuable upon conversion of the Debentures.

"Shelf Registration" shall have the meaning set forth in Section 2.1(a) hereof.

"TIA" shall mean the Trust Indenture Act of 1939, as amended from time to time, and the rules and regulations of the SEC promulgated thereunder.

"Trustee" shall mean the trustee with respect to the Securities under the Indenture.

"Underwriter" shall have the meaning set forth in Section 4(a) hereof.

2. Registration Under the 1933 Act.

2.1 Shelf Registration.

(a) As promptly as practicable, but no later than the Filing Date, the Company and the Guarantor shall file with the SEC, a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 under the 1933 Act covering all of the Registrable Securities held by Holders that have provided the information required pursuant to the terms of Section 2.1(d) hereof (the "Shelf Registration"). The Shelf Registration shall be on an appropriate form permitting registration of such Registrable Securities for resale by the Holders in the manner or manners reasonably designated by them (including, without limitation, one or more underwritten offerings). Each of the Company and the Guarantor shall use its commercially reasonable best efforts to cause the Registration Statement to be declared effective by the SEC as promptly as practicable, but no later than the Effectiveness Target Date, and to keep such Registration Statement continuously effective, supplemented and amended as required, in order to permit the Prospectus forming a part thereof to be useable by the Holders until the earliest of (i) the date when the Holders are able to sell all of their Registrable Securities immediately without restriction pursuant to the volume limitation provisions of Rule 144 under the 1933 Act or otherwise, (ii) the date when all of the Registrable Securities covered by the Registration Statement have been sold pursuant to the Registration Statement (iii) the two-year anniversary date of the Closing Date, and (iv) the date no Registrable Securities are outstanding (the "Effectiveness Period"); provided, however, that the Effectiveness Period in respect of the Registration Statement shall be extended to the extent required to permit dealers to comply with the applicable prospectus delivery requirements of Rule 174 under the 1933 Act and as otherwise provided herein.

(b) Notwithstanding any other provisions hereof, each of the Company and the Guarantor shall use its commercially reasonable best efforts to ensure that (i) any Registration Statement and any amendment thereto and any Prospectus forming a part thereof and any supplements thereto complies in all material respects with the 1933 Act, (ii) any Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) any Prospectus forming a part of any Registration Statement and any amendment or supplement to such Prospectus, does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) The Company and the Guarantor further agree, if necessary, to supplement or amend the Registration Statement, as required by Section 3(b) below, and to furnish to the Holders of Registrable Securities copies of any such supplement or amendment promptly after its being used or filed with the SEC.

(d) No Holder of Registrable Securities may include any of its Registrable Securities in the Registration Statement pursuant to this Agreement unless the Holder furnishes to the Company in writing such information as the Company may reasonably request for use in connection with the Registration Statement or Prospectus included therein and in any application to be filed with or under state securities laws (the form of questionnaire is attached as Annex A to the Offering Memorandum). Before the effectiveness of the Registration Statement, each Holder of Registrable Securities wishing to resell Registrable Securities pursuant to a Registration Statement and related Prospectus agrees to furnish this information to the Company in writing at least five business days prior to any intended distribution of Registrable Securities under the Registration Statement and the Company and the Guarantor agree to include this information in the Registration Statement in a manner so that upon effectiveness the Holders will be permitted to deliver the Prospectus to purchasers of the Holder's Securities. From and after the date of the Registration Statement is first declared effective, upon receipt of a completed questionnaire (in the form attached as Annex A to the Offering Memorandum), the Company and the Guarantor will, as promptly as practicable but in any event within 10 business days of receipt, file any amendments or supplements to the Registration Statement necessary for Holders to be named as selling securityholders in the Prospectus contained therein to be permitted to deliver the Prospectus to purchasers of the Holder's Securities (subject to the right of the Company and the Guarantor to suspend the Registration Statement as described in Sections 3(e)(ii), 3(e)(iii), 3(e)(v) through 3(e)(vii) and 3(j)(C) below); provided, however, that the Company and the Guarantor will not be obligated to file more than one such amendment or supplement to the Registration Statement in any 30-day period following the date the Registration Statement is declared effective for the purpose of naming Holders as selling securityholders who were not named in the Registration Statement at the time of effectiveness. Holders that do not complete and deliver the questionnaire in a timely manner will not be named as selling securityholders in the Prospectus. Each Holder as to which the Registration Statement is being effected agrees to furnish promptly to the Company all information required to be disclosed in order to make information previously furnished to the Company by the Holder not materially misleading.

2.2 Expenses. The Company shall pay all Registration Expenses in connection with the Shelf Registration and any Registration Statement. Each Holder shall pay all fees and disbursements of its counsel (other than as set forth in the preceding sentence or in the definition of Registration Expenses) and all underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Securities pursuant to the Registration Statement.

2.3 Effectiveness. The Registration Statement shall not be deemed to have become effective unless it has been declared effective by the SEC; provided, however, that if, after it has been declared effective, the offering of Registrable Securities pursuant to the Registration Statement is interfered with by any stop order, injunction or other order or requirement of the SEC or any other governmental agency or court, such Registration Statement shall be deemed not to have been effective during the period of such interference, until the offering of Registrable Securities pursuant to such Registration Statement may legally resume.

2.4 Liquidated Damages. The Company, the Guarantor and the Initial Purchasers agree that the Holders of Registrable Securities will suffer damages if the Company or the Guarantor fails to fulfill its obligations under Section 2.1 hereof and that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, each of the Company and the Guarantor, jointly and severally, agrees to pay, as liquidated damages and not as a penalty, on the Registrable Securities ("Liquidated Damages") under the circumstances and to the extent as set forth below. In the event that (a) the Registration Statement has not been filed with the SEC on or prior to the Filing Date, (b) the Registration Statement is not declared effective by the SEC on or prior to the Effectiveness Target Date, (c) the Registration Statement has been declared effective by the SEC and such Registration Statement ceases to be effective or usable at any time during the Effectiveness Period for any reason (other than as a result of the Company's and the Guarantor's exercise of their right to suspend the use of the Registration Statement and the Prospectus for a period not to exceed the period set forth in Section 2.4(d) below, as set forth in Section 3(j) hereof) without being succeeded within five business days by a post-effective amendment to such Registration Statement or a report filed with the SEC pursuant to the 1934 Act that cures such failure or (d) the Company or the Guarantor suspends the use of any Prospectus related to the Registration Statement for a period exceeding forty-five (45) days in any consecutive three-month period or exceeding an aggregate of ninety (90) days in any consecutive twelve-month period (each such event referred to in clauses (a) through (d) above, a "Registration Default"), then the interest rate borne by the Debentures shall be increased as Liquidated Damages (x) by one-quarter of one percent (0.25%) per annum upon the occurrence of each Registration Default up to and including the ninetieth (90th) day following such Registration Default and (y) by one-half of one percent (0.50%) from and after the ninety-first (91st) day following the occurrence of such Registration Default, provided that the aggregate increase in such interest rate will in no event exceed one half of one percent (0.50%) per annum. Upon the cure of such Registration Default, the accrual of Liquidated Damages will cease and the interest rate will revert to the original rate so long as no other Registration Default shall have occurred and shall be continuing at such time; provided, however, that, if after any such reduction in interest rate, one or more Registration Defaults shall again occur, the interest rate shall again be increased pursuant to the foregoing provisions. Notwithstanding the foregoing, no Liquidated Damages shall accrue as to any Debenture or as to any Common Stock issuable upon the conversion of a Debenture from and after the earlier of (x) the date such security is no longer

a Registrable Security and (y) the expiration of the Effectiveness Period. The rate of accrual of the Liquidated Damages with respect to any period shall not exceed the rate provided for in this Section 2.4 notwithstanding the occurrence of multiple concurrent Registration Defaults. A Registration Default under clause (a) above shall be cured on the date that the Shelf Registration is filed with the SEC; a Registration Default under clause (b) above shall be cured on the date that the Shelf Registration is declared effective by the SEC; a Registration Default under clause (c) above shall be cured on the date the Shelf Registration is declared effective or useable; and a Registration Default under clause (d) above shall be cured on the date the Prospectus is declared useable by the Company and the Guarantor. In the event of a Registration Default, the Company and the Guarantor shall pay Liquidated Damages to (x) the holders of Debentures based on the aggregate principal amount held by such holders of Debentures and (y) the holders of Common Stock issued upon conversion of the Debentures based on the aggregate principal amount of such Debentures from which such holders' Common Stock was converted.

The Company shall notify the Trustee within three business days after each and every date on which a Registration Default occurs (an "Event Date"). Liquidated Damages shall be paid by the Company and the Guarantor to the Holders of Debentures by depositing with the Trustee, in trust, for the benefit of the Holders of Debentures, on or before the applicable semiannual interest payment date, immediately available funds in sums sufficient to pay the Liquidated Damages then due. Such Liquidated Damages due shall be payable on each interest payment date to the record Holder of Securities entitled to receive the interest payment to be paid on such date as set forth in the Indenture. Liquidated Damages in respect of Common Stock issued upon conversion of Debentures shall be payable by the Company and the Guarantor to the holders of Common Stock issued upon conversion of such Debentures concurrently with the payment of Liquidated Damages to the holders of Debentures. Each obligation to pay Liquidated Damages shall be deemed to accrue from and including the day following the applicable Event Date but excluding the day on which the Registration Default (or if more than one Registration Default shall have occurred, the last Registration Default) is cured. When such Registration Default is cured, accrued and unpaid Liquidated Damages will be paid in cash to the record holder as of the date of such cure.

2.5 Specific Enforcement. Without limiting the remedies available to the Initial Purchasers and the Holders, the Company and the Guarantor acknowledge that any failure by the Company or the Guarantor to comply with its obligations under this Section 2 may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it would not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchasers or any Holder may obtain such relief as may be required to specifically enforce the obligations of the Company and Guarantor under this Section 2.

3. Registration Procedures.

In connection with the obligations of the Company and the Guarantor with respect to the Shelf Registration and the Registration Statement pursuant to Section 2 hereof, each of the Company and the Guarantor agrees to:

(a) prepare and file with the SEC by the Filing Date a Registration Statement within the period specified in Section 2, on the appropriate form under the 1933 Act, which form (i) shall be selected by the Company and the Guarantor, (ii) shall be available for the sale of the Registrable Securities by the selling Holders thereof, and (iii) shall comply as to form in all material respects with the requirements of the applicable form and include or incorporate by reference all financial statements required by the SEC to be filed therewith or incorporated by reference therein, and use its commercially reasonable best efforts to cause such Registration Statement to become effective and remain effective in accordance with the terms of this Agreement (including, without limitation, Section 3(j) hereof);

(b) subject to Section 3(j) hereof, prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary under applicable law to keep such Registration Statement effective for the applicable period; cause each Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provision then in force) under the 1933 Act; and use commercially reasonable best efforts to comply with the provisions of the 1933 Act and the 1934 Act with respect to the disposition of all securities covered by a Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the selling Holders thereof;

(c) (i) notify each Holder of Registrable Securities, as promptly as practicable, but in any event no less than five business days prior to filing, that a Registration Statement with respect to the Registrable Securities is being filed and advising such Holders that the distribution of Registrable Securities will be made in accordance with the method elected by the Majority Holders; (ii) furnish to each Holder of Registrable Securities, to counsel for the Holders, to counsel for the Initial Purchasers and to each underwriter of an underwritten offering of Registrable Securities, if any, without charge, as many copies of each Prospectus, including each preliminary Prospectus, and any amendment or supplement thereto and such other documents as such Holder, counsel or underwriter may reasonably request, including financial statements and schedules and, if such Holder, counsel or underwriter so requests, all exhibits (including those incorporated by reference) in order to facilitate the public sale or other disposition of the Registrable Securities; and (iii) subject to any notice by the Company or the Guarantor in accordance with Section 3(j) of the existence of any fact or event of the kind described in Section 3(e)(v) or 3(e)(vi), the Company and the Guarantor hereby consent to the use of the Prospectus, including each preliminary Prospectus, or any amendment or supplement thereto by each of the Holders and underwriters of Registrable Securities in connection with the offering and sale of the Registrable Securities covered by any Prospectus or any amendment or supplement thereto;

(d) prior to any public offering of the Registrable Securities pursuant to a Registration Statement, use its commercially reasonable best efforts to register or qualify the Registrable Securities under all applicable state securities or “blue sky” laws of such jurisdictions as any Holder of Registrable Securities covered by a Registration Statement and each underwriter of an underwritten offering of Registrable Securities shall request, to cooperate with the Holders and the underwriters of any Registrable Securities in connection with any filings required to be made with the NASD, to keep each such registration or qualification effective during the period such Registration Statement is required to be effective, and do any and all other acts and things which may be necessary or advisable to enable such Holder to

consummate the disposition in each such jurisdiction of such Registrable Securities owned by such Holder; provided, however, that neither the Company nor the Guarantor shall be required to (x) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d) or (y) take any action which would subject it to general service of process or taxation in any such jurisdiction if it is not then so subject;

(e) notify each Holder of Registrable Securities and, if known, counsel for such Holder promptly and, if requested by such Holder or counsel, confirm such advice in writing promptly (i) when a Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective, (ii) of any request by the SEC or any state securities authority for post-effective amendments or supplements to a Registration Statement or Prospectus or for additional information after a Registration Statement has become effective, (iii) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, (iv) if between the effective date of a Registration Statement and the closing of any sale of Registrable Securities covered thereby, the representations and warranties of the Company and/or the Guarantor contained in any underwriting agreement, securities sales agreement or other similar agreement, if any, relating to such offering cease to be true and correct in all material respects, (v) that there has been an event or the discovery of facts (without any specificity of the event or fact) during the period a Registration Statement is effective which makes any statement made in such Registration Statement or the related Prospectus untrue in any material respect or which constitutes an omission to state a material fact in such Registration Statement or Prospectus or which requires the making of any changes in such Registration Statement or Prospectus in order to make the statements therein not misleading, (vi) of the receipt by the Company or the Guarantor of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose and (vii) of any determination by the Company and the Guarantor that a post-effective amendment to a Registration Statement would be appropriate;

(f) furnish counsel for the Holders of Registrable Securities and, if known, counsel for any underwriters of Registrable Securities copies of any comment letters received from the SEC or any other request by the SEC or any state securities authority for amendments or supplements to a Registration Statement and Prospectus or for additional information;

(g) use its commercially reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement as soon as practicable and provide immediate notice to each Holder of the withdrawal of any such order;

(h) furnish to each Holder of Registrable Securities, and each underwriter, if any, without charge, at least one conformed copy of each Registration Statement and any post-effective amendment thereto, including financial statements and schedules (without documents incorporated or deemed to be incorporated therein by reference or exhibits thereto, unless requested);

(i) cooperate with the selling Holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends; and cause such Registrable Securities to be in such denominations (consistent with the provisions of the Indenture) and registered in such names as the selling Holders or the underwriters, if any, request in writing at least three business days prior to the closing of any sale of Registrable Securities;

(j) upon (A) the occurrence of any event described in Section 3(e)(iii) hereof, (B) the occurrence of any event or the discovery of any facts, each as contemplated by Sections 3(e)(v) and 3(e)(vi) hereof, or (C) the occurrence or existence of any corporate development that, in the reasonable discretion of the Company and the Guarantor, makes it appropriate to suspend the availability of a Registration Statement and the related Prospectus, (1) in the case of the occurrence of any event or the discovery of any facts as contemplated by Section 3(e)(v), subject to the next sentence, as promptly as is practicable after the occurrence of such an event, use its commercially reasonable best efforts to prepare a supplement or post-effective amendment to a Registration Statement or the related Prospectus or any document incorporated or deemed to be incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities, neither such Registration Statement nor the related Prospectus will contain at the time of such delivery any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Registration Statement, subject to the next sentence, use commercially reasonable best efforts to cause it to be declared effective as promptly as is practicable, and (2) give notice to the Holders of Registrable Securities that the availability of the Shelf Registration Statement is suspended (a "Deferral Notice") and, upon receipt of any Deferral Notice, each Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Holder's receipt of copies of the supplemented or amended Prospectus provided for in clause (1), or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. Each of the Company and the Guarantor will use its commercially reasonable best efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is practicable, (y) in the case of clause (B) above, as soon as, in the reasonable judgment of the Company and the Guarantor, if public disclosure of such event or fact would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as promptly as practicable thereafter, and (z) in the case of clause (C) above, as soon as, in the reasonable discretion of the Company and the Guarantor, such suspension is no longer appropriate. If the period during which the availability of the Registration Statement and any Prospectus is suspended shall exceed the time period specified in Section 2.4(d) hereof, the Company and the Guarantor shall pay Liquidated Damages pursuant to Section 2.4.

(k) obtain CUSIP numbers for all Registrable Securities not later than the effective date of a Registration Statement, and provide the Trustee with printed certificates for the Registrable Securities in a form eligible for deposit with the Depositary;

(l) (i) cause the Indenture to be qualified under the TIA in connection with the registration of the Registrable Securities, (ii) cooperate with the Trustee and the Holders to effect such changes, if any, to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the TIA and (iii) execute, and use its commercially reasonable best efforts to cause the Trustee to execute, all documents as may be required to effect such changes, if any, and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner;

(m) enter into agreements (including underwriting agreements) and take all other customary and appropriate actions in order to expedite or facilitate the disposition of such Registrable Securities and in such connection, whether or not an underwriting agreement is entered into and whether or not the registration is an underwritten registration:

(i) make such representations and warranties to the Holders of such Registrable Securities and the underwriters, if any, in form, substance and scope as are customarily made by issuers to underwriters in similar underwritten offerings as may be requested by such Holders and underwriters;

(ii) in connection with any underwritten offering, seek to obtain opinions of counsel to the Company and Guarantor and updates thereof (which counsel and opinions (in form, scope and substance) shall be satisfactory to the managing underwriters, if any, and the Holders of a majority in principal amount of the Registrable Securities being sold) addressed to each selling Holder and the underwriters, if any, covering the matters customarily covered in opinions requested in sales of securities or underwritten offerings and such other matters as may be requested by such Holders and underwriters;

(iii) in connection with any underwritten offering, seek to obtain “comfort letters” and updates thereof with respect to such Registration Statement and the Prospectus included therein, all amendments and supplements thereto and all documents incorporated or deemed to be incorporated by reference therein from the Company’s and Guarantor’s independent certified public accountants and from the independent certified public accountants for any other Person or any business or assets whose financial statements are included or incorporated by reference in the Registration Statement or Prospectus, each addressed to the underwriters, if any, and to have such letter addressed to the selling Holders of Registrable Securities, such letters to be in customary form and covering matters of the type customarily covered in “comfort letters” to underwriters in connection with similar underwritten offerings;

(iv) enter into securities sales agreements with the Holders and agents of the Holders providing for, among other things, the appointment of such agents for the selling Holders for the purpose of soliciting purchases of Registrable Securities, which agreements shall be in form, substance and scope customary for similar offerings;

(v) if an underwriting agreement is entered into in the case of any underwritten offering, cause the same to set forth indemnification and contribution provisions and procedures substantially equivalent to the indemnification and contribution provisions and procedures set forth in Section 4 hereof with respect to the underwriters and all other parties to

be indemnified pursuant to Section 4 hereof or, at the request of any underwriters, in the form customarily provided to such underwriters in similar types of transactions; and

(vi) deliver such other documents and certificates as may be reasonably requested by, and as are customarily delivered in similar offerings to, the Holders of a majority in aggregate principal amount of the Registrable Securities being sold (with Holders of Common Stock issued upon conversion of the Debentures deemed to be Holders, for the purposes of this section, of the aggregate principal amount of Debentures from which such Common Stock was converted) and the managing underwriters, if any.

The above shall be done at (i) the effectiveness of such Registration Statement (and, if appropriate, each post-effective amendment thereto) and (ii) each closing under any underwriting or similar agreement as and to the extent required thereunder;

(n) make available for inspection by representatives of the Holders of the Registrable Securities and any underwriters participating in any disposition pursuant to a Registration Statement and any counsel or accountant retained by such Holders or underwriters, all financial and other records, documents and properties of the Company and the Guarantor reasonably requested by any such Persons, and cause the respective officers, directors, employees, and any other agents of the Company and the Guarantor to supply all information reasonably requested by any such representative, underwriter, special counsel or accountant in connection with a Registration Statement;

(o) a reasonable time prior to filing any Registration Statement, any Prospectus forming a part thereof, any amendment to such Registration Statement or amendment or supplement to such Prospectus, provide copies of such document upon request to the Holders of Registrable Securities, to the Initial Purchasers, to the underwriter or underwriters of an underwritten offering of Registrable Securities, if any, and, if known, to counsel for any such Holders, the Initial Purchasers or underwriters, and make such changes in any such document prior to the filing thereof as the Holders of Registrable Securities, the Initial Purchasers, the counsel to the Holders or the underwriter or underwriters or any of their respective counsel may reasonably request; and shall not at any time make any filing of any such document of which such Holders, the Initial Purchasers on behalf of such Holders, their counsel or any underwriter shall not have previously been advised and furnished a copy or to which the Majority Holders, the Initial Purchasers on behalf of the Holders, their counsel or any underwriter shall reasonably object within a reasonable time period;

(p) use its commercially reasonable best efforts to cause all Registrable Securities to be listed on the principal securities exchange or inter-dealer quotation system such as NASDAQ on which similar debt or equity securities issued by the Company are then listed, if any;

(q) otherwise comply with all applicable rules and regulations of the SEC and make available to its security holders, as soon as practicable, an earnings statement covering at least twelve (12) months which shall satisfy the provisions of Section 11(a) of the 1933 Act and Rule 158 thereunder; and

(r) cooperate and assist in any filings required to be made with the NASD and in the performance of any due diligence investigation by any underwriter and its counsel (including any "qualified independent underwriter" that is required to be retained in accordance with the rules and regulations of the NASD).

The Company and Guarantor may (as a condition to such Holder's participation in the Shelf Registration) require each Holder of Registrable Securities to furnish to the Company such information regarding such Holder and the proposed distribution by such Holder of such Registrable Securities as the Company or Guarantor may from time to time reasonably request in writing.

Each Holder agrees that, upon receipt of any notice from the Company and Guarantor of the happening of any event or development or the discovery of any facts, each of the kind described in Sections 3(e)(ii), 3(e)(iii), 3(e)(v) through 3(e)(vii) or 3(j)(C) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to a Registration Statement until receipt by such Holder of (i) the copies of the supplemented or amended Prospectus contemplated by Section 3(j) hereof or (ii) written notice from the Company that the Shelf Registration is once again effective or that no supplement or amendment is required. If so directed by the Company, such Holder will deliver to the Company (at the Company's expense) all copies in such Holder's possession, other than permanent file copies then and to be held in such Holder's possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. Nothing in this paragraph shall prevent the accrual of Liquidated Damages on any Securities in accordance with the terms herein.

If any of the Registrable Securities covered by any Registration Statement are to be sold in an underwritten offering, the underwriter or underwriters and manager or managers that will manage such offering will be selected by the Majority Holders of such Registrable Securities included in such offering and shall be reasonably acceptable to the Company. No Holder of Registrable Securities may participate in any underwritten registration hereunder unless such Holder (a) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements, (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements and (c) provides the Company with the information required in Section 2.1(d) above.

4. Indemnification and Contribution.

(a) The Company and the Guarantor agree, jointly and severally, to indemnify and hold harmless each Initial Purchaser, each Holder, each Person who participates as an underwriter (each, an "Underwriter"), the affiliates, as such term is defined in Rule 501(b) under the 1933 Act (each, an "Affiliate"), of any of the foregoing and each Person, if any, who controls any Initial Purchaser, Holder or Underwriter within the meaning of either Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact

contained in any Registration Statement (or any amendment or supplement thereto) pursuant to which Registrable Securities were registered under the 1933 Act, including all documents incorporated therein by reference, or any omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact contained in any Prospectus (or any amendment or supplement thereto) or any omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 4(d) below) any such settlement is effected with the written consent of the Company; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by any indemnified party), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Initial Purchaser, any Holder or Underwriter expressly for use in a Registration Statement (or any amendment thereto) or any Prospectus (or any amendment or supplement thereto); provided, further, that as to any preliminary Prospectus, this indemnity agreement shall not inure to the benefit of any indemnified party on account of any loss, claim, damage or liability arising from the sale of the Registrable Securities sold pursuant to the Registration Statement to any person by such indemnified party if (x) that indemnified party failed to send or give a copy of the Prospectus, as the same may be amended or supplemented, to that person within the time required by the 1933 Act and (y) the untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact in such preliminary Prospectus was corrected in the Prospectus or a supplement or amendment thereto, as the case may be, unless in each case, such failure resulted from noncompliance by the Company or the Guarantor with Section 3 hereof.

(b) Each Holder, severally but not jointly, agrees to indemnify and hold harmless the Company, the Guarantor, each Initial Purchaser, each Underwriter and each selling Holder, the Affiliates of any of the foregoing, and each Person, if any, who controls the Company, such Initial Purchaser, any Underwriter or any other selling Holder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 4(a) hereof, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto) or any Prospectus included therein (or

any amendment or supplement thereto) in reliance upon and in conformity with written information with respect to such Holder furnished to the Company and the Guarantor by such Holder expressly for use in the Registration Statement (or any amendment thereto) or such Prospectus (or any amendment or supplement thereto); provided, however, that no such Holder shall be liable for any claims hereunder in excess of the amount of net proceeds received by such Holder from the sale of Registrable Securities pursuant to such Registration Statement.

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action or proceeding commenced against it in respect of which indemnity may be sought hereunder, but failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying party or parties be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 4 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 4(a)(ii) effected without its written consent if (i) such settlement is entered into more than forty-five (45) days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least thirty (30) days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement; provided that, an indemnifying party shall not be liable for any such settlement effected without its consent if such indemnifying party, prior to the date of such settlement, (1) reimburses such indemnified party in accordance with such request for the amount of such fees and expenses of counsel as the indemnifying party believes in good faith to be reasonable, and (2) provides written notice to the indemnified party that the indemnifying party disputes in good faith the reasonableness of the unpaid balance of such fees and expenses.

(e) If the indemnification provided for in this Section 4 is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to

the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Registrable Securities pursuant to the Shelf Registration, or (ii) if the allocation provided for by the foregoing clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

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

(f) The Company, the Guarantor, the Holders and the Initial Purchasers agree that it would not be just or equitable if contribution pursuant to this Section 4 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (e) above. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 4 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 4, no Initial Purchaser, Holder or Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which Registrable Securities sold by it pursuant to a Registration Statement were offered exceeds the amount of any damages that such Initial Purchaser, Holder or Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 4, each Person, if any, who controls an Initial Purchaser, Holder or Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, and the Affiliates of an Initial Purchaser, Holder or Underwriter, shall have the same rights to contribution as such Initial Purchaser, Holder or Underwriter, as the case may be, and each director of the Company or the Guarantor, each officer of the Company or the Guarantor who signed the Registration Statement and each Person, if any, who controls the Company or the Guarantor within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, or

who is an Affiliate of the Company or the Guarantor, shall have the same rights to contribution as the Company or the Guarantor, respectively. The respective obligations of the Initial Purchasers, Holders and Underwriters to contribute pursuant to this Section 4 are several in proportion to the principal amount of Securities sold by them pursuant to a Registration Statement and not joint.

The indemnity and contribution provisions contained in this Section 4 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Initial Purchaser, Holder or Underwriter or any Person controlling any Initial Purchaser, Holder or Underwriter, or by or on behalf of the Company or the Guarantor, their respective officers, or directors or any Person controlling the Company or the Guarantor and (iii) any sale of Registrable Securities pursuant to a Registration Statement.

5. Miscellaneous.

5.1 Rule 144 and Rule 144A. If the Company ceases to be subject to the reporting requirements of Section 13 or 15 of the 1934 Act, the Company and the Guarantor will upon the request of any Holder or beneficial owner of Registrable Securities (a) make publicly available such information (including, without limitation, the information specified in Rule 144A(d)(4) under the 1933 Act) as is necessary to permit sales pursuant to Rule 144 under the 1933 Act, (b) deliver or cause to be delivered, promptly following a request by any Holder or beneficial owner of Registrable Securities or any prospective purchaser or transferee designated by such Holder or beneficial owner, such information (including, without limitation, the information specified in Rule 144A(d)(4) under the 1933 Act) as is necessary to permit sales pursuant to Rule 144A under the 1933 Act and it will take such further action as any Holder or beneficial owner of Registrable Securities may reasonably request, and (c) take such further action that is required from time to time to enable such Holder to sell its Registrable Securities without registration under the 1933 Act within the limitation of the exemptions provided by (i) Rule 144 under the 1933 Act, as such Rule may be amended from time to time, (ii) Rule 144A under the 1933 Act, as such Rule may be amended from time to time or (iii) any similar rules or regulations hereafter adopted by the SEC. Upon the request of any Holder or beneficial owner of Registrable Securities, the Company and the Guarantor will deliver to such Holder a written statement as to whether it has complied with such requirements.

5.2 No Inconsistent Agreements. Neither the Company nor the Guarantor has entered into nor will the Company nor the Guarantor on or after the date of this Agreement enter into any agreement with respect to their respective securities that conflicts with the rights granted to the Holders of Registrable Securities in this Agreement. The rights granted to the Holders hereunder do not conflict in any material respect with rights granted to the holders of any of the Company's or the Guarantor's other issued and outstanding securities under any other agreements entered into by the Company or the Guarantor or any of their subsidiaries that are in effect on the date hereof.

5.3 Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company and Guarantor have obtained the written consent of Holders of at least a majority in aggregate

principal amount of the outstanding Registrable Securities affected by such amendment, modification, supplement, waiver or departure (with Holders of Common stock issued upon conversion of the Debentures deemed to be Holders, for the purposes of this section, of the aggregate principal amount of Debentures from which such Common Stock was converted).

5.4 Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, registered first-class mail, telecopier or any courier guaranteeing overnight delivery (a) if to a Holder (other than the Initial Purchasers), at the most current address set forth on the records of the registrar under the Indenture, (b) if to an Initial Purchaser, at the most current address given by such Initial Purchaser to the Company by means of a notice given in accordance with the provisions of this Section 5.4, which address initially is the address set forth in the Purchase Agreement with respect to Deutsche Bank Securities Inc., and (c) if to the Company or Guarantor, initially at the Company's address set forth in the Purchase Agreement, and thereafter at such other address of which notice is given in accordance with the provisions of this Section 5.4.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; two business days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged, if telecopied; and on the next business day if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee, at the address specified in the Indenture.

5.5 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including, without limitation and without the need for an express assignment, subsequent Holders; provided, that (a) this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign acquires Registrable Securities from a Holder and (b) nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms hereof or of the Purchase Agreement or the Indenture. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities, such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement, including the restrictions on resale set forth in this Agreement and, if applicable, the Purchase Agreement, and such person shall be entitled to receive the benefits hereof.

5.6 Third Party Beneficiaries. Each Initial Purchaser (even if such Initial Purchaser is not a Holder of Registrable Securities) shall be a third party beneficiary of the agreements made hereunder between the Company and the Guarantor, on the one hand, and the Holders, on the other hand, and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of Holders hereunder. Each Holder of Registrable Securities shall be a third party beneficiary to the agreements made hereunder between the Company and the Guarantor, on the one hand, and the Initial Purchasers,

on the other hand, and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights hereunder.

5.7 Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

5.8 Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

5.9 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

5.10 Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

WYNN RESORTS, LIMITED

By: /s/ JOHN STRZEMP

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

WYNN RESORTS FUNDING, LLC

BY: Wynn Resorts, Limited,
its sole member and control manager

By: /s/ JOHN STRZEMP

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

Confirmed and accepted as of the date first above written:

Deutsche Bank Securities Inc.
As Representative of the Initial
Purchasers listed on Schedule II
of the Purchase Agreement

By: /s/ A. DREW GOLDMAN

Name: A. Drew Goldman
Title: Director

By: /s/ PAUL WHYTE

Name: Paul Whyte
Title: Managing Director

Exhibit 4.4

COLLATERAL PLEDGE AND SECURITY AGREEMENT

between

WYNN RESORTS FUNDING, LLC,
(as the Pledgor)

and

U.S. BANK NATIONAL ASSOCIATION,
(as the Collateral Agent, the Trustee and the Securities Intermediary)

Dated as of July 7, 2003

COLLATERAL PLEDGE AND SECURITY AGREEMENT

This COLLATERAL PLEDGE AND SECURITY AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Pledge Agreement") is made and entered into as of July 7, 2003 between Wynn Resorts Funding, LLC, a Nevada limited liability company (the "Pledgor"), and U.S. Bank National Association as (i) the trustee (in such capacity, the "Trustee") for the Holders of the Debentures issued by Wynn Resorts, Limited, a Nevada corporation ("Wynn Resorts"), under the Indenture, (ii) the collateral agent for the Trustee and the Holders (in such capacity, the "Collateral Agent") and (iii) the "securities intermediary" (as such term is defined in Section 8-102(a)(14) of the UCC or, in respect of any Book-Entry Security, in the Federal Book-Entry Regulations (in such capacity, the "Securities Intermediary") (all capitalized terms used but not defined in this preamble are defined below).

W I T N E S S E T H:

WHEREAS, Wynn Resorts, Deutsche Bank Securities Inc. and SG Cowen Securities Corporation (Deutsche Bank Securities Inc. and SG Cowen Securities Corporation together the "Initial Purchasers") are parties to a Purchase Agreement dated June 30, 2003 (the "Purchase Agreement"), pursuant to which Wynn Resorts will issue and sell to the Initial Purchasers $200,000,000 aggregate principal amount of Convertible Subordinated Debentures due 2015 (plus an additional $50,000,000 aggregate principal amount if the Initial Purchasers exercise in full their purchase option set forth in Section 2(b) of the Purchase Agreement) (collectively, the "Debentures");

WHEREAS, Wynn Resorts, the Pledgor and the Trustee have entered into that certain indenture dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), pursuant to which, among other things, Wynn Resorts is issuing the Debentures on the date hereof and the Pledgor is guaranteeing the Debentures on a senior secured basis;

WHEREAS, pursuant to and subject to the terms of the Indenture, as of the Closing Time or the relevant Date of Delivery, as the case may be, the Pledgor is required, with proceeds of the Debentures contributed to the Pledgor by Wynn Resorts, to purchase, or cause the purchase of, and pledge to the Collateral Agent for the benefit of the Trustee and the holders (the "Holders") of the Debentures, U.S. Government Obligations in such amount that will be sufficient, accounting for scheduled interest and principal payments of such U.S. Government Obligations, to provide for cash payment in full when due of the first six scheduled interest payments on the Debentures (i.e., sufficient to provide for cash payment in full when due of scheduled interest payments due on the Debentures during the period from Closing Time up to and including July 15, 2006)(the "Collateralized Obligations");

WHEREAS, the Pledgor and the Securities Intermediary have established account number 33543801 at the Securities Intermediary's office at 180 East 5th Street, St. Paul, Minnesota 55101 in the name of the Pledgor, designated as "Wynn Resorts Funding, LLC Collateral Account, subject to the security interest of U.S. Bank National Association, as the Collateral Agent" (together with any successor accounts, the "Collateral Account"); and

WHEREAS, it is a condition to the purchase of the Debentures by the Initial Purchasers that the Pledgor purchase, or cause the purchase of, the Pledged Securities and deposit such Pledged Securities into the Collateral Account to be held therein subject to the terms of this Pledge Agreement and grant the security interest contemplated by this Pledge Agreement.

NOW, THEREFORE, in consideration of the premises herein contained, and to induce the Initial Purchasers to purchase the Debentures, the Pledgor, the Trustee, the Securities Intermediary and the Collateral Agent hereby agree, for the benefit of the Initial Purchasers and for the ratable benefit of the Trustee and the Holders, as follows:

SECTION 1. Definitions; Appointment; Deposit and Investment.

1.1 Definitions.

(a) Unless otherwise defined in this Pledge Agreement, terms defined or referenced in the Indenture are used in this Pledge Agreement as such terms are defined or referenced therein.

(b) Unless otherwise defined in the Indenture or in this Pledge Agreement, terms defined in the UCC and/or the Federal Book-Entry Regulations are used in this Pledge Agreement as such terms are defined in the UCC or the Federal Book-Entry Regulations, as applicable.

(c) In this Pledge Agreement, the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Additional Pledged Securities" has the meaning specified in Section 1.3.

"Book-Entry Security" has the meaning specified in the applicable Federal Book-Entry Regulation for "book-entry securities".

"Closing Time" has the meaning specified in Section 2(c) of the Purchase Agreement.

"Collateral" has the meaning specified in Section 1.3.

"Collateral Account" has the meaning specified in the recitals hereto.

"Collateral Agent" has the meaning specified in the preamble hereto.

"Collateralized Obligations" has the meaning specified in the recitals hereto.

"Date of Delivery" has the meaning specified in Section 2(b) of the Purchase Agreement.

"Debentures" has the meaning specified in the recitals hereto.

"Entitlement Holder" has the meaning specified in Section 8-102(a)(7) of the UCC or, in respect of any Book-Entry Security, the meaning specified for "Entitlement Holder" in the Federal Book-Entry Regulations.

"Entitlement Order" has the meaning specified in Section 8-102(a)(8) of the UCC.

"Federal Book-Entry Regulations" means (i) with respect to securities issued by the United States Department of the Treasury, the federal regulations contained in 31 CFR Part 357 and (ii) with respect to any other U.S. Government Obligations, the applicable federal regulations governing the transfer and pledge thereof.

"Financial Asset" has the meaning specified in Section 8-102(a)(9) of the UCC.

"FRB" means the Federal Reserve Bank or, as applicable, a branch thereof.

"FRB Account" means the FRB Member Securities Account maintained in the name of the Securities Intermediary by the FRB.

"FRB Member" means any Person that is eligible to maintain (and that maintains) with the FRB one or more FRB Member Securities Accounts in such Person's name.

"FRB Member Securities Account" means, in respect of any Person, the Participant's Securities Account maintained in the name of such Person at the FRB, to which account U.S. Government Obligations held for such Person are or may be credited.

"Holders" has the meaning specified in the recitals hereto.

"Initial Pledged Securities" has the meaning specified in Section 1.3.

"Initial Purchasers" has the meaning specified in the recitals hereto.

"Person" has the meaning specified in Section 1.1 of the Indenture.

"Pledge Agreement" has the meaning specified in the preamble hereto.

"Purchase Agreement" has the meaning specified in the recitals hereto.

"Pledged Securities" has the meaning specified in Section 1.3.

"Pledgor" has the meaning specified in the preamble hereto.

"Secured Obligations" all obligations and liabilities of the Pledgor which may arise under or in connection with this Pledge Agreement, the Indenture or any other instrument, document or agreement related thereto.

"Securities Account" has the meaning specified in Section 8-501(a) of the UCC.

"Securities Intermediary" has the meaning specified in the preamble hereto.

"Security Entitlement" has the meaning specified in Section 8-102(a)(17) of the UCC or, in respect of any Book-Entry Security, has the meaning specified for "Security Entitlement" in the Federal Book-Entry Regulations.

"Settlement Date" means, as to any U.S. Government Obligations, the date on which the purchase of such U.S. Government Obligations shall have been settled.

"Supplement" has the meaning specified in Section 1.3.

"Termination Date" means the earlier of (a) the payment in full in cash of the Collateralized Obligations in accordance with the Indenture and the Debentures and (b) if the Wynn Resorts Obligations are accelerated prior to the payment in full in cash of the Collateralized Obligations pursuant to the Indenture and the Debentures, the payment in full in cash of all Wynn Resorts Obligations.

"Trustee" has the meaning specified in the preamble hereto.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

"U.S. Government Obligations" means securities that are (i) direct obligations of the United States of America, the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by or acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof at any time prior to the stated maturity thereof.

"Wynn Resorts" has the meaning specified in the recitals hereto.

"Wynn Resorts Obligations" means the obligation of Wynn Resorts to repay the principal, premium, if any, interest, fees, expenses or otherwise on the Debentures and each other obligation and liability of Wynn Resorts which may arise under or in connection with the Indenture, the Debentures or any other instrument, document or agreement related thereto.

1.2 Appointment of the Collateral Agent. The Trustee, on behalf of the Holders, hereby appoints the Collateral Agent as its agent for purposes hereof, and authorizes the Collateral Agent to take such actions and to exercise such powers, on the Trustee's behalf, as are delegated to the Collateral Agent, together with such actions and powers as are reasonably incidental thereto, all in accordance with the terms and conditions set forth herein, and the Collateral Agent hereby accepts such appointment.

1.3 Pledge and Grant of Security Interest. As security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations, the Pledgor hereby grants to the Collateral Agent for the benefit of the Trustee and the ratable benefit of the Holders a lien on and security interest in all of the Pledgor's right, title and interest in, to and under the following property: (a) (i) the U.S. Government Obligations identified by CUSIP No. in Schedule I to this Pledge Agreement (the

"Initial Pledged Securities") and (ii) the U.S. Government Obligations, if any, identified by CUSIP No. in a supplement or supplements to this Pledge Agreement substantially in the form of Exhibit A hereto (each, a "Supplement") (the "Additional Pledged Securities" and, together with the Initial Pledged Securities, the "Pledged Securities") and, in each case, the certificates, if any, representing the Pledged Securities and the scheduled payments of principal and interest thereon, (b) the Collateral Account, all Security Entitlements from time to time credited or related to the Collateral Account, all funds held therein and all certificates and instruments, if any, from time to time representing or evidencing the foregoing, (c) all other U.S. Government Obligations purchased from time to time in accordance with this Pledge Agreement (whether pursuant to Section 4 or otherwise) and all certificates and instruments, if any, representing or evidencing such U.S. Government Obligations, and any and all Security Entitlements to such U.S. Government Obligations, (d) all notes, certificates of deposit, deposit accounts, checks and other instruments, if any, from time to time hereafter delivered to or otherwise possessed by the Collateral Agent for or on behalf of the Pledgor, (e) all interest, dividends, cash, instruments and other property, if any, from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the then existing Collateral and (f) all proceeds of any and all of the foregoing Collateral (including, without limitation, proceeds that constitute property of the types described in clauses (a) through (e) of this Section 1.3) and, to the extent not otherwise included, all (i) payments under insurance (whether or not the Trustee or the Collateral Agent is the loss payee thereof) or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral and (ii) cash proceeds of any and all of the foregoing Collateral (such property described in clauses (a) through (f) of this Section 1.3 being collectively referred to herein as the "Collateral"). Without limiting the generality of the foregoing, this Pledge Agreement secures the payment of all amounts that constitute part of the Secured Obligations notwithstanding the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Pledgor.

SECTION 2. Establishment, Maintenance and Control of Collateral Account and Security Entitlements.

(a) Prior to or concurrently with the execution and delivery hereof, the Securities Intermediary shall establish the Collateral Account on its books as a separate account segregated from all other custodial or collateral accounts, at its office at 180 East 5th Street, St. Paul, Minnesota 55101. The parties hereto agree that the Collateral Account constitutes a Securities Account and the Pledgor and the Securities Intermediary will maintain the Collateral Account as a Securities Account. The following provisions shall apply to the establishment, maintenance and control of the Collateral Account and the Financial Assets and Security Entitlements credited or related thereto:

(i) The Securities Intermediary shall cause the Collateral Account to be, and the Collateral Account shall be, separate from all other accounts maintained by the Securities Intermediary.

(ii) If at any time the Securities Intermediary receives an Entitlement Order from the Collateral Agent relating to the Collateral Account or any Financial Asset or Security Entitlement credited or related to the Collateral

Account, the Securities Intermediary will comply with such Entitlement Order without further consent by the Pledgor or any other Person. Subject to Sections 2(d), 4 and 5, Securities Intermediary shall not comply with any Entitlement Orders relating to the Collateral Account or any Financial Asset or Security Entitlement credited or related to the Collateral Account from any Person (including, without limitation, the Pledgor) other than the Collateral Agent. If the Pledgor is otherwise entitled to issue Entitlement Orders with respect to the Collateral Account or any Financial Asset or Security Entitlement credited or related to the Collateral Account pursuant to this Pledge Agreement and such Entitlement Orders conflict with any Entitlement Order issued by the Collateral Agent, the Securities Intermediary will follow the Entitlement Orders issued by the Collateral Agent. Until this Pledge Agreement shall terminate in accordance with the terms hereof, Collateral Agent shall have "control" (within the meaning of Section 8-106 of the UCC, including, without limitation, subsection (d)(2) thereof) of the Collateral Account, the Security Entitlements with respect to the Collateral Account and the Financial Assets credited to the Collateral Account.

(iii) Each of the Pledgor and the Securities Intermediary agrees that it has not and will not execute and deliver, or otherwise become bound by, any agreement under which it agrees with any Person other than Collateral Agent to comply with Entitlement Orders originated by such Person relating to the Collateral Account or any Financial Asset or Security Entitlement credited or related to the Collateral Account. Except for the claims and interests of the Collateral Agent and the Pledgor in the Collateral Account and the Financial Assets and Security Entitlements credited or related to the Collateral Account, neither the Securities Intermediary nor the Pledgor knows of any claim to, or interest in, the Collateral Account or any Financial Asset or Security Entitlement credited or related to the Collateral Account. If either the Securities Intermediary or the Pledgor obtains knowledge that any Person has asserted a Lien, encumbrance or adverse claim against the Collateral Account or any Financial Asset or Security Entitlement credited or related to the Collateral Account, such party will promptly notify the Collateral Agent thereof. In the event that the Securities Intermediary has or subsequently obtains by agreement, operation of law or otherwise a Lien or security interest in the Collateral Account or any Financial Asset or Security Entitlement credited or related to the Collateral Account, the Securities Intermediary agrees that such Lien or security interest shall be subordinate to the Lien and security interest of the Collateral Agent. The Collateral Account and the Financial Assets and Security Entitlements credited or related to the Collateral Account will not be subject to deduction, set-off, banker's lien or any other right, and the Securities Intermediary shall not grant, permit or consent to any other right or interest in the Collateral, in favor of any Person (including itself) other than the Collateral Agent.

(iv) All property, including, without limitation, the Pledged Securities and other U.S. Government Obligations purchased in accordance with this Pledge Agreement (whether pursuant to Section 4 or otherwise), delivered to the Securities Intermediary pursuant to this Pledge Agreement shall be promptly credited to the Collateral Account. All securities or other property underlying any Financial Assets credited to the Collateral Account shall be registered in the name of, payable to or to the order of, the Securities Intermediary, indorsed to the Securities Intermediary or in blank or credited to another Securities Account maintained in the name of the Securities Intermediary and in no case will any Financial Asset credited to the Collateral Account be registered in the name of the Pledgor, payable to the order of the Pledgor or specially indorsed to the Pledgor except to the extent the foregoing have been specially indorsed to the Securities Intermediary or in blank. Each item of property (including cash, a security, security entitlement, investment property, instrument or obligation, share, participation, interest or other property whatsoever) credited to the Collateral Account shall be treated as a Financial Asset.

(b) On or prior to (i) the Closing Time and (ii) the relevant Date of Delivery, if any, the Pledgor shall transfer, or cause to be transferred, to the Securities Intermediary, or otherwise purchase, in each case for credit to the Collateral Account, (A) in the case of the Closing Time, the Initial Pledged Securities or (B) in the case of a Date of Delivery, an additional amount in cash to be set forth in the relevant Supplement, which amount shall be sufficient for the Securities Intermediary to purchase the Additional Pledged Securities.

(c) As soon as practicable after receipt of amounts pursuant to Section 2(b)(ii) (and not later than the business day following the relevant Date of Delivery) the Collateral Agent shall instruct the Securities Intermediary to apply such amounts to the purchase of the U.S. Government Obligations listed on the relevant Supplement and credit such U.S. Government Obligations to the Collateral Account as Collateral hereunder. The Securities Intermediary shall ensure that, on any Settlement Date of U.S. Government Obligations, the FRB indicates by book-entry that such U.S. Government Obligations being settled on such date are credited to the FRB Account.

(d) The Securities Intermediary will, from time to time in accordance with Section 4, reinvest the proceeds of Collateral that may mature or be sold as permitted by this Pledge Agreement in such U.S. Government Obligations as it will be directed in writing by the Pledgor, and cause such U.S. Government Obligations to be credited to the Collateral Account as Collateral hereunder. Any such proceeds not so reinvested in U.S. Government Obligations shall be held in cash in the Collateral Account.

SECTION 3. Filing Authorization. Pledgor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in the Office of the Secretary of State of Nevada and any other filing office in the United States any initial financing statements and amendments thereto that (a) contain a description of collateral of an equal or lesser scope as the Collateral described in this Pledge Agreement or any Supplement, but such description may contain greater detail than is contained in this Pledge Agreement or any such Supplement, and (b) contain any other information required by Part 5 of Article 9 of the Uniform Commercial Code as in effect in any applicable jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment therein, including whether the Pledgor is an organization, the type of organization and any organization identification number issued to the Pledgor. The Pledgor agrees to furnish any such information to the Collateral Agent promptly upon request. The Pledgor also ratifies its authorization for the Collateral Agent to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. A photocopy or other reproduction of this Pledge Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

SECTION 4. Investing of Amounts in the Collateral Account. The Securities Intermediary shall advise the Collateral Agent and the Pledgor if, at any time, any amounts shall exist in the Collateral Account uninvested, and if directed in writing by the Pledgor, the Securities Intermediary will, subject to the provisions of Section 5 and Section 12;

(a) invest such amounts on deposit in the Collateral Account in such U.S. Government Obligations as the Pledgor may select; and

(b) invest interest paid on the U.S. Government Obligations referred to in clause (a) above, and reinvest other proceeds of any such U.S. Government Obligations that may mature or be sold, in each case in such U.S. Government Obligations as the Pledgor may select. Interest and proceeds that are not invested or reinvested in U.S. Government Obligations as provided above shall be deposited in cash and held in the Collateral Account. Except as otherwise provided in Section 11, neither the Securities Intermediary nor the Collateral Agent shall be liable for any loss in the investment or reinvestment of amounts held in the Collateral Account. Neither the Securities Intermediary nor the Collateral Agent is at any time under any duty to advise or make any recommendation for the purchase, sale, retention or disposition of U.S. Government Obligations. In no event will any investment be made in any U.S. Government Obligations that the Securities Intermediary is unable or unwilling to credit to the Collateral Account.

Notwithstanding the foregoing, after the purchase of any U.S. Government Obligations at the Closing Time or a Date of Delivery, as the case may be, as required by the Indenture, any U.S. Government Obligations thereafter purchased pursuant to this Section 4 shall have maturities consistent with the scheduled interest payment(s) on the Debentures to which the invested proceeds relate.

SECTION 5. Disbursements. The Securities Intermediary shall hold the Collateral in the Collateral Account and release the same, or a portion thereof, only as follows:

(a) Immediately prior to the interest payment date under the Indenture and the Debentures prior to the Termination Date, the Securities Intermediary shall release from the Collateral Account and pay to the Trustee for the benefit of, and payment to, the Holders in accordance with the provisions of the Indenture an amount in cash sufficient to pay the interest due on the Debentures on the applicable interest payment date, and will take any action necessary to provide for the cash payment of the interest on the Debentures to the Holders in accordance with the payment provisions of the Indenture from (and to the extent of) proceeds of such released portion of the Collateral. Nothing in this Section 5 shall affect the Collateral Agent's rights to apply the Collateral to the payments of amounts due on the Debentures upon acceleration thereof. On the Termination Date, any Collateral remaining in the Collateral Account shall be released hereunder and returned to the Pledgor, in accordance with the terms and provisions hereof.

(b) If, prior to the Termination Date:

(i) an Event of Default under the Indenture occurs and is continuing and

(ii) the Trustee or the Holders of 25% in aggregate principal amount of the Debentures accelerate the Debentures by declaring the principal amount of the Debentures to be immediately due and payable in accordance with the provisions of the Indenture, except for the occurrence and continuance of an Event of Default under clause (7) of Section 8.1 of the Indenture, upon which the Debentures will be accelerated automatically pursuant to the Indenture,

then the Securities Intermediary, upon instruction by the Collateral Agent, shall promptly release the Collateral from the Collateral Account and transfer the Collateral to the Trustee for the benefit of, and payment to, the Holders of the Debentures as directed by the Collateral Agent in accordance with the provisions of the Indenture. Distributions from the Collateral Account shall be applied, for the ratable benefit of the Holders, as follows:

(x) first, to any accrued and unpaid interest on the Debentures and

(y) second, to the extent available, to the repayment of the remaining Wynn Resort Obligations, including the principal amount of the Debentures.

Any surplus of such proceeds held by the Collateral Agent and remaining after payment in full of all of the Secured Obligations shall be paid over to the Pledgor.

(c) If at any time value of the Collateral held in the Collateral Account is less than 100% of the amount sufficient, as calculated by the Pledgor and verified in writing by a nationally recognized firm of independent public accountants selected by the Pledgor, to provide for cash payment in full of the Collateralized Obligations outstanding at such time, the Pledgor shall deposit cash into the Collateral Account in the amount of such deficiency promptly after receipt of such accounts' written verification.

(d) If at any time the value of the Collateral held in the Collateral Account exceeds 100% of the amount sufficient, as calculated by the Pledgor and verified in writing by a

nationally recognized firm of independent public accountants selected by the Pledgor, to provide for cash payment in full of the Collateralized Obligations outstanding at such time, the Securities Intermediary shall promptly release to the Pledgor, at the Pledgor's written request, accompanied by the written verification prepared by such nationally recognized firm of independent public accountants, any such excess Collateral.

(e) Upon the release of any Collateral from the Collateral Account in accordance with the terms of this Pledge Agreement, the security interest and lien evidenced by this Pledge Agreement in such released Collateral will automatically terminate and be of no further force or effect, and the Collateral Agent shall take such actions as the Pledgor deems necessary or advisable to evidence the release of the Collateral Agent's security interest in such released portion of the Collateral, at the Pledgor's expense; provided, that the foregoing shall not affect the security interest and lien on any Collateral not so released.

(f) Except as expressly provided in this Section 5, nothing contained in this Pledge Agreement shall (i) afford the Pledgor any right to issue Entitlement Orders with respect to any Security Entitlement related to the Collateral Account or any Financial Assets credited thereto, or otherwise afford the Pledgor control of any such Security Entitlement or Financial Asset or (ii) otherwise give rise to any rights of the Pledgor with respect to such Security Entitlements, the Collateral Account or any Financial Asset credited thereto, other than the Pledgor's rights under this Pledge Agreement as the beneficial owner of Collateral pledged to and subject to the "control" (within the meaning of Sections 8-106 and 9-106 of the UCC) of the Collateral Agent.

SECTION 6. Representations and Warranties. The Pledgor hereby represents and warrants to the other parties hereto, as of the date hereof, that:

(a) The execution and delivery by the Pledgor of, and the performance by the Pledgor of its obligations under, this Pledge Agreement will not contravene any provision of applicable law or the articles of organization, operating agreement or equivalent organizational instruments of the Pledgor or any agreement or other instrument binding upon the Pledgor or any of its subsidiaries or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Pledgor or any of its subsidiaries, or result in the creation or imposition of any lien on any assets of the Pledgor, except for the lien and security interests granted under this Pledge Agreement. No consent, approval, authorization or order of, or qualification with, and no notice to or filing with, any governmental body or agency or other third party is required (i) for the performance by the Pledgor of its obligations under this Pledge Agreement, (ii) for the pledge by the Pledgor of the Collateral pursuant to this Pledge Agreement or for the execution, delivery or performance of this Pledge Agreement by the Pledgor, (iii) for the perfection or maintenance of the security interest created hereby (including the first priority nature of such security interest), except for the filing of financing and continuation statements under the Uniform Commercial Code of applicable jurisdictions, which financing statements have been delivered pursuant to Section 3 hereof, and the making of any book entries under the Federal Book-Entry Regulations or (iv) except for any such consents, approvals, authorizations or orders required to be obtained by the Collateral Agent (or the Holders) for reasons other than the consummation of this transaction, for the exercise by the Collateral Agent of the rights provided for in this Pledge Agreement or the remedies in respect of the Collateral pursuant to this Pledge Agreement.

(b) The Pledgor is the legal and beneficial owner of the Collateral, free and clear of any Liens or claims of any Person (except for the lien and security interests granted under this Pledge Agreement). No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any public office appropriate for such filings other than the financing statements, if any, to be filed pursuant to this Pledge Agreement.

(c) This Pledge Agreement has been duly authorized, validly executed and delivered by the Pledgor and (assuming the due authorization and valid execution and delivery of this Pledge Agreement by each of the other parties hereto and enforceability of this Pledge Agreement against each of the other parties hereto in accordance with its terms) constitutes a valid and binding agreement of the Pledgor, enforceable against the Pledgor in accordance with its terms, except as (i) the enforceability hereof may be limited by bankruptcy, insolvency, fraudulent conveyance, preference, reorganization, moratorium or similar laws now or hereafter in effect relating to or affecting the rights or remedies of creditors generally, (ii) the availability of equitable remedies may be limited by equitable principles of general applicability and the discretion of the court before which any proceeding therefor may be brought, (iii) the exculpation provisions and rights to indemnification hereunder may be limited by U.S. federal and state securities laws and public policy considerations and (iv) the waiver of rights and defenses contained in Sections 17.11 and 17.15 hereof may be limited by applicable law.

(d) Upon the execution of this Pledge Agreement by all parties hereto, the delivery to the Securities Intermediary of the Collateral in accordance with the terms hereof, and the making of any book entries required under the Federal Book-Entry Regulations, the grant of a security interest in the Collateral securing the payment of the Secured Obligations for the benefit of the Trustee and the Holders will constitute a valid, first priority, perfected security interest in such Collateral (except, with respect to proceeds, only to the extent permitted by Section 9-315 of the UCC), enforceable as such against all creditors of the Pledgor and any Persons purporting to purchase any of the Collateral from the Pledgor other than as permitted by the Indenture.

(e) There are no legal or governmental proceedings pending or, to the best of the Pledgor's knowledge, threatened to which the Pledgor or any of its subsidiaries is a party or to which any of the properties of the Pledgor or any of its subsidiaries is subject that would adversely affect the power or ability of the Pledgor to perform its obligations under this Pledge Agreement or to consummate the transactions contemplated hereby.

(f) The pledge of the Collateral pursuant to this Pledge Agreement is not prohibited by law or governmental regulation (including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System) applicable to the Pledgor.

(g) No Event of Default exists.

(h) The Pledgor is a limited liability company duly organized and validly existing under the laws of the State of Nevada and the Pledgor is not organized under the laws of any other jurisdiction. The Pledgor's name as it appears in official filings in the State of Nevada is "Wynn Resorts Funding, LLC". The Pledgor's organizational identification number issued by the State of Nevada is LLC9574-03.

SECTION 7. Further Assurances. The Pledgor will, promptly upon the request by the Collateral Agent (which request the Collateral Agent may submit at the direction of the Trustee), execute and deliver or cause to be executed and delivered, or use commercially reasonable efforts to procure, all assignments, instruments and other documents, deliver any instruments to the Collateral Agent and take any other actions that are necessary or desirable to perfect, continue the perfection of, or protect the first priority of the Collateral Agent's security interest in and to the Collateral, to protect the Collateral against the rights, claims or interests of third Persons (other than any such rights, claims or interests created by or arising through the Collateral Agent) or to effect the purposes of this Pledge Agreement. The Pledgor will promptly pay all costs incurred in connection with any of the foregoing within 45 days of receipt of an invoice therefor. The Pledgor also agrees, whether or not requested by the Collateral Agent, to use commercially reasonable efforts to perfect or continue the perfection of, or to protect the first priority of, the Collateral Agent's security interest in and to the Collateral, and to protect the Collateral against the rights, claims or interests of third Persons (other than any such rights, claims or interests created by or arising through the Collateral Agent).

SECTION 8. Covenants. The Pledgor covenants and agrees with the Collateral Agent, Trustee and the Holders that from and after the date of this Pledge Agreement until the Termination Date:

(a) it will not (i) (and will not purport to) sell or otherwise dispose of, or grant any option or warrant with respect to, any of the Collateral or (ii) create or permit to exist any Lien on or with respect to any of the Collateral (except for the liens and security interests granted under this Pledge Agreement) and at all times will be the sole beneficial owner of the Collateral;

(b) it will not (i) enter into any agreement or understanding that restricts or inhibits or purports to restrict or inhibit the Trustee's or the Collateral Agent's rights or remedies hereunder, including, without limitation, the Collateral Agent's right to sell or otherwise dispose of the Collateral or (ii) fail to pay or discharge any tax, assessment or levy of any nature with respect to its beneficial interest in the Collateral not later than three business days prior to the date of any proposed sale under any judgment, writ or warrant of attachment with respect to the Collateral;

(c) it will maintain its jurisdiction of organization in the State of Nevada, or upon 30 days' prior written notice to the Collateral Agent, in another jurisdiction where all actions required by Sections 3 and 7 have been taken with respect to the Collateral;

(d) it will execute and deliver on or prior to any Date of Delivery, a Supplement to this Pledge Agreement, and take such other actions as shall be necessary to grant to the Collateral Agent, for the benefit of the Trustee and the ratable benefit of the Holders, a valid security interest in the Additional Pledged Securities and the related Security Entitlements; and

(e) it will not, and acknowledges that it is not authorized to, file any financing statement or amendment or termination statement with respect to any financing statement in connection with the Collateral without the prior written consent of Collateral Agent, subject to the Pledgor's rights under Section 9-509(d)(2) of the UCC.

SECTION 9. Power of Attorney; Agent May Perform.

(a) Subject to the terms of this Pledge Agreement, the Pledgor hereby appoints and constitutes the Collateral Agent as the Pledgor's attorney-in-fact (with full power of substitution) to exercise to the fullest extent permitted by law all of the following powers upon and at any time after the occurrence and during the continuance of an Event of Default:

(i) collection of proceeds of any Collateral;

(ii) conveyance of any item of Collateral to any purchaser thereof;

(iii) giving of any notices or recording of any liens hereunder; and

(iv) paying or discharging taxes or liens levied or placed upon the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole reasonable discretion, and such payments made by the Collateral Agent to become part of the Obligations secured hereby, due and payable immediately upon demand. The Collateral Agent's authority under this Section 9 shall include, without limitation, the authority to endorse and negotiate any checks or instruments representing proceeds of Collateral in the name of the Pledgor, execute and give receipt for any certificate of ownership or any document constituting Collateral, transfer title to any item of Collateral, sign the Pledgor's name on all financing statements (to the extent permitted by applicable law) or any other documents necessary or appropriate to preserve, protect or perfect the security interest in the Collateral and to file the same, prepare, file and sign the Pledgor's name on any notice of lien (to the extent permitted by applicable law), and to take any other actions arising from or necessarily incident to the powers granted to the Trustee or the Collateral Agent in this Pledge Agreement. This power of attorney is coupled with an interest and is irrevocable by the Pledgor.

(b) If the Pledgor fails to perform any agreement contained herein, the Collateral Agent may, but is not obligated to, after providing to the Pledgor notice of such failure and five business days to effect such performance, itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by the Pledgor under Section 13.

SECTION 10. No Assumption of Duties; Reasonable Care. The rights and powers granted to the Collateral Agent and the Securities Intermediary hereunder are being granted in order to preserve and protect the security interest of the Collateral Agent for the benefit of the Trustee and the Holders in and to the Collateral granted hereby and shall not be interpreted to, and shall not impose any duties on, the Collateral Agent or the Securities Intermediary in connection therewith other than those expressly provided herein or imposed under applicable law. Except as provided by applicable law or by the Indenture, the Collateral Agent and the Securities Intermediary shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent or the Securities Intermediary, as

applicable, accords similar property held by the Collateral Agent or the Securities Intermediary for similar accounts, it being understood that the Collateral Agent and the Securities Intermediary:

(a) may consult with counsel of its selection and the advice of such counsel or any opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon; and

(b) shall not have any responsibility for

(i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities or other matters relative to any Collateral, whether or not the Collateral Agent or the Securities Intermediary has or is deemed to have knowledge of such matters,

(ii) taking any necessary steps for the existence, enforceability or perfection of any security interest of the Collateral Agent or to preserve rights against any parties with respect to any Collateral or

(iii) except as otherwise set forth in Section 4, investing or reinvesting any of the Collateral.

Notwithstanding anything to the contrary contained in this Agreement, the Indenture, the Debentures or any other document, instrument or agreement related thereto, in no event shall the Collateral Agent or the Securities Intermediary be liable for the existence, validity, enforceability or perfection of any security interest of the Collateral Agent, or for special indirect or consequential damages or lost profits or loss of business, arising in connection with this Pledge Agreement.

SECTION 11. Indemnity; Limitation of Liability.

(a) No claim shall be made by the Pledgor against the Collateral Agent, the Securities Intermediary, the Trustee or the Holders or any of their Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Pledge Agreement, the Indenture or any other instrument, document or agreement related thereto or any act or omission or event occurring in connection therewith and the Pledgor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(b) The Pledgor shall fully indemnify, hold harmless and defend the Collateral Agent and the Securities Intermediary and their respective directors and officers from and against any and all claims, losses, actions, obligations, liabilities and expenses, including reasonable defense costs, reasonable investigative fees and costs, and reasonable legal fees, expenses, and damages arising from the Collateral Agent’s appointment and performance as Collateral Agent under this Pledge Agreement or the Securities Intermediary’s appointment and performance as Securities

Intermediary under this Pledge Agreement, as applicable, except to the extent that such claim, action, obligation, liability or expense is directly caused by the bad faith, gross negligence or willful misconduct of such indemnified person. The provisions of this Section 11 shall survive termination of this Pledge Agreement and the resignation and removal of the Collateral Agent or the Securities Intermediary.

SECTION 12. Remedies upon Event of Default. Subject to Section 5(b), if any Event of Default under the Indenture shall have occurred and be continuing and the Debentures shall have been accelerated in accordance with the provisions of the Indenture:

(a) The Collateral Agent shall have, in addition to all other rights given by applicable law or in equity or by this Pledge Agreement or the Indenture, all of the rights and remedies with respect to the Collateral of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral) at that time. In addition, with respect to any Collateral that shall then be in or shall thereafter come into the possession or custody of the Collateral Agent, the Collateral Agent may, and at the written direction of the Trustee shall, appoint a broker or other expert to sell or cause the same to be sold at any broker's board or at public or private sale, in one or more sales or lots, at such price or prices such broker or other expert may deem commercially reasonable, for cash or on credit or for future delivery. The purchaser of any or all Collateral so sold shall thereafter hold the same absolutely, free from any claim, encumbrance or right of any kind whatsoever created by or through the Pledgor. Any sale of the Collateral conducted in conformity with reasonable commercial practices of banks, insurance companies, commercial finance companies, or other financial institutions disposing of property similar to the Collateral shall be deemed to be commercially reasonable. Any requirements of reasonable notice shall be met if notice of the time and place of any public sale or the time after which any private sale is to be made is given to the Pledgor as provided in Section 17.1 hereof at least ten days before the time of the sale or disposition. The Collateral Agent or any Holder may, in its own name or in the name of a designee or nominee, buy any of the Collateral at any public sale and, if permitted by applicable law, at any private sale. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. All expenses (including court costs and reasonable attorneys' fees, expenses and disbursements) of, or incident to, the enforcement of any of the provisions hereof shall be recoverable from the proceeds of the sale or other disposition of the Collateral.

(b) The Pledgor agrees to use its reasonable best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Collateral pursuant to this Section 12 valid and binding and in compliance with any and all other applicable requirements of law. The Pledgor further agrees that a breach of any of the covenants contained in this Section 12 will cause irreparable injury to the Trustee and the Holders, that the Trustee and the Holders have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 12 shall be specifically enforceable against the Pledgor, and the Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

(c) All cash proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Collateral Agent, be held by the Collateral Agent as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Collateral Agent or the Trustee pursuant to Section 13) by the Collateral Agent for the ratable benefit of the Holders first against any accrued and unpaid interest on the Debentures and thereafter against the remaining Secured Obligations. Any surplus of such cash or cash proceeds held by the Collateral Agent and remaining after payment in full in cash of all of the Secured Obligations shall be paid over to the Pledgor.

(d) The Collateral Agent may, but is not obligated to, exercise any and all rights and remedies of the Pledgor in respect of the Collateral.

(e) Subject to and in accordance with the terms of this Pledge Agreement, all payments received by the Pledgor in respect of the Collateral shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of the Pledgor and shall be forthwith paid over to the Collateral Agent in the same form as so received (with any necessary endorsement).

(f) The Collateral Agent may, without notice to the Pledgor except as required by law and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Secured Obligations against the Collateral Account or any part thereof.

(g) The Pledgor shall cease to be entitled to direct the investment of amounts held in the Collateral Account under Section 4 hereof and the Securities Intermediary shall not accept any direction from the Pledgor to invest amounts held in the Collateral Account.

SECTION 13. Fees and Expenses. The Pledgor agrees to pay to the Collateral Agent the fees as may be agreed upon from time to time in writing. The Pledgor will promptly upon demand pay to the Trustee and the Collateral Agent the amount of any and all expenses, including, without limitation, the reasonable fees, expenses and disbursements of counsel, experts and agents retained by the Trustee and the Collateral Agent, that the Trustee and the Collateral Agent may incur in connection with

(a) the review, negotiation and administration of this Pledge Agreement;

(b) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral;

(c) the exercise or enforcement of any of the rights of the Collateral Agent, the Trustee and the Holders hereunder; or

(d) the failure by the Pledgor to perform or observe any of the provisions hereof.

SECTION 14. Security Interest Absolute. All rights of the Collateral Agent, the Trustee and the Holders hereunder, and all obligations of the Pledgor hereunder, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of the Indenture or any other agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations or the Wynn Resorts Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture;

(c) any exchange, surrender, release or non-perfection of any Liens on any other collateral for all or any of the Secured Obligations or the Wynn Resorts Obligations;

(d) any change, restructuring or termination of the limited liability company structure or the existence of the Pledgor or any of its subsidiaries;

(e) to the extent permitted by applicable law, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Pledgor in respect of the Secured Obligations or of this Pledge Agreement (other than payment in full of the Secured Obligations); or

(f) any manner of application of other collateral, or proceeds thereof, to all or any item of the Secured Obligations or the Wynn Resorts Obligations, or any manner of sale or other disposition of any item of Collateral for all or any of the Secured Obligations or the Wynn Resorts Obligations.

SECTION 15. Securities Intermediary's Representations, Warranties and Covenants. The Securities Intermediary represents and warrants that it is as of the date hereof, and it agrees that for so long as it maintains the Collateral Account pursuant to this Pledge Agreement, it shall be a "securities intermediary" (as such term is defined in Section 8-102(a)(14) of the UCC or, in respect of any Book-Entry Security, in the Federal Book-Entry Regulations) and a FRB Member. In furtherance of the foregoing, the Securities Intermediary hereby:

(a) represents and warrants that it is a commercial bank that in the ordinary course of its business maintains Securities Accounts for others and is acting in that capacity hereunder and with respect to the Collateral Account and the Financial Assets and Security Entitlements credited or related thereto;

(b) represents and warrants that it maintains the FRB Account with the FRB;

(c) agrees that the Collateral Account shall be an account to which Financial Assets may be credited, and undertakes to treat the Pledgor as the Entitlement Holder in respect of the Collateral Account and the Financial Assets and Security Entitlements credited or related thereto and shall so note in its records pertaining to the Collateral Account and such Financial Assets and Security Entitlements;

(d) represents that, subject to applicable law, it has not granted, and covenants that so long as it acts as a Securities Intermediary hereunder it shall not grant, control (including without limitation, securities control) over or with respect to any Collateral credited to the Collateral Account from time to time to any other Person other than the Collateral Agent;

(e) covenants that it shall not, subject to applicable law, knowingly take any action inconsistent with, and represents and covenants that it is not and so long as this Pledge Agreement remains in effect will not knowingly become, party to any agreement the terms of which are inconsistent with, the provisions of this Pledge Agreement;

(f) agrees that any item of property credited to the Collateral Account shall be treated as a Financial Asset;

(g) agrees that any item of Collateral credited to the Collateral Account shall not be subject to any security interest, lien or right of set-off in favor of Securities Intermediary, except as may be expressly permitted under the Indenture and this Pledge Agreement; and

(h) agrees to maintain the Collateral Account as a Securities Account and maintain appropriate books and records in respect thereof in accordance with its usual procedures and subject to the terms of this Pledge Agreement.

SECTION 16. Securities Intermediary's Jurisdiction. The parties hereby agree that the Securities Intermediary's jurisdiction as "securities intermediary" for purposes of Section 8-110(e) of the UCC and Section 357.11 of the Federal Book-Entry Regulations as they pertain to this Pledge Agreement, the Collateral Account and the Security Entitlements relating thereto, shall be the State of New York.

SECTION 17. Miscellaneous Provisions.

17.1 Notices. All notices required or permitted under the terms and provisions hereof shall be in writing, and any such notice shall be effective if given in accordance with the provisions of Section 14.2 of the Indenture. Notices to the Pledgor or the Trustee may be given at the address set forth in Section 14.2 of the Indenture. Notices to the Collateral Agent or the Securities Intermediary may be given at the same address as set forth in Section 14.2 of the Indenture with respect to the Trustee.

17.2 No Adverse Interpretation of Other Agreements. This Pledge Agreement may not be used to interpret another pledge, security or debt agreement of the Pledgor or any subsidiary thereof. No such pledge, security or debt agreement (other than the Indenture) may be used to interpret this Pledge Agreement.

17.3 Severability. The provisions of this Pledge Agreement are severable, and if any clause or provision shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect in that jurisdiction only such clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Pledge Agreement in any jurisdiction.

17.4 Headings. The headings in this Pledge Agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

17.5 Counterpart Originals. This Pledge Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

17.6 Benefits of Pledge Agreement. Nothing in this Pledge Agreement, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, and the Holders, any benefit or any legal or equitable right, remedy or claim under this Pledge Agreement.

17.7 Amendments, Waivers and Consents. Any amendment or waiver of any provision of this Pledge Agreement and any consent to any departure by any party hereto or from any provision of this Pledge Agreement shall be effective only if made or duly given in compliance with all of the terms and provisions of the Indenture, and no party hereto shall be deemed, by any act, delay, indulgence, omission or otherwise, to have waived any right or remedy hereunder or to have acquiesced in any default or Event of Default or in any breach of any of the terms and conditions hereof. Failure by any party hereto to exercise, or delay in exercising, any right, power or privilege hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any party hereto of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that such party would otherwise have on any future occasion. The Collateral Agent and the Trustee may refuse to sign any amendment hereof authorized or permitted pursuant to Article 13 of the Indenture if such amendment adversely affects their rights, duties, liabilities or immunities. In signing or refusing to sign such amendment, the Collateral Agent and the Trustee shall be entitled to receive and, subject to Section 10 and 17.12, shall be fully protected in relying upon, an opinion of counsel stating that such amendment is authorized or permitted by the Indenture. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

17.8 Amendments of Obligations. If the Collateral Agent, the Trustee or the Holders shall at any time or from time to time, with or without the consent of, or notice to, the Pledgor:

(a) change or extend the manner, place or terms of payment of, or renew or alter all or any portion of, the Secured Obligations or the Wynn Resorts Obligations;

(b) take any action under or in respect of the Indenture, the Debentures or the other agreements, documents and instruments related thereto in the exercise of any remedy, power or privilege contained therein or available at law, equity or otherwise, or waive or refrain from exercising any such remedies, power or privileges;

(c) amend or modify, in any manner whatsoever, the Indenture, the Debentures or the other agreements, documents and instruments related thereto;

(d) extend or waive the time for Wynn Resorts' or any other Person's performance of, or compliance with, any term, covenant or agreement on its part to be performed or observed under the Indenture, the Debentures or the other agreements, documents and instruments related thereto, or waive such performance or compliance or consent to a failure of, or departure from, such performance or compliance;

(e) take and hold security or collateral for the payment of the Secured Obligations or the Wynn Resorts Obligations, or sell, exchange, release, dispose of, or otherwise deal with, any property pledged, mortgaged or conveyed, or in which the Collateral Agent has been granted a lien, to secure any indebtedness of Wynn Resorts, the Pledgor or any other Person party to the Indenture, the Debentures or the other agreements, documents and instruments related thereto to the Collateral Agent;

(f) release or limit the liability of anyone who may be liable in any manner for the payment of any amounts owed by Wynn Resorts, the Pledgor or any other Person party to the Indenture, the Debentures or the other agreements, documents and instruments related thereto to Collateral Agent;

(g) modify or terminate the terms of any intercreditor or subordination agreement pursuant to which claims of other creditors of Wynn Resorts, the Pledgor or any other Person party to the Indenture, the Debentures or the other agreements, documents and instruments related thereto are subordinated to the claims of the Collateral Agent; or

(h) apply any sums by whomever paid or however realized to any amounts owing by Wynn Resorts, the Pledgor or any other Person party to the Indenture, the Debentures or the other agreements, documents and instruments related thereto to the Collateral Agent in such manner as the Collateral Agent shall determine in its discretion;

then, neither the Collateral Agent nor the Trustee nor any Holder shall incur any liability to the Pledgor pursuant hereto as a result thereof and no such action shall impair or release the obligations of the Pledgor under this Pledge Agreement.

17.9 Continuing Security Interest; Termination.

(a) This Pledge Agreement shall create a continuing first priority perfected security interest in and to the Collateral and shall, unless otherwise provided in the Indenture or in this Pledge Agreement, remain in full force and effect until the Termination Date. This Pledge Agreement shall be binding on the parties hereto and their respective transferees, successors and assigns, and shall inure, together with the rights and remedies of the Trustee and the Collateral Agent hereunder, to the benefit of the parties hereto and their respective successors, transferees and assigns. Without limiting the generality of the foregoing, the Holders may assign or otherwise transfer the Debentures or other evidence of indebtedness held by them to any other Person to the extent permitted by the Indenture, and such other Person shall thereupon become vested with all or an appropriate part of the benefits in respect thereof granted to the Holders herein or otherwise.

(b) On the Termination Date, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to the Pledgor. At such time, the Securities Intermediary shall act in accordance with the Pledgor's instructions with respect to the Collateral hereunder that has not been sold, disposed of, retained or applied by the Collateral Agent in accordance with the terms of this Pledge Agreement and the Indenture and execute and deliver to the Pledgor such documents as the Pledgor shall reasonably request to evidence such termination. Any such actions requested by the Pledgor shall be without warranty by or recourse to the Collateral

Agent, the Securities Intermediary or the Trustee, except as to the absence of any liens on the Collateral created by or arising through the Collateral Agent, the Securities Intermediary or the Trustee, and shall be at the reasonable expense of the Pledgor.

17.10 Survival Provisions. All representations, warranties and covenants contained herein shall survive the execution and delivery of this Pledge Agreement, and shall terminate only upon the termination of this Pledge Agreement. The obligations of the Pledgor under Sections 11 and 13 and the obligations of the Collateral Agent and the Securities Intermediary under Section 17.9(b) hereof shall survive the termination of this Pledge Agreement.

17.11 Waivers. The Pledgor waives presentment and demand for payment of any of the Secured Obligations, protest and notice of dishonor or default with respect to any of the Secured Obligations, and all other notices to which the Pledgor might otherwise be entitled, except as otherwise expressly provided herein or in the Indenture.

17.12 Authority of the Collateral Agent.

(a) The Collateral Agent shall have and be entitled to exercise all powers hereunder that are specifically granted to the Collateral Agent by the terms hereof, together with such powers as are reasonably incidental thereto. The Collateral Agent may perform any of its duties hereunder or in connection with the Collateral by or through agents or attorneys, shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder and shall be entitled to retain counsel and to act in reliance upon the advice of counsel concerning all such matters. Except as otherwise expressly provided in this Pledge Agreement or the Indenture, neither the Collateral Agent nor any director, officer, employee, attorney or agent of the Collateral Agent shall be liable to the Pledgor for any action taken or omitted to be taken by the Collateral Agent hereunder, except for its own bad faith, gross negligence or willful misconduct, and the Collateral Agent shall not be responsible for the validity, effectiveness or sufficiency hereof or of any document or security furnished pursuant hereto. The Collateral Agent and its directors, officers, employees, attorneys and agents shall be entitled to rely conclusively on any communication, instrument or document believed by it or them to be genuine and correct and to have been signed or sent by the proper Person or Persons. The Collateral Agent shall have no duty to cause any financing statement or continuation statement to be filed in respect of the Collateral.

(b) The Pledgor acknowledges that the rights and responsibilities of the Collateral Agent under this Pledge Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Pledge Agreement shall, as between the Collateral Agent and the Holders, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Pledgor, the Collateral Agent shall be conclusively presumed to be acting as agent for the Trustee and the Holders with full and valid authority so to act or refrain from acting, and the Pledgor shall not be obligated or entitled to make any inquiry respecting such authority.

17.13 Final Expression. This Pledge Agreement, together with the Indenture and any other agreement executed among the parties to this Agreement in connection herewith, is intended by the parties as a final expression of this Pledge Agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

17.14 Rights of Holders. No Holder shall have any independent rights hereunder other than those rights granted to individual Holders pursuant to the Indenture; provided, that nothing in this subsection shall limit any rights granted to the Trustee under the Debentures or the Indenture.

17.15 GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; WAIVER OF DAMAGES.

(a) THIS PLEDGE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THEREOF (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST GRANTED HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK, AND ANY DISPUTE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THE PLEDGOR, THE TRUSTEE, THE COLLATERAL AGENT AND THE SECURITIES INTERMEDIARY IN CONNECTION WITH THIS PLEDGE AGREEMENT, WHETHER ARISING IN CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE RESOLVED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK EXCEPT TO THE EXTENT, IF ANY, OTHERWISE PROVIDED IN THE APPLICABLE FEDERAL BOOK-ENTRY REGULATIONS. NOTWITHSTANDING THE FOREGOING, THE MATTERS IDENTIFIED IN SECTION 9-305(a)(3) OF THE UCC WILL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THEREOF (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) THE PLEDGOR HEREBY WAIVES PERSONAL SERVICE OF PROCESS IN ANY SUIT, ACTION OR PROCEEDING WITH RESPECT TO THIS PLEDGE AGREEMENT AND FOR ACTIONS BROUGHT UNDER THE U.S. FEDERAL OR STATE SECURITIES LAWS BROUGHT IN ANY FEDERAL OR STATE COURT LOCATED IN THE CITY OF NEW YORK (EACH A "NEW YORK COURT") AND CONSENTS THAT ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE MADE BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE PLEDGOR AT THE ADDRESS INDICATED IN SECTION 17.1. EACH OF THE PARTIES HERETO SUBMITS TO THE JURISDICTION OF ANY NEW YORK COURT AND TO THE COURTS OF ITS CORPORATE DOMICILE WITH RESPECT TO ANY ACTIONS BROUGHT AGAINST IT AS DEFENDANT IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THE PLEDGOR, THE TRUSTEE, THE

COLLATERAL AGENT AND THE SECURITIES INTERMEDIARY IN CONNECTION WITH THIS PLEDGE AGREEMENT, AND EACH OF THE PARTIES HERETO WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE LAYING OF VENUE, INCLUDING ANY PLEADING OF FORUM NON CONVENIENS, WITH RESPECT TO ANY SUCH ACTION AND WAIVES ANY RIGHT TO WHICH IT MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

(c) THE PLEDGOR AGREES THAT THE COLLATERAL AGENT SHALL, IN THE NAME AND ON BEHALF OF THE TRUSTEE OR ANY HOLDER, HAVE THE RIGHT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO PROCEED AGAINST THE PLEDGOR OR THE COLLATERAL IN A COURT IN ANY LOCATION REASONABLY SELECTED IN GOOD FAITH (AND HAVING PERSONAL OR IN REM JURISDICTION OVER THE PLEDGOR OR THE COLLATERAL, AS THE CASE MAY BE) TO ENABLE THE COLLATERAL AGENT TO REALIZE ON SUCH COLLATERAL, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF THE TRUSTEE. THE PLEDGOR AGREES THAT IT WILL NOT ASSERT ANY COUNTERCLAIMS, SETOFFS OR CROSSCLAIMS IN ANY PROCEEDING BROUGHT BY THE COLLATERAL AGENT TO REALIZE ON SUCH PROPERTY OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE COLLATERAL AGENT, EXCEPT FOR SUCH COUNTERCLAIMS, SETOFFS OR CROSSCLAIMS WHICH, IF NOT ASSERTED IN ANY SUCH PROCEEDING, COULD NOT OTHERWISE BE BROUGHT OR ASSERTED.

(d) THE PLEDGOR AGREES THAT NEITHER ANY HOLDER NOR (EXCEPT AS OTHERWISE PROVIDED IN THIS PLEDGE AGREEMENT OR THE INDENTURE) ANY OTHER PARTY TO THIS PLEDGE AGREEMENT SHALL HAVE ANY LIABILITY TO THE PLEDGOR (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE) FOR LOSSES SUFFERED BY THE PLEDGOR IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO, THE TRANSACTIONS CONTEMPLATED AND THE RELATIONSHIP ESTABLISHED BY THIS PLEDGE AGREEMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, UNLESS IT IS DETERMINED BY A FINAL AND NONAPPEALABLE JUDGMENT OF A COURT THAT IS BINDING ON SUCH PERSON THAT SUCH LOSSES WERE THE RESULT OF ACTS OR OMISSIONS ON THE PART OF SUCH PERSON CONSTITUTING BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(e) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PLEDGOR WAIVES THE POSTING OF ANY BOND OTHERWISE REQUIRED OF THE TRUSTEE, THE COLLATERAL AGENT OR ANY HOLDER IN CONNECTION WITH ANY JUDICIAL PROCESS OR PROCEEDING TO ENFORCE ANY JUDGMENT OR OTHER COURT ORDER PERTAINING TO THIS PLEDGE AGREEMENT OR ANY RELATED AGREEMENT OR DOCUMENT ENTERED IN FAVOR OF THE TRUSTEE, THE COLLATERAL AGENT OR ANY HOLDER, OR TO ENFORCE BY SPECIFIC PERFORMANCE, TEMPORARY RESTRAINING ORDER OR PRELIMINARY OR PERMANENT INJUNCTION, THIS PLEDGE AGREEMENT OR ANY RELATED AGREEMENT OR DOCUMENT BETWEEN THE PLEDGOR, ON THE ONE HAND, AND

THE TRUSTEE, THE COLLATERAL AGENT AND/OR THE HOLDERS, ON THE OTHER HAND.

17.16 Effectiveness. This Pledge Agreement shall become effective upon the effectiveness of the Indenture.

IN WITNESS WHEREOF, the Pledgor, the Trustee, the Securities Intermediary and the Collateral Agent have each caused this Pledge Agreement to be duly executed and delivered as of the date first above written.

WYNN RESORTS FUNDING, LLC,
a Nevada limited liability company, as the Pledgor

By: Wynn Resorts, Limited, a Nevada Corporation, its sole member and control manager

By: /s/ RONALD J. KRAMER

Name: Ronald J. Kramer
Title: President

U.S. BANK NATIONAL ASSOCIATION,
as the Trustee, the Collateral Agent and the Securities Intermediary

By: /s/ FRANK P. LESLIE III

Name: Frank P. Leslie III
Title: Vice President

EXHIBIT 4.5

SUPPLEMENT NO. 1 dated as of July 30, 2003, to the COLLATERAL PLEDGE AND SECURITY AGREEMENT dated as of July 7, 2003 (as amended, restated, supplemented or otherwise modified from time to time, the "Pledge Agreement") between Wynn Resorts Funding, LLC, a Nevada limited liability company (the "Pledgor"), and U.S. Bank National Association, as (i) the trustee (in such capacity, the "Trustee") for the Holders of the Debentures issued by Wynn Resorts, Limited, a Nevada corporation ("Wynn Resorts"), under the Indenture, (ii) the collateral agent for the Trustee and the Holders (in such capacity, the "Collateral Agent") and (iii) the "securities intermediary" (as such term is defined in Section 8-102(a)(14) of the UCC or, in respect of any Book-Entry Security, in the Federal Book-Entry Regulations (in such capacity, the "Securities Intermediary"). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Pledge Agreement.

WHEREAS, Wynn Resorts, Deutsche Bank Securities Inc. and SG Cowen Securities Corporation (Deutsche Bank Securities Inc. and SG Cowen Securities Corporation together the "Initial Purchasers") are parties to a Purchase Agreement dated June 30, 2003 (the "Purchase Agreement"), pursuant to which Wynn Resorts granted the Initial Purchasers an option under Section 2(b) of the Purchase Agreement to purchase up to $50,000,000 aggregate principal amount of Wynn Resorts' 6% Convertible Subordinated Debentures due 2015 (the "Debentures");

WHEREAS, Wynn Resorts, the Pledgor and the Trustee have entered into that certain indenture dated as of July 7, 2003 (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), pursuant to which, among other things, Wynn Resorts is issuing the Debentures and Pledgor is guaranteeing the Debentures on a senior secured basis;

WHEREAS, pursuant to and subject to the terms of the Indenture, as of each Date of Delivery, the Pledgor is required to purchase, or cause the purchase of, with proceeds of the Debentures contributed to the Pledgor by Wynn Resorts, and pledge to the Collateral Agent for the benefit of the Trustee and the holders (the "Holders") of the Debentures, U.S. Government Obligations in such amount that will be sufficient, accounting for scheduled interest and principal payments of such U.S. Government Obligations, to provide for cash payment in full when due of the first six scheduled interest payments on the Debentures (i.e., scheduled interest payments due on the Debentures during the period from Closing Time up to and including July 15, 2006)(the "Collateralized Obligations");

WHEREAS, the Pledgor, the Trustee, the Collateral Agent and the Securities Intermediary have entered into the Pledge Agreement, pursuant to which the Pledgor has previously pledged certain Pledged Securities to the Collateral Agent for the benefit of the Holders in connection with the purchase by the Initial Purchasers of $200,000,000 aggregate principal amount of Debentures;

WHEREAS, the Initial Purchasers have exercised their option under Section 2(b) of the Purchase Agreement to purchase $50,000,000 aggregate principal amount of Debentures;

WHEREAS, it is a condition precedent to the purchase of the Debentures by the Initial Purchasers pursuant to the option granted in Section 2(b) the Purchase Agreement that the Pledgor purchase Additional Pledged Securities and deposit such Additional Pledged Securities into the Collateral Account to be held therein subject to the terms of the Pledge Agreement and shall have granted a security interest as contemplated by the Pledge Agreement;

NOW, THEREFORE, in consideration of the premises herein contained, and to induce the Initial Purchasers to purchase the Debentures, the Pledgor, the Trustee, the Securities Intermediary and the Collateral Agent hereby agree, for the benefit of the Initial Purchasers and for the ratable benefit of the Trustee and the Holders, as follows:

SECTION 1. *Pledge and Grant of Security Interest.* Pursuant to Section 1.3 of the Pledge Agreement, as security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations, the Pledgor hereby grants to the Collateral Agent for the benefit of the Trustee and for the ratable benefit of the Holders, a Lien on and security interest in all of the Pledgor's right, title and interest in, to and under the following property: (a) the U.S. Government Obligations identified by CUSIP No. on Schedule I hereto (the "Additional Pledged Securities") and the certificates representing the Additional Pledged Securities, the scheduled payments of principal and interest thereon and (b) the Security Entitlements described in Schedule I hereto and, in each case, the certificates, if any, representing the Additional Pledged Securities and the scheduled payments of principal and interest thereon. The Pledge Agreement is hereby incorporated herein by reference.

SECTION 2. *Supplement to Schedule I.* The parties hereto agree that Schedule I to the Pledge Agreement shall be supplemented by Schedule I hereto.

SECTION 3. *Purchase of Additional Pledged Securities*. Pursuant to Section 2(b)(ii) of the Pledge Agreement, as of the date hereof, the Pledgor agrees to transfer, or caused to be transferred to the Securities Intermediary for credit to the Collateral Account, an amount equal to $8,783,700, which amount shall be sufficient for the Securities Intermediary to purchase the Additional Pledged Securities. The Securities Intermediary agrees to apply such amount to purchase the Additional Pledged Securities as contemplated under Section 2(c) of the Pledge Agreement.

SECTION 4. *Representations and Warranties of the Pledgor*. The Pledgor hereby represents and warrants to the other parties hereto, as of the date hereof, that:

(a) Each of this Supplement and the Pledge Agreement as supplemented hereby has been duly authorized, validly executed and delivered by the Pledgor and (assuming the due authorization and valid execution and delivery of this Supplement by each of the other parties hereto and enforceability of this Supplement against each of the other parties hereto in accordance with its terms) constitutes a valid and binding agreement of the Pledgor, enforceable against the Pledgor in accordance with its terms, except as (i) the enforceability hereof and thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, preference, reorganization, moratorium or similar laws now or hereafter in effect relating to or affecting the rights or remedies of creditors generally, (ii) the

availability of equitable remedies may be limited by equitable principles of general applicability and the discretion of the court before which any proceeding therefor may be brought, (iii) the exculpation provisions and rights to indemnification under the Pledge Agreement may be limited by U.S. federal and state securities laws and public policy considerations and (iv) the waiver of rights and defenses contained in Sections 17.11 and 17.15 of the Pledge Agreement may be limited by applicable law; and

(b) the representations and warranties of the Pledgor set forth in Section 6 of the Pledge Agreement are true and correct in all material respects with the same effect as if made on and as of the date hereof, except to the extent such representations and warranties relate to an earlier date (in which case they shall be been true and correct in all material respects on and as of such earlier date).

SECTION 5. *Execution in Counterparts*. This Supplement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement. This Supplement shall become effective when the Collateral Agent shall have received counterparts of this Supplement that, when taken together, bear the signatures of the Pledgor, the Trustee, the Securities Intermediary and the Collateral Agent.

SECTION 6. *Effect of Supplement*. Except as expressly supplemented hereby, the Pledge Agreement shall remain in full force and effect.

SECTION 7. *Governing Law*. This Supplement shall governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Pledgor, the Trustee, the Securities Intermediary and the Collateral Agent have each caused this Supplement to be duly executed and delivered as of the date first above written.

WYNN RESORTS FUNDING, LLC,
a Nevada limited liability company, as the Pledgor

By: /s/ RONALD J. KRAMER

Name: Ronald J. Kramer
Title: President

U.S. BANK NATIONAL ASSOCIATION,
as the Trustee, the Collateral Agent and the Securities Intermediary

By: /s/ RICHARD H. PROKOSCH

Name: Richard H. Prokosch
Title: Vice President

Exhibit 4.6

PLEDGE AND SECURITY AGREEMENT

among

WYNN RESORTS, LIMITED,
a Nevada corporation
(as the Pledgor)

and

U.S. BANK NATIONAL ASSOCIATION,
(as the Trustee and the Collateral Agent)

Dated as of July 7, 2003

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EXHIBITS AND SCHEDULE

PLEDGE AND SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT, dated as of July 7, 2003, (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is entered into by and among Wynn Resorts, Limited, a Nevada corporation (the "Pledgor"), and U.S. Bank National Association as (i) the trustee (in such capacity, the "Trustee") for the Holders of the Debentures issued by the Pledgor under the Indenture and (ii) the collateral agent for the Trustee and the Holders (in such capacity, the "Collateral Agent").

W I T N E S S E T H:

WHEREAS, the Pledgor, Deutsche Bank Securities Inc. and SG Cowen Securities Corporation (Deutsche Bank Securities Inc. and SG Cowen Securities Corporation together the "Initial Purchasers") are parties to a Purchase Agreement dated June 30, 2003 (the "Purchase Agreement"), pursuant to which the Pledgor will issue and sell to the Initial Purchasers $200,000,000 aggregate principal amount of Convertible Subordinated Debentures due 2015 (plus an additional $50,000,000 aggregate principal amount if the Initial Purchasers exercise in full their purchase option set forth in Section 2(b) of the Purchase Agreement) (collectively, the "Debentures");

WHEREAS, the Pledgor, Wynn Resorts Funding, LLC, a Nevada limited liability company (the "Guarantor"), and the Trustee, have entered into that certain indenture dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), pursuant to which, among other things, the Pledgor is issuing Debentures on the date hereof and Guarantor is guaranteeing the Debentures on a senior secured basis;

WHEREAS, the Pledgor is the sole member and directly owns all of the outstanding member's interests of the Guarantor; and

WHEREAS, it is a condition precedent to the purchase of the Debentures by the Initial Purchasers pursuant to the Purchase Agreement that the Pledgor shall have granted the security interest and pledged all of the outstanding member's interests of the Guarantor as contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises herein contained, and in order to induce the Initial Purchasers to purchase the Debentures, the Pledgor, the Trustee and the Collateral Agent hereby agree, for the benefit of the Initial Purchasers and for the ratable benefit of the Trustee and the Holders, as follows:

ARTICLE I.
DEFINITIONS AND APPOINTMENT

1.1 Defined Terms. Unless otherwise defined in the Indenture or in this Agreement, terms defined in the UCC (defined below) are used in this Agreement as such terms are defined in the UCC. In this Agreement, the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Collateral" has the meaning given in Section 2.1.

"Collateral Agent" has the meaning given in the preamble to this Agreement.

"Collateral Pledge and Security Agreement" means the Collateral Pledge and Security Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time) among the Trustee, the Collateral Agent, U.S. Bank National Association, as securities intermediary thereunder, and the Guarantor.

"Debentures" has the meaning given in the recitals to this Agreement.

"Event of Default" has the meaning assigned to such term in the Indenture.

"Guarantor" has the meaning given in the recitals to this Agreement.

"Holders" has the meaning given in the recitals to this Agreement.

"Initial Purchasers" has the meaning given in the recitals to this Agreement.

"Obligations" means the obligations of the Pledgor to repay the principal, premium, if any, interest, fees, expenses or otherwise on the Debentures and each other obligation and liability of the Pledgor which may arise under or in connection with the Indenture, this Agreement or any other instrument, document or agreement related thereto.

"Person" has the meaning given in the Indenture.

"Pledged Equity Interests" has the meaning given in Section 2.1.

"Pledgor" has the meaning given in the preamble to this Agreement.

"Purchase Agreement" has the meaning given in the recitals to this Agreement.

"Securities Laws" has the meaning given in Section 5.6.

"Termination Date" has the meaning given in the Collateral Pledge and Security Agreement.

"Trustee" has the meaning given in the preamble to this Agreement.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform

Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

1.2 Rules of Interpretation. Unless otherwise provided herein, the rules of interpretation set forth in the Indenture shall apply to this Agreement.

1.3 Appointment of the Collateral Agent. The Trustee, on behalf of the Holders, hereby appoints the Collateral Agent as its agent for purposes hereof, and authorizes the Collateral Agent to take such actions and to exercise such powers, on the Trustee's behalf, as are delegated to the Collateral Agent, together with such actions and powers as are reasonably incidental thereto, all in accordance with the terms and conditions set forth herein, and the Collateral Agent hereby accepts such appointment.

ARTICLE II.
PLEDGE AND GRANT OF SECURITY INTEREST

2.1 Granting Clause. To secure the timely payment in full in cash and performance in full of the Obligations, the Pledgor hereby grants and pledges to the Collateral Agent, for the benefit of the Trustee and ratable benefit of the Holders, a continuing security interest in all the right, title and interest of the Pledgor, now owned or hereafter existing or acquired, in, to and under any and all of the following (the "Collateral"):

Any and all of the Pledgor's right(s), title(s) and interest(s), whether now owned or hereafter existing or acquired, in the member's interests of the Guarantor (the "Pledged Equity Interests"), including the member's interests described on Schedule I hereto and the Pledgor's share of:

(a) all rights to receive income, gain, profit, dividends and other distributions allocated or distributed to the Pledgor in respect of or in exchange for all or any portion of the Pledged Equity Interests;

(b) all of the Pledgor's voting rights in or rights to control or direct the affairs of the Guarantor;

(c) all other rights, title and interest in or to the Guarantor derived from the Pledged Equity Interests;

(d) all securities, notes, certificates and other instruments representing or evidencing any of the foregoing rights and interests or the ownership thereof and any interest of the Pledgor reflected in the books of any financial intermediary pertaining to such rights and interests and all non-cash dividends, cash, options, warrants, stock splits, reclassifications, rights, instruments or other investment property and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such rights and interests; and

(e) all proceeds of the foregoing Collateral, whether cash or non-cash.

2.2 Delivery of Certificates. All certificates, notes and other instruments representing or evidencing any Collateral (including the certificates described on Schedule I hereto) shall be delivered to and held by or on behalf of, and, in the case of notes, endorsed to the order of, the Collateral Agent, or its designee pursuant hereto, in the manner set forth in Section 6.16.

2.3 Retention of Certain Rights. So long as the Collateral Agent has not exercised remedies with respect to the Collateral under this Agreement upon the occurrence of an Event of Default, the Pledgor reserves the right to exercise all voting and other rights with respect to the Collateral; provided that no vote shall be cast, right exercised or other action taken which could materially impair the Collateral.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF PLEDGOR

The Pledgor hereby represents and warrants to the other parties hereto, as of the date hereof, that:

(a) The execution and delivery by the Pledgor of, and the performance by the Pledgor of its obligations under, this Agreement will not contravene any provision of applicable law or the articles of incorporation, bylaws or equivalent organizational instruments of the Pledgor or any agreement or other instrument binding upon the Pledgor or any of its subsidiaries or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Pledgor or any of its subsidiaries, or result in the creation or imposition of any lien on any assets of the Pledgor, except for the lien and security interests granted under this Agreement. No consent, approval, authorization or order of, or qualification with, and no notice to or filing with, any governmental body or agency or other third party is required (i) for the performance by the Pledgor of its obligations under this Agreement, (ii) for the pledge by the Pledgor of the Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by the Pledgor, (iii) for the perfection or maintenance of the security interest created hereby (including the first priority nature of such security interest), except for the filing of financing and continuation statements with the Secretary of State of the State of Nevada under the UCC as in effect in the State of Nevada, which financing statements have been delivered to the Collateral Agent as of the date hereof or (iv) except for any such consents, approvals, authorizations or orders required to be obtained by the Collateral Agent (or the Holders) for reasons other than the consummation of this transaction, for the exercise by the Collateral Agent of the rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement.

(b) The Pledgor is the legal and beneficial owner of the Collateral, free and clear of any liens or claims of any Person (except for the lien and security interests granted under this Agreement). No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any public office appropriate for such filings other than the financing statements, if any, to be filed pursuant to this Agreement. The Pledged Equity Interests (i) have been duly authorized and validly issued and (ii) constitute all of the outstanding member’s interests of the Guarantor.

(c) This Agreement has been duly authorized, validly executed and delivered by the Pledgor and (assuming the due authorization and valid execution and delivery of this Agreement by each of the other parties hereto and enforceability of this Agreement against each of the other parties hereto in accordance with its terms) constitutes a valid and binding agreement of the Pledgor, enforceable against the Pledgor in accordance with its terms, except as (i) the enforceability hereof may be limited by bankruptcy, insolvency, fraudulent conveyance, preference, reorganization, moratorium or similar laws now or hereafter in effect relating to or affecting the rights or remedies of creditors generally, (ii) the availability of equitable remedies may be limited by equitable principles of general applicability and the discretion of the court before which any proceeding therefor may be brought, (iii) the exculpation provisions and rights to indemnification hereunder may be limited by U.S. federal and state securities laws and public policy considerations and (iv) the waiver of rights and defenses contained in Section 6.17 hereof may be limited by applicable law.

(d) Upon the execution of this Agreement by all parties hereto and the filing of financing statements with the Secretary of State of the State of Nevada under the UCC as in effect in the State of Nevada (all of such financing statements having been delivered to the Collateral Agent as of the date hereof), the grant of a security interest in the Collateral securing the payment of the Obligations for the benefit of the Trustee and the Holders will constitute a valid, first priority, perfected security interest in such Collateral (except, with respect to proceeds, only to the extent permitted by Section 9-315 of the UCC), enforceable as such against all creditors of the Pledgor and any Persons purporting to purchase any of the Collateral from the Pledgor other than as permitted by the Indenture.

(e) There are no legal or governmental proceedings pending or, to the best of the Pledgor's knowledge, threatened to which the Pledgor or any of its subsidiaries is a party or to which any of the properties of the Pledgor or any of its subsidiaries is subject that would adversely affect the power or ability of the Pledgor to perform its obligations under this Agreement or to consummate the transactions contemplated hereby

(f) The pledge of the Collateral pursuant to this Agreement is not prohibited by law or governmental regulation (including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System) applicable to the Pledgor.

(g) No Event of Default exists.

(h) The Pledgor is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Nevada and the Pledgor is not organized under the laws of any other jurisdiction. The Pledgor's name as it appears in official filings in the State of Nevada is "Wynn Resorts, Limited". The Pledgor's federal employee identification number is 46-0484987 and the Pledgor's Nevada organizational number is C14059-2002.

(i) It is understood and agreed that the foregoing representations and warranties shall apply only to the Collateral delivered on the date hereof and that, with respect to Collateral delivered thereafter, the Pledgor shall, upon the written request of the Collateral Agent, be required to make representations and warranties in form and substance substantially

similar to the foregoing in supplements hereto and that such representations and warranties contained in such supplements hereto shall be applicable to such Collateral hereafter delivered.

ARTICLE IV.
COVENANTS OF THE PLEDGOR

The Pledgor covenants to and in favor of the Collateral Agent, the Trustee and the Holders as follows:

4.1 Compliance with Obligations. The Pledgor shall perform and comply in all material respects with all obligations and conditions on its part to be performed with respect to the Collateral.

4.2 Defense of Collateral. The Pledgor shall, until the Termination Date, defend its title to the Collateral and the interest of the Collateral Agent in the Collateral pledged hereunder against the claims and demands of all Persons.

4.3 Preservation of Value; Limitation of Liens. The Pledgor shall not take or permit to be taken any action in connection with the Collateral which would impair in any material respect the value of the interests or rights of the Pledgor therein or which would impair the interests or rights of the Collateral Agent therein or with respect thereto; provided, however, that nothing in this Agreement shall prevent the Pledgor, prior to the exercise by the Collateral Agent of any rights pursuant to the terms hereof, from undertaking the Pledgor's operations in the ordinary course of business in accordance with the Indenture. The Pledgor shall not directly or indirectly create, incur, assume or suffer to exist any liens on or with respect to all or any part of the Collateral (other than the lien created by this Agreement). Pledgor shall at its own cost and expense promptly take such action as may be necessary to discharge any such liens.

4.4 No Other Filings. The Pledgor shall not file or authorize to be filed in any jurisdiction any financing statements under the UCC or any like statement relating to the Collateral in which the Collateral Agent (for the benefit of the Trustee an the Holders) is not named as the sole secured party.

4.5 No Sale of Collateral. The Pledgor shall not cause, suffer or permit the sale, assignment, conveyance, pledge or other transfer of all or any portion of the Collateral and the Pledgor shall at all times remain the 100% direct owner of all of the member's interests of the Guarantor.

4.6 Filing of Bankruptcy Proceedings. To the extent it may do so under applicable laws, the Pledgor, for itself, its successors and assigns, shall not cast any vote as an owner in the Guarantor (a) in favor of the commencement of a voluntary case or other proceeding seeking liquidation, reorganization, rehabilitation or other relief with respect to the Guarantor or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect in any jurisdiction or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the owners of the Guarantor or any substantial part of the Guarantor's property, (b) to authorize the Guarantor to consent to any such aforesaid relief or to the appointment of or taking possession by any such aforesaid official in an involuntary case or other

proceeding commenced against the Guarantor or (c) to authorize the Guarantor to make a general assignment for the benefit of creditors.

4.7 Distributions. If the Pledgor in its capacity as owner of the Guarantor receives any income, dividend or other distribution of money or property of any kind from the Guarantor (other than as expressly permitted by the Indenture and the Collateral Pledge and Security Agreement), the Pledgor shall hold such income or distribution as trustee for and shall promptly deliver the same to the Collateral Agent.

4.8 Maintenance of Records. The Pledgor shall, at all times, keep accurate and complete records of the Collateral. The Pledgor shall permit representatives of the Collateral Agent, upon reasonable prior notice, at any time during normal business hours of the Pledgor to inspect and make abstracts from the Pledgor's books and records pertaining to the Collateral. Upon the occurrence and during the continuation of any Event of Default, at the Collateral Agent's request, the Pledgor shall promptly deliver copies of any and all such records to the Collateral Agent.

4.9 Name; Jurisdiction of Organization. The Pledgor shall not change its name, its jurisdiction of organization, the location of its principal place of business, its organization identification number or its fiscal year without notice to the Collateral Agent at least 30 days prior to such change. In the event of such change, the Pledgor shall at its own expense execute and deliver such instruments and documents as may be required by the Collateral Agent or applicable laws to maintain a prior perfected security interest in the Collateral.

4.10 Certificated Securities. The Pledgor shall cause the Guarantor's equity interests to be evidenced by and remain "certificated securities" as defined in Article 8 of the UCC.

4.11 Amendments to Organizational Documents. The Pledgor shall not terminate, amend, supplement or otherwise modify, or cancel, the articles of incorporation, bylaws or other governing documents of the Guarantor other than amendments, supplements or modifications that are administrative in nature.

4.12 Proceeds of Collateral. The Pledgor shall, at all times, keep pledged to the Collateral Agent (for the benefit of the Trustee and the Holders) pursuant hereto all Collateral and shall not permit the Guarantor to issue any equity interests which shall not have been immediately duly pledged to the Collateral Agent (for the benefit of the Trustee and the Holders) hereunder on a first priority perfected basis.

ARTICLE V.
REMEDIES UPON EVENT OF DEFAULT.

5.1 Remedies Upon an Event of Default. Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent, shall have the right, at its election, but not the obligation, to do any of the following:

(a) in connection with any acceleration and foreclosure, vote or exercise any and all of the Pledgor's rights or powers incident to its ownership of the Pledged Equity Interests, including any rights or powers to manage or control the Guarantor;

(b) demand, sue for, collect or receive any money or property at any time payable to or receivable by Pledgor on account of or in exchange for all or any part of the Collateral;

(c) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce any obligation or right hereunder or included in the Collateral, including specific enforcement of any covenant or agreement contained herein, or to foreclose or enforce the security interest in all or any part of the Collateral granted herein, or to enforce any other legal or equitable right vested in it by this Agreement or by applicable laws;

(d) incur expenses, including reasonable attorneys' fees, reasonable consultants' fees, and other costs appropriate to the exercise of any right or power under this Agreement;

(e) perform any obligation of the Pledgor hereunder;

(f) secure the appointment of a receiver for the Pledgor without notice to the Guarantor or the Pledgor;

(g) exercise any other or additional rights or remedies granted to the Collateral Agent under any other provision of this Agreement, the Indenture or any other instrument, document or agreement related thereto, or exercisable by a secured party under the UCC, whether or not the UCC applies to the affected Collateral, or under any other applicable laws;

(h) take any other action that the Collateral Agent deems necessary or desirable to protect or realize upon its security interest in the Collateral or any part thereof, and the Pledgor hereby irrevocably appoints the Collateral Agent as the Pledgor's attorney-in-fact (as set forth in Section 8.3) to take any such action, including the execution and delivery of any and all documents or instruments related to the Collateral or any part thereof in the Pledgor's name, and said appointment shall create in the Collateral Agent a power coupled with an interest which shall be irrevocable; or

(i) appoint another Person (who may be an employee, officer or other representative of the Collateral Agent) to do any of the foregoing, or take any other action permitted hereunder, on behalf of the Collateral Agent.

5.2 Minimum Notice Period. If, pursuant to applicable laws, prior notice of any action described in Section 5.1 is required to be given to the Pledgor or the Guarantor, the Pledgor and the Guarantor hereby acknowledge and agree that the minimum time required by such applicable laws, or if no minimum is specified, ten business days, shall be deemed a reasonable notice period.

5.3 Expenses; Interest. All costs and expenses (including attorneys' fees and expenses) incurred by the Collateral Agent in connection with exercising any actions taken under Section 5.1, together with interest thereon (to the extent permitted by laws) computed at a rate per annum equal to the interest rate applicable to the Debentures from the date on which such costs or expenses are payable to the date of payment thereof, shall constitute indebtedness secured by this Agreement and shall be paid the Pledgor to the Collateral Agent within five business days after demand.

5.4 Sale of Collateral. In addition to exercising the foregoing rights, the Collateral Agent may, to the extent permitted by applicable laws, arrange for and conduct a sale of the Collateral at a public or private sale (as the Collateral Agent may elect) which sale may be conducted by an employee or representative of the Collateral Agent, without any demand of performance or notice of intention to sell or dispose of, or of time or place of sale or disposition (except such notice as required by any applicable laws), and any such sale shall be considered or deemed to be a sale made in a commercially reasonable manner. The Collateral Agent may release, temporarily or otherwise, to the Pledgor any item of Collateral of which the Collateral Agent has taken possession pursuant to any right granted to the Collateral Agent by this Agreement without waiving any rights granted to the Collateral Agent under this Agreement, the Indenture or any other instrument, document or agreement related thereto. The Pledgor, in dealing with or disposing of the Collateral or any part thereof, hereby waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to require, upon foreclosure, sales of assets in a particular order. The Pledgor also waives its right to challenge the reasonableness of any disclaimer of warranties, title and the like made by the Collateral Agent in connection with a sale of the Collateral. Each successor and assign of the Pledgor, by acceptance of its interest, shall be bound by the above waiver, to the same extent as if such holder gave the waiver itself. The Pledgor also hereby waives, to the full extent it may lawfully do so, the benefit of all laws providing for rights of appraisal, valuation, stay or extension or of redemption after foreclosure now or hereafter in force.

5.5 Compliance With Limitations and Restrictions. The Pledgor hereby agrees that in respect of any sale of any of the Collateral pursuant to the terms hereof, the Collateral Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as the Collateral Agent may be advised by counsel is necessary in order to avoid any violation of applicable laws, or in order to obtain any required approval of the sale or of the purchaser by any Governmental Authority or official, and the Pledgor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Collateral Agent be liable or accountable to the Pledgor for any discount allowed by reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

5.6 Registration of Securities. If the Collateral Agent shall decide to exercise its right to sell any or all of the Collateral, and if, in the opinion of counsel to the Collateral Agent, it is necessary to have such Collateral, or that portion thereof to be sold, registered under the provisions of the Securities Act of 1933, as amended, or otherwise registered or qualified under any federal or state securities laws or regulations (collectively, the "Securities Laws"), the Pledgor and the Guarantor will execute and deliver, all at the Pledgor's and the Guarantor's expense, all such instruments and documents which, in the opinion of the Collateral Agent, are

necessary to register or qualify such Collateral, or that portion thereof to be sold, under the provisions of the Securities Laws. The Pledgor and the Guarantor will execute and will use best efforts to cause any registration statement relating thereto to become effective and to remain effective for a period of not less than six months from the date of the first public offering of such Collateral, or that portion thereof to be sold, and to make all amendments thereto and/or to any related prospectus or similar document which, in the reasonable opinion of the Collateral Agent, are necessary, all in conformity with the Securities Laws applicable thereto. Without limiting the generality of the foregoing, the Pledgor and the Guarantor agree to comply with the applicable provisions of the securities or "Blue Sky" laws of any jurisdiction(s) which the Collateral Agent shall reasonably designate and to make available to its security holders, as soon as practicable, an earnings statement which will satisfy the provisions of Section 11(a) of the Securities Act of 1933.

5.7 No Impairment of Remedies. If the Collateral Agent may, under applicable laws, proceed to realize its benefits under this Agreement, whether owned by the Pledgor or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, the Collateral Agent may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of the rights and remedies of the Collateral Agent under this Agreement. If, in the exercise of any of such rights and remedies, the Collateral Agent forfeits any of its rights or remedies, including any right to enter a deficiency judgment against the Pledgor or any other Person, whether because of any applicable laws pertaining to "election of remedies" or otherwise, the Pledgor hereby consents to such action by the Collateral Agent and, to the extent permitted by applicable laws, waives any claim based upon such action, even if such action by the Collateral Agent shall result in a full or partial loss of any rights of subrogation, indemnification or reimbursement which the Pledgor might otherwise have had but for such action by the Collateral Agent or the terms herein. Any election of remedies which results in the denial or impairment of the right of the Collateral Agent to seek a deficiency judgment against any of the parties to the Indenture or any other instrument, document or agreement related thereto shall not, to the extent permitted by applicable laws, impair the Pledgor's obligation hereunder. In the event the Collateral Agent shall bid at any foreclosure or trustee's sale or at any private sale permitted by laws or this Agreement, the Indenture or any other instrument, document or agreement related thereto, the Collateral Agent may bid all or less than the amount of the Obligations. To the extent permitted by applicable laws, the amount of the successful bid at any such sale, whether the Collateral Agent or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations.

ARTICLE VI.
MISCELLANEOUS.

6.1 Remedies Cumulative; Delay Not Waiver.

6.1.1 Remedies Cumulative. No right, power or remedy herein conferred upon or reserved to the Collateral Agent is intended to be exclusive of any other right, power or remedy, and every such right, power and remedy shall, to the extent permitted by applicable laws, be cumulative and in addition to every other right, power and remedy given

hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy. Resort to any or all security now or hereafter held by the Collateral Agent may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both.

6.1.2 No Waiver; Separate Causes of Action. No delay or omission to exercise any right, power or remedy accruing to the Collateral Agent upon the occurrence and during the continuance of any Event of Default as aforesaid shall impair any such right, power or remedy of the Collateral Agent, nor shall it be construed to be a waiver of any such Event of Default or of any similar breach or default thereafter occurring or an acquiescence therein, nor shall any waiver of any other breach or default under this Agreement, the Indenture or any other instrument, document or agreement related thereto be deemed a waiver of any other breach or default theretofore or thereafter occurring. Each and every default by the Pledgor in payment hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by the Collateral Agent.

6.1.3 Application of Proceeds. Upon the occurrence and during the continuation of an Event of Default, the proceeds of any sale of or other realization upon, all or any part of the Collateral shall be applied by the Collateral Agent for the ratable benefit of the Holders, as follows:

(x) first, to any accrued and unpaid interest on the Debentures and

(y) second, to the extent available, to the repayment of the remaining Obligations.

Any surplus of such proceeds held by the Collateral Agent and remaining after payment in full of all of the Obligations shall be paid over to the Pledgor.

6.1.4 Foreclosure Waiver. To the extent permitted by law, the Pledgor waives the posting of any bond otherwise required of the Collateral Agent in connection with any judicial process or proceeding to obtain possession of, replevy, attach, or levy upon the Collateral, to enforce any judgment or other security for the Obligations, to enforce any judgment or other court order entered in favor of the Collateral Agent, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other agreement or document between the Pledgor, the Collateral Agent, the Trustee and the Holders. The Pledgor further agrees that upon the occurrence and during the continuation of an Event of Default, the Collateral Agent may elect to nonjudicially or judicially foreclose against any real or personal property security it holds for the Obligations or any part thereof, or to exercise any other remedy against any other Person, any security or any guarantor.

6.2 The Guarantor's Consent and Covenant. The Guarantor hereby consents to the assignment of and grant of a security interest in the Collateral to the Collateral Agent and

to the exercise by the Collateral Agent of all rights and powers assigned or delegated to Collateral Agent by the Pledgor hereunder, including the rights upon and during an Event of Default to exercise the Pledgor's voting rights and other rights to manage or control the Guarantor.

6.3 Attorney-in-Fact. Subject to the terms of this Agreement, the Pledgor hereby appoints and constitutes the Collateral Agent as the Pledgor's attorney-in-fact (with full power of substitution) to exercise to the fullest extent permitted by law all of the following powers upon and at any time after the occurrence and during the continuance of an Event of Default:

(a) collection of proceeds of any Collateral;;

(b) conveyance of any item of Collateral to any purchaser thereof;

(c) to vote, demand, receive and enforce the Pledgor's rights with respect to the Collateral;

(d) giving of any notices or recording of any liens hereof; and

(e) paying or discharging taxes or liens levied or placed upon the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole reasonable discretion, and such payments made by the Collateral Agent to become part of the Obligations secured hereby, due and payable immediately upon demand. The Collateral Agent's authority under this Section 6.3 shall include, without limitation, the authority to endorse and negotiate any checks or instruments representing proceeds of Collateral in the name of the Pledgor, execute and give receipt for any certificate of ownership or any document constituting Collateral, transfer title to any item of Collateral, sign the Pledgor's name on all financing statements (to the extent permitted by applicable law) or any other documents necessary or appropriate to preserve, protect or perfect the security interest in the Collateral and to file the same, prepare, file and sign the Pledgor's name on any notice of lien (to the extent permitted by applicable law), and to take any other actions arising from or necessarily incident to the powers granted to the Trustee or the Collateral Agent in this Agreement. This power of attorney is coupled with an interest and is irrevocable by the Pledgor

If the Pledgor fails to perform any agreement contained herein, the Collateral Agent may, but is not obligated to, after providing to the Pledgor notice of such failure and five business days to effect such performance, itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by the Pledgor under Section 6.11.

6.4 Perfection; Further Assurances.

6.4.1 Perfection. The Pledgor agrees that from time to time, at its own expense, the Pledgor shall promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary, or that the Collateral Agent may reasonably request, in order to perfect, to ensure the continued perfection of, and to protect the assignment and security interest granted or intended to be granted hereby or to enable the

Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Pledgor shall (a) deliver the Collateral or any part thereof to the Collateral Agent, as the Collateral Agent may request, accompanied by such duly executed instruments of transfer or assignment as the Collateral Agent may request, and (b) authorize and file such financing or continuation statements, or amendments thereto, and authorize, execute and file such other instruments, endorsements or notices, as may be reasonably necessary or desirable or as the Collateral Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby.

6.4.2 Filing of Financing and Continuation Statements. The Pledgor hereby authorizes the filing of any financing statements or continuation statements, and amendments to financing statements, or any similar document in any jurisdictions and with any filing offices as the Collateral Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Collateral Agent, for the benefit of the Trustee and the Holders, herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of the Collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein. The Pledgor ratifies and authorizes the Collateral Agent to have filed in any UCC jurisdiction any initial financing statements or amendments thereto prior to the date hereof. A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

6.4.3 Information Concerning Collateral. The Pledgor shall, promptly upon request, provide to the Collateral Agent all information and evidence it may reasonably request concerning the Collateral to enable the Collateral Agent to enforce the provisions of this Agreement.

6.5 Payment of Taxes. The Pledgor shall pay or cause to be paid, before any fine, penalty, interest or cost attaches thereto, all taxes, assessments and other governmental or non-governmental charges or levies (other than those taxes that it is contesting in good faith and by appropriate proceedings, and in respect of which it has established adequate reserves for such taxes) now or hereafter assessed or levied against the Collateral pledged by it hereunder (or against the Collateral in which the Pledgor has granted to the Collateral Agent a security interest of first priority) and shall retain copies of, and, upon request, permit the Collateral Agent to examine receipts showing payment of any of the foregoing.

6.6 Place of Business; Location of Records. Unless the Collateral Agent is otherwise notified under Section 4.9, the principal place of business of the Pledgor is, and all records of the Pledgor concerning the Collateral are and will be, located at 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

6.7 Continuing Security Interest; Transfer of Debentures. This Agreement shall create a continuing pledge and security interest in the Collateral and shall (a) remain in full force and effect until the Termination Date; (b) be binding upon the Guarantor (only to the extent

specified above the Guarantor's signature on the signature pages hereto), the Pledgor, and their respective successors and assigns; and (c) inure, together with the rights and remedies of the Collateral Agent, to the benefit of the Collateral Agent, the Trustee, the Holders and their respective successors, transferees and assigns. Without limiting the generality of the foregoing clause (c), the Holders may assign or otherwise transfer the Debentures or other evidence of indebtedness held by them to any other Person to the extent permitted by the Indenture, and such other Person shall thereupon become vested with all or an appropriate part of the benefits in respect thereof granted to the Holders herein or otherwise. The release of the security interest in any or all of the Collateral, the taking or acceptance of additional security, or the resort by the Collateral Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any Person on the indebtedness secured hereby.

6.8 Termination of Security Interest. Upon the Termination Date, this Agreement and the security interest and all other rights granted hereby shall terminate (subject to Section 6.19) and all rights to the Collateral shall revert to the Pledgor. Upon any such termination, the Collateral Agent will return all certificates previously delivered to the Collateral Agent representing the Pledged Equity Interests and, at the Pledgor's expense and upon its written direction, execute and deliver to the Pledgor such documents (including UCC-3 termination statements) as the Pledgor shall reasonably request to evidence such termination, to release all security interest on the Collateral and to return such Collateral to the Pledgor. If this Agreement shall be terminated or revoked by operation of law, the Pledgor shall indemnify and hold the Collateral Agent, the Trustee and the Holders harmless from any loss that may be suffered or incurred by the Collateral Agent, the Trustee and the Holders in acting hereunder prior to the receipt by the Collateral Agent, its successors, transferees, or assigns of notice of such termination or revocation. Any such termination actions requested by the Pledgor shall be without warranty by or recourse to the Collateral Agent or the Trustee, except as to the absence of any liens on the Collateral created by or arising through the Collateral Agent or the Trustee.

6.9 Security Interest Absolute. All rights of the Collateral Agent, the Trustee and the Holders and the security interest hereunder, and all obligations of the Pledgor hereunder, shall be absolute and unconditional irrespective of: (a) any lack of validity or enforceability of the Indenture or any other agreement, document or instrument relating thereto; (b) the failure of the Trustee or any Holder (i) to assert any claim or demand or to enforce any right or remedy against the Pledgor, any Affiliate of the Pledgor or any other Person under the provisions of the Indenture, any Note or any other agreement, document or instrument relating thereto or otherwise or (ii) to exercise any right or remedy against any other guarantor of, or collateral securing, any of the Obligations; (c) any change in the time, manner or place of payment of, or in any other term of the Obligations (including any increase in the amount thereof), or any other amendment or waiver of or any consent to any departure from the Indenture, any Note or any other agreement, document or instrument relating thereto; (d) any reduction, limitation, impairment or termination of any of the Obligations for any reason other than the written agreement of the Holders to terminate the Obligations in full, but including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to, and the Pledgor hereby waives any right to or claim of, any defense or set-off, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation or otherwise; (e) any amendment to, rescission, waiver, or other modification of, or any consent to departure from,

any of the terms of the Indenture, any Debenture or any other agreement, document or instrument relating thereto; (f) any exchange, surrender, release or non-perfection of any Collateral, or any release, amendment or waiver or addition of or consent to departure from any other security interest held by Person securing any of the Obligations; (g) any bankruptcy or insolvency of the Guarantor, the Pledgor or any other Person; or (h) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Pledgor or any third party pledgor (other than the defense of payment).

6.10 Limitation on Duty of the Collateral Agent with Respect to the Collateral. The powers conferred on the Collateral Agent hereunder are solely to protect its interest and the interests of the Trustee and the Holders in the Collateral and shall not impose any duty on the Collateral Agent or any of its designated agents to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for monies actually received by it hereunder, the Collateral Agent shall have no duty with respect to any Collateral and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment that is substantially equivalent to that which the Collateral Agent accords its own property, it being expressly agreed, to the maximum extent permitted by applicable laws, that the Collateral Agent shall have no responsibility for (a) taking any necessary steps to preserve rights against any parties with respect to any Collateral, or (b) taking any action to protect against any diminution in value of the Collateral, but, in each case, the Collateral Agent may do so and all expenses reasonably incurred in connection therewith shall be part of the Obligations.

6.11 Fees and Expenses. The Pledgor agrees to pay to Collateral Agent the fees as may be agreed upon from time to time in writing. The Pledgor will upon demand pay to the Trustee and the Collateral Agent the amount of any and all expenses, including, without limitation, the reasonable fees, expenses and disbursements of counsel, experts and agents retained by the Trustee and the Collateral Agent, that the Trustee and the Collateral Agent may incur in connection with (i) the administration of this Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral, (iii) the exercise or enforcement of any of the rights of the Collateral Agent, the Trustee and the Holders hereunder or (iv) the failure by the Pledgor to perform or observe any of the provisions hereof.

6.12 Amendments; Waivers; Consents. Any amendment or waiver of any provision of this Agreement and any consent to any departure by any party hereto from any provision of this Agreement shall be effective only if made or given in compliance with all of the terms and provisions of the Indenture necessary for amendments or waivers of, or consents to any departure by any party hereto from any provision of the Indenture, as applicable, and no party hereto shall be deemed, by any act, delay, indulgence, omission or otherwise, to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. Failure of any party hereto to exercise, or delay in exercising, any right, power or privilege hereunder shall not operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any party hereto of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that such party would otherwise have on any future occasion. The rights

and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law. The Collateral Agent and the Trustee may refuse to sign any amendment hereof authorized or permitted pursuant to Article 13 of the Indenture if such amendment adversely affects their rights, duties, liabilities or immunities. In signing or refusing to sign such amendment, the Collateral Agent and the Trustee shall be entitled to receive and, subject to Sections 6.14 and 6.26, shall be fully protected in relying upon, an opinion of counsel stating that such amendment is authorized or permitted by the Indenture. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

6.13 Notices. All notices required or permitted under the terms and provisions hereof shall be in writing, and any such notice shall be effective if given in accordance with the provisions of Section 14.2 of the Indenture. Notices to the Guarantor, the Pledgor or the Trustee may be given at the address set forth in Section 14.2 of the Indenture. Notices to the Collateral Agent may be given at the same address as set forth in Section 14.2 of the Indenture with respect to the Trustee.

6.14 No Assumption of Duties; Reasonable Care. The rights and powers granted to the Collateral Agent hereunder are being granted in order to preserve and protect the security interest of the Collateral Agent for the benefit of the Trustee and the Holders in and to the Collateral granted hereby and shall not be interpreted to, and shall not impose any duties on, the Collateral Agent in connection therewith other than those expressly provided herein or imposed under applicable law. Except as provided by applicable law or by the Indenture, the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent accords similar property held by the Collateral Agent for similar accounts, it being understood that the Collateral Agent:

(a) may consult with counsel of its selection and the advice of such counsel or any opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon; and

(b) shall not have any responsibility for taking any necessary steps for the existence, enforceability or perfection of any security interest of the Collateral Agent or to preserve rights against any parties with respect to any Collateral.

Notwithstanding anything to the contrary contained in this Agreement, the Indenture, the Debentures or any other document, instrument or agreement related thereto, in no event shall the Collateral Agent be liable for the existence, validity, enforceability or perfection of any security interest of the Collateral Agent, or for special indirect or consequential damages or lost profits or loss of business, arising in connection with this Agreement.

6.15 Modification of Obligations. If the Collateral Agent, the Trustee or the Holders shall at any time or from time to time, with or without the consent of, or notice to, the Pledgor:

(a) change or extend the manner, place or terms of payment of, or renew or alter all or any portion of, the Obligations;

(b) take any action under or in respect of the Indenture, the Debentures or the other agreements, documents and instruments related thereto in the exercise of any remedy, power or privilege contained therein or available at law, equity or otherwise, or waive or refrain from exercising any such remedies, power or privileges;

(c) amend or modify, in any manner whatsoever, the Indenture, the Debentures or the other agreements, documents and instruments related thereto;

(d) extend or waive the time for the Pledgor's or any other Person's performance of, or compliance with, any term, covenant or agreement on its part to be performed or observed under the Indenture, the Debentures or the other agreements, documents and instruments related thereto, or waive such performance or compliance or consent to a failure of, or departure from, such performance or compliance;

(e) take and hold security or collateral for the payment of the Obligations, or sell, exchange, release, dispose of, or otherwise deal with, any property pledged, mortgaged or conveyed, or in which the Collateral Agent has been granted a lien, to secure any indebtedness of the Pledgor, the Guarantor or any other Person party to the Indenture, the Debentures or the other agreements, documents and instruments related thereto to the Collateral Agent;

(f) release or limit the liability of anyone who may be liable in any manner for the payment of any amounts owed by the Pledgor, the Guarantor or any other Person party to the Indenture, the Debentures or the other agreements, documents and instruments related thereto to Collateral Agent;

(g) modify or terminate the terms of any intercreditor or subordination agreement pursuant to which claims of other creditors of the Pledgor, the Guarantor or any other Person party to the Indenture, the Debentures or the other agreements, documents and instruments related thereto are subordinated to the claims of the Collateral Agent; or

(h) apply any sums by whomever paid or however realized to any amounts owing by the Pledgor, the Guarantor or any other Person party to the Indenture, the Debentures or the other agreements, documents and instruments related thereto to the Collateral Agent in such manner as the Collateral Agent shall determine in its discretion;

then, subject to Section 6.8, neither the Collateral Agent nor the Trustee or any Holder shall incur any liability to the Pledgor pursuant hereto as a result thereof and no such action shall impair or release the obligations of the Pledgor under this Agreement.

6.16 Delivery of Collateral; Proxy. All certificates or instruments representing or evidencing the Pledged Equity Interests shall be delivered to and held by or on behalf of the Collateral Agent pursuant hereto. All such certificates or instruments shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance acceptable to the Collateral Agent. The Collateral

Agent shall have the right, at any time in its discretion and without prior notice to the Pledgor, following the occurrence and during the continuation of an Event of Default, to transfer to or to register in the name of the Collateral Agent or any of its nominees any or all of the Pledged Equity Interests and to exchange certificates or instruments representing or evidencing Pledged Equity Interests for certificates or instruments of smaller or larger denominations; provided, however, that once such Event of Default has been cured, the Collateral Agent will promptly transfer to or register in the name or cause its nominees to transfer to or register in the name of the Pledgor all such certificates or instruments. In furtherance of the foregoing, the Pledgor shall further execute and deliver to the Collateral Agent a proxy in the form attached hereto as Exhibit A and, if any ownership interest shall be evidenced by certificates or documents, an irrevocable power in the form of Exhibit B with respect to the ownership interest(s) of the Guarantor owned by the Pledgor.

6.17 GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL; WAIVER OF DAMAGES.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THEREOF (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST GRANTED HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK, AND ANY DISPUTE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THE PLEDGOR, THE TRUSTEE AND THE COLLATERAL AGENT IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE RESOLVED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) THE PLEDGOR HEREBY WAIVES PERSONAL SERVICE OF PROCESS IN ANY SUIT, ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT AND FOR ACTIONS BROUGHT UNDER THE U.S. FEDERAL OR STATE SECURITIES LAWS BROUGHT IN ANY FEDERAL OR STATE COURT LOCATED IN THE CITY OF NEW YORK (EACH A "NEW YORK COURT") AND CONSENTS THAT ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE MADE BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE PLEDGOR AT THE ADDRESS INDICATED IN SECTION 6.13. EACH OF THE PARTIES HERETO SUBMITS TO THE JURISDICTION OF ANY NEW YORK COURT AND TO THE COURTS OF ITS CORPORATE DOMICILE WITH RESPECT TO ANY ACTIONS BROUGHT AGAINST IT AS DEFENDANT IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THE PLEDGOR, THE TRUSTEE AND THE COLLATERAL AGENT IN CONNECTION WITH THIS PLEDGE AGREEMENT, AND EACH OF THE PARTIES HERETO WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE LAYING OF VENUE, INCLUDING ANY PLEADING OF FORUM NON CONVENIENS, WITH RESPECT TO ANY SUCH ACTION AND WAIVES ANY RIGHT TO

WHICH IT MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

(c) THE PLEDGOR AGREES THAT THE COLLATERAL AGENT SHALL, IN THE NAME AND ON BEHALF OF THE TRUSTEE OR ANY HOLDER, HAVE THE RIGHT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO PROCEED AGAINST THE PLEDGOR OR THE COLLATERAL IN A COURT IN ANY LOCATION REASONABLY SELECTED IN GOOD FAITH (AND HAVING PERSONAL OR IN REM JURISDICTION OVER THE PLEDGOR OR THE COLLATERAL, AS THE CASE MAY BE) TO ENABLE THE COLLATERAL AGENT TO REALIZE ON SUCH COLLATERAL, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF THE TRUSTEE. THE PLEDGOR AGREES THAT IT WILL NOT ASSERT ANY COUNTERCLAIMS, SETOFFS OR CROSSCLAIMS IN ANY PROCEEDING BROUGHT BY THE COLLATERAL AGENT TO REALIZE ON SUCH PROPERTY OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE COLLATERAL AGENT, EXCEPT FOR SUCH COUNTERCLAIMS, SETOFFS OR CROSSCLAIMS WHICH, IF NOT ASSERTED IN ANY SUCH PROCEEDING, COULD NOT OTHERWISE BE BROUGHT OR ASSERTED.

(d) THE PLEDGOR AGREES THAT NEITHER ANY HOLDER NOR (EXCEPT AS OTHERWISE PROVIDED IN THIS PLEDGE AGREEMENT OR THE INDENTURE) ANY OTHER PARTY TO THIS PLEDGE AGREEMENT SHALL HAVE ANY LIABILITY TO THE PLEDGOR (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE) FOR LOSSES SUFFERED BY THE PLEDGOR IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO, THE TRANSACTIONS CONTEMPLATED AND THE RELATIONSHIP ESTABLISHED BY THIS PLEDGE AGREEMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, UNLESS IT IS DETERMINED BY A FINAL AND NONAPPEALABLE JUDGMENT OF A COURT THAT IS BINDING ON SUCH PERSON THAT SUCH LOSSES WERE THE RESULT OF ACTS OR OMISSIONS ON THE PART OF SUCH PERSON CONSTITUTING BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(e) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PLEDGOR WAIVES THE POSTING OF ANY BOND OTHERWISE REQUIRED OF THE TRUSTEE, THE COLLATERAL AGENT OR ANY HOLDER IN CONNECTION WITH ANY JUDICIAL PROCESS OR PROCEEDING TO ENFORCE ANY JUDGMENT OR OTHER COURT ORDER PERTAINING TO THIS PLEDGE AGREEMENT OR ANY RELATED AGREEMENT OR DOCUMENT ENTERED IN FAVOR OF THE TRUSTEE, THE COLLATERAL AGENT OR ANY HOLDER, OR TO ENFORCE BY SPECIFIC PERFORMANCE, TEMPORARY RESTRAINING ORDER OR PRELIMINARY OR PERMANENT INJUNCTION, THIS PLEDGE AGREEMENT OR ANY RELATED AGREEMENT OR DOCUMENT BETWEEN THE PLEDGOR, ON THE ONE HAND, AND THE TRUSTEE, THE COLLATERAL AGENT AND/OR THE HOLDERS, ON THE OTHER HAND.

6.18 Reinstatement. This Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time any payment pursuant to this

Agreement is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, reorganization, liquidation of the Pledgor, the Guarantor or any other Person party to the Indenture or any other instrument, document or agreement related thereto or upon the dissolution of, or appointment of any intervenor or conservator of, or trustee or similar official for, the Pledgor, the Guarantor or any other Person party to the Indenture or any other instrument, document or agreement related thereto or any substantial part of the Pledgor's, the Guarantor's or any other such Person's assets, or otherwise, all as though such payments had not been made, and the Pledgor shall pay the Collateral Agent promptly after demand all reasonable costs and expenses (including reasonable fees of counsel) incurred by the Collateral Agent in connection with such rescission or restoration.

6.19 Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

6.20 Survival of Provisions. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement, the Indenture and the other instrument, document or agreement related thereto and the issuance of the Debentures. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements, representations and warranties of the Pledgor set forth herein shall terminate at the same time as the security interest and other rights granted hereunder shall terminate pursuant to Section 6.8.

6.21 Headings Descriptive. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

6.22 Entire Agreement. This Agreement, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

6.23 Time. Time is of the essence of this Agreement.

6.24 Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

6.25 Indemnity; Limitation of Liability.

(a) No claim shall be made by the Pledgor against the Collateral Agent, the Trustee or the Holders or any of their Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any

indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement, the Indenture or any other instrument, document or agreement related thereto or any act or omission or event occurring in connection therewith; and the Pledgor waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(b) The Pledgor shall fully indemnify, hold harmless and defend the Collateral Agent and its directors and officers from and against any and all claims, losses, actions, obligations, liabilities and expenses, including reasonable defense costs, reasonable investigative fees and costs, and reasonable legal fees, expenses, and damages arising from the Collateral Agent's appointment and performance as Collateral Agent under this Agreement, except to the extent that such claim, action, obligation, liability or expense is directly caused by the bad faith, gross negligence or willful misconduct of such indemnified Person. The provisions of this Section 6.25 shall survive termination of this Agreement and the resignation and removal of the Collateral Agent.

6.26 Authority of the Collateral Agent.

(a) The Collateral Agent shall have and be entitled to exercise all powers hereunder that are specifically granted to the Collateral Agent by the terms hereof, together with such powers as are reasonably incident thereto. The Collateral Agent may perform any of its duties hereunder or in connection with the Collateral by or through agents or attorneys, shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder and shall be entitled to retain counsel and to act in reliance upon the advice of counsel concerning all such matters. Except as otherwise expressly provided in this Agreement or the Indenture, neither the Collateral Agent nor any director, officer, employee, attorney or agent of the Collateral Agent shall be liable to the Pledgor for any action taken or omitted to be taken by the Collateral Agent, in its capacity as Collateral Agent, hereunder, except for its own bad faith, gross negligence or willful misconduct, and the Collateral Agent shall not be responsible for the validity, effectiveness or sufficiency hereof or of any document or security furnished pursuant hereto. The Collateral Agent and its directors, officers, employees, attorneys and agents shall be entitled to rely conclusively on any communication, instrument or document believed by it or them to be genuine and correct and to have been signed or sent by the proper Person or Persons. The Collateral Agent shall have no duty to cause any financing statement or continuation statement to be filed in respect of the Collateral.

(b) The Pledgor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Collateral Agent and the Holders, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Pledgor, the Collateral Agent shall be conclusively presumed to be acting as agent for the Trustee and the Holders with full and valid authority so to

act or refrain from acting, and the Pledgor shall not be obligated or entitled to make any inquiry respecting such authority.

6.27 Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder, and the Holders, any benefit or any legal right or claim under this Agreement.

6.28 Rights of Holders. No Holder shall have any independent rights hereunder other than those rights granted to individual Holders pursuant to the Indenture; provided, that nothing in this subsection shall limit any rights granted to the Trustee under the Debentures or the Indenture

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Pledge and Security Agreement to be duly executed and delivered as of the date first above written.

WYNN RESORTS, LIMITED,
a Nevada corporation,
as the Pledgor

By: /s/ RONALD J. KRAMER

Name: Ronald J. Kramer
Title: President

U.S. BANK NATIONAL ASSOCIATION,
as the Trustee and the Collateral Agent

By: /s/ FRANK P. LESLIE III

Name: Frank P. Leslie III
Title: Vice President

Solely with respect to Sections 5.2, 5.6, 6.2 and 6.7(b):

WYNN RESORTS FUNDING, LLC,
a Nevada limited liability company, as the Guarantor

By: /s/ RONALD J. KRAMER

Name: Ronald J. Kramer
Title: President

APNs: 162-16-212-001, 162-16-113-004, 162-16-113-005, 162-16-610-004, 162-16-610-005,
162-16-511-008, 162-16-510-001 through 006, inclusive,
162-16-511-009, 162-16-510-007 through 018, inclusive, 162-16-510-021 through 022, inclusive,
162-16-510-024 through 025, inclusive, 162-16-510-028 through 031, inclusive,
162-16-610-028 through 030, inclusive, 162-16-610-021 through 022, inclusive,
162-16-610-017 through 019, inclusive, 162-16-610-008 through 015, inclusive,
162-16-611-001 through 014, inclusive, 162-16-610-016, 162-16-610-007, 162-16-610-006,
162-16-511-002 and 162-16-511-003, 162-16-511-002, 162-16-511-003,
162-16-610-016, 162-16-610-007 and 162-16-610-006,
162-16-511-008 and 162-16-510-001, through 006, inclusive, 162-16-511-009,
162-16-510-007 through 018, inclusive, 162-16-510-021 through 022, inclusive,
162-16-510-024 through 025, inclusive, 162-16-510-028 through 031, inclusive,
162-16-610-028 through 030, inclusive, 162-16-610-021 through 022, inclusive,
162-16-610-017 through 019, inclusive, 162-16-610-008 through 015, inclusive,
162-16-611-001 through 014, inclusive,
162-16-511-002 and 162-16-511-003

Recording requested by and recorded
counterparts should be returned to:

Sony Ben-Moshe, Esq.
Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Mail Property Tax Statements to:

Wynn Las Vegas, LLC
Palo, LLC
Valvino Lamore, LLC
Wynn Resorts Holdings, LLC
Legal Department
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109

**AMENDMENT TO MULTIPLE DEEDS OF TRUST, LEASEHOLD DEEDS OF TRUST,
ASSIGNMENTS OF RENTS AND LEASES,
SECURITY AGREEMENTS AND FIXTURE FILINGS**

MADE BY

**WYNN LAS VEGAS, LLC,
a Nevada limited liability company,
as Trustor,**

**WYNN RESORTS HOLDINGS, LLC,
a Nevada limited liability company,
as Trustor,**

**VALVINO LAMORE, LLC,
a Nevada limited liability company,
as Trustor,**

AND

**PALO, LLC,
a Delaware limited liability company,
as Trustor,**

to

**Nevada Title Company,
a Nevada corporation,
as Trustee,
for the benefit of**

**DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Secured Parties,
as Beneficiary**

AMENDMENT TO MULTIPLE DEEDS OF TRUST, LEASEHOLD DEEDS OF TRUST, ASSIGNMENTS OF RENTS AND LEASES, SECURITY AGREEMENTS AND FIXTURE FILINGS

THIS AMENDMENT TO MULTIPLE DEEDS OF TRUST, LEASEHOLD DEEDS OF TRUST, ASSIGNMENTS OF RENTS AND LEASES, SECURITY AGREEMENTS AND FIXTURE FILINGS (hereinafter called "**Amendment**") is made as of April 23, 2003 by WYNN LAS VEGAS, LLC, a Nevada limited liability company ("**Wynn Las Vegas**"), WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company ("**Wynn Resorts**"), VALVINO LAMORE, LLC, a Nevada limited liability company ("**Valvino**"), and PALO, LLC, a Delaware limited liability company ("**Palo**", and together with Wynn Las Vegas, Wynn Resorts and Valvino, "**Trustors**"), to Nevada Title Company, a Nevada corporation, as Trustee ("**Trustee**"), for the benefit of DEUTSCHE BANK TRUST COMPANY AMERICAS ("**Beneficiary**"), in its capacity as Administrative Agent for the Secured Parties.

RECITALS

A. Wynn Las Vegas has executed that certain Amended and Restated Deed of Trust, Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, effective as of October 30, 2002 and recorded on October 29, 2002 in Book No. 20021029 as Instrument No. 03540 of Official Records in the office of the County Recorder of Clark County, Nevada (as amended, modified or supplemented from time to time, the "**Wynn Las Vegas Deed of Trust**") in favor of Nevada Title Company for the benefit of the Administrative Agent;

B. Palo has executed that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, effective as of October 30, 2002 and recorded on October 29, 2002 in Book No. 20021029 as Instrument No. 03543 (as amended, modified or supplemented from time to time, the "**Palo Deed of Trust**") in favor of Nevada Title Company, for the benefit of the Administrative Agent;

C. Valvino has executed that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, effective as of October 30, 2002 and recorded on October 29, 2002 in Book No. 20021029 as Instrument No. 03542 (as amended, modified or supplemented from time to time, the "**Valvino Deed of Trust**") in favor of Nevada Title Company, for the benefit of the Administrative Agent;

D. Wynn Resorts Holdings has made that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, effective as of October 30, 2002 and recorded on October 29, 2002 in Book No. 20021029 as Instrument No. 03541 (as amended, modified or supplemented from time to time, the "**Wynn Resorts Holdings Deed of Trust**" and, together with the Wynn Las Vegas Deed of Trust, the Palo Deed of Trust and the Valvino Deed of Trust, the "**Wynn Deeds of Trust**") in favor of Nevada Title Company, for the benefit of the Administrative Agent; and

E. Due to inadvertent omissions in the Wynn Deeds of Trust, the parties now wish to make certain amendments to the Wynn Deeds of Trust in order to correct such inadvertent omissions, in each case pursuant to Section 6.16 of the respective Wynn Deeds of Trust.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustors for the benefit of Trustee, Beneficiary on behalf of the Secured Parties agree as follows:

1. Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Amendment shall have the meanings given in the Wynn Deeds of Trust, as applicable.

2. Amendments.

(a) The face page of each of the Wynn Deeds of Trust is amended by replacing the words:

DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Banks,
as Beneficiary

with the words

DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Secured Parties,
as Beneficiary

(b) The definition of "Obligations" contained in each of the Wynn Resorts Holdings Deed of Trust, the Palo Deed of Trust and the Valvino Deed of Trust, is deleted in its entirety and replaced with the following:

> "Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Commitment Letter, the Credit Agreement, the Notes, the other Loan Documents (including the Security Documents) and the Specified Hedge Agreements and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust, the Indemnity Agreement and the other Loan Documents.

(c) The definition of "Obligations" contained in the Wynn Las Vegas Deed of Trust is deleted in its entirety and replaced with the following:

> "Obligations" means the payment and performance of each covenant and agreement of Trustor contained in this Deed of Trust, the Commitment

Letter, the Credit Agreement, the Notes, the Indemnity Agreement, the other Loan Documents (including the Security Documents) and the Specified Hedge Agreements.

(d) The first paragraph of the granting clause of the Wynn Las Vegas Deed of Trust (at the top of page nine of the Wynn Las Vegas Deed of Trust) is amended by (i) inserting the language "and the Specified Hedge Agreements" at the end of clause (1) of such paragraph, (ii) inserting the language "and the other Obligations" at the end of clause (2) of such paragraph and (iii) replacing the word "BANKS" in the second to last line of such paragraph with the words "SECURED PARTIES".

(e) The first paragraph of the granting clause of each of the Wynn Resorts Holdings Deed of Trust, the Palo Deed of Trust and the Valvino Deed of Trust (at the top of page nine of the Wynn Resorts Holdings Deed of Trust and on page eight of the Palo Deed of Trust and the Valvino Deed of Trust) is amended by replacing the word "BANKS" in the second to last line of such paragraph with the words "SECURED PARTIES".

3. Miscellaneous. The governing law provisions set forth in Section 6.9 of each of the Wynn Deeds of Trust are incorporated herein by this reference *mutatis mutandis*, as applicable. Except as amended hereby, all of the provisions of the Wynn Deeds of Trust shall remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Trustors have executed this Amendment as of the day and year first above written.

TRUSTOR:

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

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

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

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

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

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

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President, General
Counsel and Secretary

VALVINO LAMORE, LLC,
a Nevada limited liability company,

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel and Secretary

PALO, LLC,
a Delaware limited liability company,

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

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

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President, General Counsel and Secretary

Exhibit 10.2

FIRST AMENDMENT TO
CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS

THIS FIRST AMENDMENT TO CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS (this "First Amendment"), dated as of May 28, 2003, is made and entered into among WYNN LAS VEGAS, LLC, a Nevada limited liability company (the "Borrower"), the other Wynn Amendment Parties (as defined below) 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 Credit Agreement dated as of October 30, 2002 (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, joint book running manager and syndication agent, Bear, Stearns & Co. Inc., as arranger and joint book running manager, Bear Stearns Corporate Lending Inc., as joint documentation agent, Dresdner Bank AG, New York and Grand Cayman Branches, as arranger and joint documentation agent, JPMorgan Chase Bank, as joint documentation agent, and the several banks and other financial institutions or entities from time to time parties thereto (the "Lenders").

B. In connection with the Credit Agreement:

(i) the Borrower, Valvino Lamore, LLC, a Nevada limited liability company ("Valvino"), Wynn Las Vegas Capital Corp., a Nevada corporation ("Capital Corp."), Palo, LLC, a Delaware limited liability company ("Palo"), Desert Inn Water Company, LLC, a Nevada limited liability company ("Desert Inn Water"), Wynn Resorts Holdings, LLC, a Nevada limited liability company ("Wynn Resorts Holdings"), Wynn Design & Development, LLC, a Nevada limited liability company ("Wynn Design"), World Travel, LLC, a Nevada limited liability company ("World Travel"), Las Vegas Jet, LLC, a Nevada limited liability company ("Las Vegas Jet" and, together with the Borrower, Valvino, Capital Corp., Palo, Desert Inn Water, Wynn Resorts Holdings, Wynn Design and World Travel, the "Wynn Amendment Parties"), and Administrative Agent have executed that certain Guarantee and Collateral Agreement dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Guarantee and Collateral Agreement");

(ii) the Borrower has executed that certain Amended and Restated Deed of Trust, Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Borrower Mortgage") in favor of Nevada Title Company for the benefit of the Administrative Agent;

(iii) Palo has executed that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Palo Mortgage") in favor of Nevada Title Company, for the benefit of the Administrative Agent;

(iv) Valvino has executed that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Valvino Mortgage") in favor of Nevada Title Company, for the benefit of the Administrative Agent; and

(v) Wynn Resorts Holdings has made that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of October 30, 2002 (as amended, modified or supplemented from time to time, the "Wynn Resorts Holdings Mortgage" and, together with the Borrower Mortgage, the Palo Mortgage and the Valvino Mortgage, the "Wynn Mortgages") in favor of Nevada Title Company, for the benefit of the Administrative Agent.

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, the Guarantee and Collateral Agreement and the Wynn Mortgages, in each case in order to clarify the treatment of Hedge Agreements thereunder.

D. The Lenders are willing to agree to such amendments and waivers, 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 other Wynn Amendment Parties, the Administrative Agent and the Lenders 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. Credit Agreement Amendments.

(a) Section 6.9 of the Credit Agreement is deleted in its entirety and replaced with the following:

> 6.9 Interest Rate Protection. In the case of the Borrower, enter into and maintain Hedge Agreements to the extent necessary to provide that at all times during the period from the Closing Date through the date that is 18 months after the Completion Date at least the lesser of (i) 50% of the Total Extensions of Credit outstanding and (ii) $325,000,000 principal amount of Loans are subject to either a fixed interest rate or interest rate

protection. All such Hedge Agreements shall have terms and conditions reasonably satisfactory to the Administrative Agent, and the Borrower shall not amend, modify or supplement any such Hedge Agreements except with the prior written consent of the Administrative Agent, such consent not to be unreasonably withheld.

(b) Section 10.16 of the Credit Agreement is amended by (i) deleting the term "(a)" from the first line of the first paragraph of such section and (ii) deleting clause (b) of such section in its entirety.

(c) The definition of "Obligations" in Section 1 of the Credit Agreement is amended by deleting the following language in the seventeenth through nineteenth lines of such definition:

(i) Obligations of the Borrower under any Specified Hedge Agreement shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (ii)

3. Guarantee and Collateral Agreement Amendments.

(a) Section 2.1(d) of the Guarantee and Collateral Agreement is amended by deleting the language "that do not arise under a Specified Hedge Agreement" from the second line of such section.

(b) Section 2.1(e) of the Guarantee and Collateral Agreement is amended by deleting the language "(other than Obligations in respect of any Specified Hedge Agreement)" from the tenth through eleventh lines of such section.

(c) The first paragraph of Section 5 of the of the Guarantee and Collateral Agreement is amended by deleting the language ", and Obligations in respect of any Specified Hedge Agreement" from the third line of such paragraph.

(d) Section 6.6 of the Guarantee and Collateral Agreement is amended by (i) replacing the word "Lenders" in each place such word is used in such section with the words "Secured Parties" and (ii) deleting the language ", and Obligations in respect of any Specified Hedge Agreement" from the second through third lines of the last paragraph of such section.

(e) Section 8.15(a) of the Guarantee and Collateral Agreement is amended by deleting the language ", and Obligations in respect of any Specified Hedge Agreement" from the third line of such section.

(f) Section 6 of each of Exhibits C and E to the Guarantee and Collateral Agreement is amended by deleting the language ", and obligations that arise under any Specified Hedge Agreement" from the fourth line of such section.

4. Wynn Mortgages Amendments.

(a) The face page of each of the Wynn Mortgages is amended by replacing the words:

DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Banks,
as Beneficiary

with the words

DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as Administrative Agent for the benefit of the Secured Parties,
as Beneficiary

(b) The definition of "Obligations" contained in each of the Wynn Resorts Holdings Mortgage, the Palo Mortgage and the Valvino Mortgage, as well as Exhibit D to the Credit Agreement, is deleted in its entirety and replaced with the following:

> "Obligations" means (i) the payment and performance by Borrower of each covenant and agreement of Borrower contained in the Commitment Letter, the Credit Agreement, the Notes, the other Loan Documents (including the Security Documents) and the Specified Hedge Agreements and (ii) the payment and performance by Trustor of each covenant and agreement of Trustor contained in the Guaranty, this Deed of Trust, the Indemnity Agreement and the other Loan Documents.

(c) The definition of "Obligations" contained in the Borrower Mortgage is deleted in its entirety and replaced with the following:

> "Obligations" means the payment and performance of each covenant and agreement of Trustor contained in this Deed of Trust, the Commitment Letter, the Credit Agreement, the Notes, the Indemnity Agreement, the other Loan Documents (including the Security Documents) and the Specified Hedge Agreements.

(d) The first paragraph of the granting clause of the Borrower Mortgage (at the top of page nine of the Borrower Mortgage) is amended by (i) inserting the language "and the Specified Hedge Agreements" at the end of clause (1) of such paragraph, (ii) inserting the language "and the other Obligations" at the end of clause (2) of such paragraph and (iii) replacing the word "BANKS" in the second to last line of such paragraph with the words "SECURED PARTIES".

(e) The first paragraph of the granting clause of each of the Wynn Resorts Holdings Mortgage, the Palo Mortgage and the Valvino Mortgage (at the top of page nine of the Wynn

Resorts Holdings Mortgage and on page eight of the Palo Mortgage and the Valvino Mortgage) is amended by replacing the word "BANKS" in the second to last line of such paragraph with the words "SECURED PARTIES".

5. Conditions to Effectiveness of this First Amendment. This First Amendment shall be effective only if and when signed by the Borrower, the other Wynn Amendment Parties and the Administrative Agent on behalf of the Lenders and the following conditions shall have been satisfied:

(a) the applicable Wynn Amendment Parties shall have executed and delivered to the Administrative Agent a supplement to each of the Wynn Mortgages, in each case in form and substance reasonably satisfactory to the Administrative Agent, reflecting the amendments contained in Section 4 of this First Amendment, in each case for recording in the appropriate real property records of the State of Nevada; and

(b) the applicable Wynn Amendment Parties shall have obtained and delivered to the Administrative Agent an appropriate endorsement or supplement to each of the Title Policies with respect to the Wynn Mortgages, in each case in form and substance reasonably satisfactory to the Administrative Agent, ensuring the Lenders that the amendments to the Wynn Mortgages made pursuant to Section 4 of this First Amendment do not adversely affect the Lender's title and extended coverage insurance contained in such Title Policies.

6. Guarantor Acknowledgment. By executing this First Amendment each of the Wynn Amendment Parties (a) consents to this First Amendment, (b) acknowledges that notwithstanding the execution and delivery of this First Amendment, the obligations of each of the Wynn Amendment Parties under the Guarantee and Collateral Agreement are not impaired or affected and the Guarantee and Collateral Agreement continues in full force and effect and (c) ratifies the Guarantee and Collateral Agreement.

7. Miscellaneous. **THIS FIRST AMENDMENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER (TO THE EXTENT NOT OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), 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 SECTION 5-1401 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", the "Guarantee and Collateral Agreement", the "Borrower Mortgage", the "Palo Mortgage", the "Valvino Mortgage" or the "Wynn Resorts Holdings Mortgage", or words of like import in any Loan Document, shall mean and be a reference to the Credit Agreement, the Guarantee and Collateral Agreement, the Borrower Mortgage, the Palo Mortgage, the Valvino

Mortgage or the Wynn Resorts Holdings Mortgage, respectively, in each case as amended hereby.

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IN WITNESS WHEREOF, the parties have caused this First Amendment to be duly executed by their officers or partners 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: Valvino Lamore, LLC,
a Nevada limited liability company,
its sole member

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

PALO, LLC,
a Delaware limited liability company,

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

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

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

VALVINO LAMORE, LLC,
a Nevada limited liability company,

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

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

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

By: Wynn Resorts, Limited,

a Nevada corporation,
its sole member

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

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

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

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

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

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

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

WORLD TRAVEL, LLC,
a Nevada limited liability company,

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

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

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

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

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

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

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

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

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

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

WYNN LAS VEGAS CAPITAL CORP.,
a Nevada corporation,

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President,
General Counsel and Secretary

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as the Administrative Agent

By: /s/ Steven P. Lapham

Name: Steven P. Lapham
Title: Director

FIRST AMENDMENT TO SECOND AMENDED AND RESTATED ART RENTAL AND LICENSING AGREEMENT

This FIRST AMENDMENT to the SECOND AMENDED AND RESTATED ART RENTAL AND LICENSING AGREEMENT (the "**Amendment**") is entered into as of June 1, 2003, by and between Stephen A. Wynn ("**Lessor**") and Wynn Resorts Holdings, LLC, dba The Wynn Collection ("**Lessee**"). Capitalized and other terms used herein that are not defined herein shall have the meanings ascribed to them in the Agreement (as defined below).

RECITALS

WHEREAS, Lessor and Lessee have entered into that certain Second Amended and Restated Art Rental and Licensing Agreement, dated September 18, 2002 (the "**Agreement**"), pursuant to which Lessor leases to Lessee certain paintings and other works or art for display in Lessee's Gallery, subject to the terms and conditions contained therein;

WHEREAS, Lessor and Lessee wish to amend the rental terms of the Agreement;

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Amendment, the parties hereto agree as follows:

1. Section 5 of the Agreement is hereby deleted in its entirety and replaced with the following:

"5. Rental Fees. Lessee agrees to pay Lessor an annual rental fee each November 1 of this agreement of One Dollar ($1.00)."

2. Other Provisions of Agreement. Notwithstanding any of the foregoing, the parties hereto acknowledge that the Agreement is being modified only as stated herein, and agree that nothing else in the Agreement shall be affected by this Amendment.

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3. Counterparts. This Amendment may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first written above by their respective officers and representatives thereunto duly authorized.

WYNN RESORTS HOLDINGS, LLC
DBA THE WYNN COLLECTION
By VALVINO LAMORE, LLC
Its Sole Member
By WYNN RESORTS, LIMITED
Its Sole Member

By: /s/ Marc H. Rubinstein

Name: Marc H. Rubinstein
Title: Senior Vice President and General Counsel

/s/ Stephen A. Wynn

Stephen A. Wynn

Exhibit 10.5

WYNN RESORTS, LIMITED, a Nevada corporation

and

WYNN RESORTS FUNDING, LLC, a Nevada limited liability company

$200,000,000
6% Convertible Subordinated Debentures Due 2015

PURCHASE AGREEMENT

Dated: June 30, 2003

WYNN RESORTS, LIMITED, a Nevada corporation
and
WYNN RESORTS FUNDING, LLC, a Nevada limited liability company
$200,000,000
6% Convertible Subordinated Debentures due 2015

June 30, 2003

Deutsche Bank Securities Inc.
as Representative of the Initial Purchasers

c/o Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005

Ladies and Gentlemen:

Wynn Resorts, Limited, a Nevada corporation (the "Company") and Wynn Resorts Funding, LLC, a Nevada limited liability company (the "Guarantor"), confirm their agreement with Deutsche Bank Securities Inc. and the other Initial Purchaser named in Schedule II hereto (collectively, the "Initial Purchasers," which term shall also include any initial purchaser substituted as hereinafter provided in Section 11 hereof), for whom Deutsche Bank Securities Inc. is acting as representative (in such capacity, the "Representative"), with respect to the issue and sale by the Company and the purchase by the Initial Purchasers, acting severally and not jointly, of the respective principal amounts set forth in Schedule II of $200,000,000 aggregate principal amount of the Company's 6% Convertible Subordinated Debentures due 2015 (the "Debentures"), guaranteed by the Guarantor (the "Subsidiary Guarantee"), and with respect to the grant by the Company to the Initial Purchasers of the option described in Section 2(b) hereof to purchase all or any part of an additional $50,000,000 aggregate principal amount of Debentures. The aforesaid $200,000,000 aggregate principal amount of Debentures (the "Initial Securities") to be purchased by the Initial Purchasers and all or any part of the $50,000,000 aggregate principal amount of Debentures subject to the option described in Section 2(b) hereof (the "Option Securities") are hereinafter called, collectively, the "Securities."

The Securities are to be issued pursuant to an indenture to be dated as of the Closing Time (as defined in Section 2(c) hereof) (the "Indenture") among the Company, the Guarantor and U.S. Bank, National Association, as trustee (the "Trustee"). The Indenture will conform in all material respects to the respective statements relating thereto in the Offering Memorandum (as defined below) and the term sheet attached hereto as Schedule IA. Under certain circumstances, the Securities will be convertible into shares of common stock, par value $0.01 per share, of the Company (the "Common Stock") in accordance with the terms of the Securities and the Indenture. Securities issued in book-entry form will be issued to Cede & Co. as nominee of The Depository Trust Company ("DTC") pursuant to a letter agreement, to be dated as of the Closing Time (the "DTC Agreement"), among the Company, the Trustee and DTC.

The holders of Securities will be entitled to the benefits of a Registration Rights Agreement, to be dated as of the Closing Time, in substantially the form attached hereto as Annex A, with such changes as shall be agreed to by the parties hereto (the "Registration Rights Agreement"), pursuant to which the Company and the Guarantor will file a registration statement (the "Registration Statement") with the Securities and Exchange Commission (the "Commission") registering the resales of the Securities and the shares of Common Stock issuable upon conversion thereof, as referred to in the Registration Rights Agreement, under the Securities Act of 1933, as amended (the "1933 Act").

The holders of Securities will be entitled to the benefits of a Pledge and Security Agreement, to be dated as of the Closing Time, in substantially the form attached hereto as Annex B, with such changes as shall be agreed to by the parties thereto (the "Pledge and Security Agreement"), pursuant to which the Company will pledge to the Trustee its 100% member's interest in the Guarantor as security for the exclusive benefit of the holders of the Securities to provide for payment in full of three years of the scheduled interest payments due on the Securities up to and including the interest payment due on July 15, 2006.

The holders of Securities will be entitled to the benefits of a Collateral Pledge and Security Agreement, to be dated as of the Closing Time, in substantially the form attached hereto as Annex C, with such changes as shall be agreed to by the parties thereto (the "Collateral Pledge and Security Agreement" and together with the Pledge and Security Agreement, the "Collateral Agreements"), pursuant to which the Guarantor will pledge to the Trustee as security for the exclusive benefit of the holders of the Securities, U.S. government securities in an amount sufficient upon receipt of scheduled interest and principal payments of such securities to provide for payment in full of three years of the scheduled interest payments due on the Securities up to and including the interest payment due on July 15, 2006.

The holders of Securities will also be entitled to the benefits of a parent guarantee provided for under the Indenture, pursuant to which the Company will guarantee the obligations of the Guarantor under the Subsidiary Guarantee (the parent guarantee, together with the Subsidiary Guarantee, the "Guarantee").

The Company and the Guarantor understand that the Initial Purchasers propose to make an offering of the Securities on the terms and in the manner set forth herein and agrees that the Initial Purchasers may resell, subject to the conditions set forth herein, all or a portion of the Securities to purchasers ("Subsequent Purchasers") at any time after this Purchase Agreement (the "Agreement") has been executed and delivered. The Securities are to be sold to the Initial Purchasers and offered and sold by the Initial Purchasers without being registered under the 1933 Act, in reliance upon exemptions therefrom. Pursuant to the terms of the Securities and the Indenture, investors that acquire Securities may only resell or otherwise transfer such Securities if such Securities in accordance with the terms of the Indenture are hereafter registered under the 1933 Act or if an exemption from the registration requirements of the 1933 Act is available (including the exemption afforded by Rule 144A ("Rule 144A") of the rules and regulations promulgated under the 1933 Act by the Securities and Exchange Commission (the "Commission")).

The Company and the Guarantor have prepared and delivered to each Initial Purchaser, on the date hereof, copies of a draft offering memorandum (the "Draft Offering Memorandum"). The Company and the Guarantor have prepared and will deliver to the Initial Purchasers, on July 2, 2003 or the next succeeding day, copies of a final offering memorandum dated June 30, 2003 (the "Final Offering Memorandum"), for use by such Initial Purchaser in connection with its solicitation of purchases of, or offering of, the Securities. "Offering Memorandum" means, with respect to any date or time referred to in this Agreement, the most recent offering memorandum (whether the Final Offering Memorandum or any amendment or supplement to such document), including exhibits thereto and any documents incorporated therein by reference, that has been prepared and delivered by the Company and the Guarantor to the Initial Purchasers in connection with their solicitation of purchases of, or offering of, the Securities.

All references in this Agreement to financial statements and schedules and other information that are "contained," "included," "disclosed," "described," "referenced" or "stated" in the Offering Memorandum (or other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that are incorporated by reference in the Offering

Memorandum; and all references in this Agreement to amendments or supplements to the Offering Memorandum shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934 (the "1934 Act") which is incorporated by reference in the Offering Memorandum.

This Agreement, the Registration Rights Agreement, the Indenture, the Debentures and the Collateral Agreements are referred to herein as the "Transaction Agreements."

SECTION 1. Representations and Warranties by the Company and the Guarantor.

(a) *Representations and Warranties*. Each of the Company and the Guarantor, jointly and severally, represents and warrants to each Initial Purchaser as of the date hereof, as of the Closing Time referred to in Section 2(c) hereof, and on each Date of Delivery (if any) referred to in Section 2(b) hereof, and agrees with each Initial Purchaser, as follows:

(i) The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the state of Nevada, with corporate power and authority to own or lease and operate its properties and conduct its business as described in the Offering Memorandum and to enter into and to perform its obligations under this Agreement. Each of the subsidiaries of the Company (including the Guarantor) is listed on Schedule 1(a)(i) hereto (collectively, the "Subsidiaries") and has been duly organized and is validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction of its organization, with corporate or limited liability company power and authority to own or lease and operate its properties and conduct its business as described in the Offering Memorandum. Neither the Company nor the Guarantor owns or controls, directly or indirectly, any corporation, association or other entity other than the Subsidiaries listed on Schedule 1(a)(i) hereto. The Company and each of the Subsidiaries are duly qualified to transact business in all jurisdictions in which the conduct of their business requires such qualification, except for such jurisdictions where the failure to so qualify would not, individually or in the aggregate, reasonably be expected to result in any material adverse change in the business, properties, assets, operations, condition (financial or otherwise) or prospects of the Company and its Subsidiaries taken as a whole, whether or not occurring in the ordinary course of business (any such change, a "Material Adverse Change"). The outstanding membership interests and shares of capital stock of each of the Subsidiaries have been duly authorized and validly issued, the shares of capital stock of such Subsidiaries are fully paid and non-assessable and, except as accurately described in all material respects in the Offering Memorandum or as set forth on Schedule 1(a)(i), all such interests and shares are owned by the Company or another Subsidiary free and clear of all liens, encumbrances and equities and claims, except for any lien, encumbrance, equity or claim granted or agreed to be granted pursuant to any of the Collateral Agreements; and except as accurately described in all material respects in the Offering Memorandum or as set forth on Schedule 1(a)(i), there are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its Subsidiaries.

(ii) As of the date hereof, the authorized capital stock of the Company consists only of 400,000,000 shares of Common Stock and 40,000,000 shares of Preferred Stock, par value $0.01 per share. As of the date hereof, there are 82,351,957 shares of Common Stock and no shares of Preferred Stock outstanding. The outstanding shares of Common Stock of the Company and have been duly authorized and validly issued and are fully paid and non-assessable and have been issued in compliance with federal and state securities laws. The outstanding member's interests in the Guarantor have been duly authorized and validly issued and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Common

Stock of the Company or member's interests in the Guarantor were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company or the Guarantor. Upon issuance and delivery of the Securities in accordance with this Agreement and the Indenture, the Securities will be convertible for Common Stock in accordance with the terms of the Securities and the Indenture. The shares of Common Stock issuable upon conversion of the Securities have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action, and such shares, when issued upon such conversion, will be validly issued, fully paid and non-assessable; and, except as set forth in the Offering Memorandum, no preemptive rights, rights of first refusal or other similar rights of stockholders or others exist with respect to any of the shares of Common Stock or the issue and sale thereof by the Company. Neither the offering or sale of the Securities nor conversion thereof as contemplated by this Agreement gives rise to any rights for or relating to the registration of any shares of Common Stock. The Common Stock conforms in all material respects to the description thereof contained in the Offering Memorandum. The form of certificate for the shares of Common Stock conforms to the form required by the corporate law of the state of Nevada.

(iii) The table relating to the capitalization of the Company under the heading "Capitalization" in the Offering Memorandum, including the footnotes thereto, (i) with respect to the actual capitalization of the Company as of March 31, 2003, presents fairly the information contained therein and (ii) with respect to the expected capitalization of the Company as of March 31, 2003 on an as adjusted basis giving effect to the sale of the Securities, was prepared in good faith by the Company, and represents the best estimates and assumptions of the Company with respect to the information contained therein. All of the Securities conform to the description thereof contained in the Offering Memorandum.

(iv) As of its date and at all subsequent times up to and including the Closing Time (and, if any Option Securities are purchased, the Date of Delivery), the Offering Memorandum, as amended or supplemented by any amendments and supplements thereto does not contain, and will not contain, any untrue statement of material fact and does not omit, and will not omit, to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, that the Company and the Guarantor make no representations or warranties as to information contained in or omitted from the Offering Memorandum, or any such amendment or supplement, in reliance upon, and in conformity with, written information furnished to the Company and Guarantor by or on behalf of any Initial Purchaser through the Representative specifically for use in the preparation thereof.

(v) The consolidated financial statements of the Company and its Subsidiaries, together with related notes and schedules as set forth in the Offering Memorandum (collectively, the "financial statements"), present fairly the consolidated financial position and the results of operations and cash flows of the Company and its Subsidiaries, at the indicated dates and for the indicated periods. Such financial statements have been prepared in accordance with generally accepted principles of accounting as applied in the United States, consistently applied throughout the periods involved, except as disclosed therein, and all adjustments necessary for a fair presentation of results for such periods have been made. The financial and statistical data included in the Offering Memorandum, including such data set forth under the captions "Capitalization" and "Selected Consolidated Historical Financial Data," presents fairly the information shown therein and such data has been compiled on a basis consistent with the financial statements presented therein and the books and records of the Company and its Subsidiaries. The as adjusted financial information included in the Offering Memorandum

presents fairly in all material respects the information shown therein, has been properly compiled on the bases described therein, and, in the opinion of the Company and the Guarantor, the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein.

(vi) Deloitte & Touche LLP, which has certified the financial statements included in the Offering Memorandum, is an independent public accountant as required by the 1933 Act and the rules and regulations of the Commission.

(vii) There is no action, suit, claim or proceeding pending or, to the knowledge of the Company or the Guarantor, threatened (i) against the Company or any of the Subsidiaries or (ii) that has as the subject thereof any officer or director of, or property owned or leased by or to, the Company or any of its Subsidiaries, in each case, before any court or administrative agency or otherwise where, in any such case, (A) there is a reasonable possibility of such action, suit or proceeding being determined adversely to the Company or its Subsidiaries and (B) any such action, suit, claim or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change, or prevent, adversely affect, hinder or delay the consummation of the transactions contemplated by this Agreement or the performance by the Company or any of its Subsidiaries of their obligations hereunder except as otherwise disclosed in the Offering Memorandum. Except as otherwise disclosed in the Offering Memorandum, neither the Company nor any of its Subsidiaries is involved in any labor dispute with the employees of the Company or any of its Subsidiaries or predecessors, or with the employees of any principal supplier, contractor or sub-contractor of the Company or any of its Subsidiaries that would reasonably be expected to result in a Material Adverse Change, and, to the best of the Company's and the Guarantor's knowledge, no such dispute is threatened or imminent.

(viii) Except as disclosed in the Offering Memorandum, the Company and its Subsidiaries have good and marketable title in fee simple to all real property and good title to all personal property owned by them or reflected as owned by them in the Offering Memorandum, subject to no lien, mortgage, pledge, charge or encumbrance of any kind except those reflected in the consolidated financial statements described in Section 1(a)(v) above or that do not, individually or in the aggregate, materially and adversely affect the value of such property and do not, individually or in the aggregate, materially interfere with the use made or proposed to be made of such property by the Company and its Subsidiaries. Except as disclosed in the Offering Memorandum, the real property, improvements, equipment and personal property held under lease by the Company or any Subsidiary are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such leased real property, improvements, equipment or personal property by the Company or such Subsidiary.

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

United States, and neither the Company nor the Guarantor has received written notice of any actual or proposed additional material tax assessment against the Company or any of its Subsidiaries.

(x) Except as disclosed in each of the Draft Offering Memorandum and the Offering Memorandum or as contemplated by the execution of the Transaction Agreements, since the respective dates as of which information is given in each of the Draft Offering Memorandum and the Offering Memorandum, as each may be amended or supplemented, (i) there has not been any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change, (ii) neither (A) the Company and its Subsidiaries, taken as a whole, nor (B) the Guarantor has incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other Subsidiaries, any of its Subsidiaries on any class of capital stock or repurchase or redemption or call by the Company or any of its Subsidiaries of capital stock.

(xi) Neither the Company nor any of its Subsidiaries is or with the giving of notice or lapse of time or both, will be, in violation of or in default under (i) its charter, by-laws, operating agreement or other organizational document or (ii) the terms of any other security issued by it or any obligation, agreement, covenant or condition contained in any stockholders' agreement, contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which any of them may be bound, or to which any of the property or assets of the Company or any of its Subsidiaries is subject (collectively, the "Agreements and Instruments") except, solely with respect to this clause (ii), for such violations or defaults that would not reasonably be expected to result in a Material Adverse Change. The execution, delivery and performance of this Agreement, the Registration Rights Agreement, the Collateral Agreements, the Indenture, the Securities and any other material agreement or instrument entered into or issued or to be entered into or issued by the Company or any of its Subsidiaries in connection with the transactions contemplated hereby or thereby and compliance by the Company and its Subsidiaries with their obligations hereunder or thereunder (including the issuance and sale of the Securities and the issuance of the shares of Common Stock upon conversion of the Securities) do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or a Repayment Event (as defined below) under, or, except with respect to the transactions contemplated by the Offering Memorandum, result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its Subsidiaries pursuant to, or require the consent of any other party that has not already been obtained to, the Agreements and Instruments except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that, singly or in the aggregate, would not reasonably be expected to result in a Material Adverse Change, nor will such execution, delivery, performance or compliance result in any violation of (i) the provisions of the charter, by-laws or any other organizational document of the Company or any of its Subsidiaries, as applicable, or (ii) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over it or any of its assets or properties and, solely with respect to this clause (ii), which violation would reasonably be expected to result in a Material Adverse Change. As used herein, a "Repayment Event" means any event or condition that gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its Subsidiaries.

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

(xiii) The Indenture has been duly authorized by the Company, and, when executed and delivered by the Company, and assuming the due authorization, execution and delivery thereof by the Trustee, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. At the Closing Time, the Indenture will conform in all material respects to the description thereof contained in the Offering Memorandum.

(xiv) The Registration Rights Agreement has been duly authorized by the Company and the Guarantor, and when duly executed and delivered by the Company, the Guarantor, and assuming the due authorization, execution and delivery thereof by the Initial Purchasers, will constitute a valid and binding agreement of each of the Company and the Guarantor, enforceable against the Company and the Guarantor in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. At the Closing Time, the Registration Rights Agreement will conform in all material respects to the description thereof contained in the Offering Memorandum.

(xv) The Collateral Pledge and Security Agreement has been duly authorized by the Guarantor, and, when executed and delivered by the Guarantor, and assuming the due authorization, execution and delivery thereof by the Trustee, will constitute a valid and binding agreement of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. At the Closing Time, the Collateral Pledge and Security Agreement will conform in all material respects to the descriptions thereof contained in the Offering Memorandum.

(xvi) The Pledge and Security Agreement has been duly authorized by the Company, and, when executed and delivered by the Company, and assuming the due authorization, execution and delivery thereof by the Trustee, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equitable principles. At the Closing Time, the Pledge and Security Agreement will conform in all material respects to the descriptions thereof contained in the Offering Memorandum.

(xvii) The Securities have been duly authorized and, at the Closing Time (or, if any Option Securities are being purchased, at the Date of Delivery) will have been duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, and entitled to the benefits of the Indenture, except as the enforcement thereof may be limited by bankruptcy, insolvency reorganization, moratorium or

other similar laws relating to or affecting creditors' rights generally or by general equitable principles, and will be in the form contemplated by the Indenture.

(xviii) The Guarantee has been duly authorized by each of the Company and the Guarantor, and when executed and delivered in accordance with the terms of the Indenture and when the Debentures and Guarantee are duly issued, authenticated and delivered in accordance with the terms of the Indenture and the Debentures and delivered to and paid for by the Initial Purchasers in accordance with the terms of this Agreement and the Indenture, will constitute the valid and legally binding obligation of the Company and the Guarantor, enforceable against the Company and the Guarantor in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or to general equitable principles. The Guarantee will conform in all material respects to the description thereof in the Offering Memorandum.

(xix) Each approval, consent, order, authorization, designation, declaration or filing by or with any regulatory, administrative or other governmental body (including, without limitation, the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming Licensing Board, the Public Utilities Commission of Nevada, the Nevada State Engineer's Office and the Macau Special Administrative Region of the People's Republic of China) (together, the "Consents") necessary in connection with the execution and delivery by the Company or the Guarantor of this Agreement, the Indenture, the Collateral Agreements and the Registration Rights Agreement and the consummation of the proposed offering of the Securities, the issuance of shares of Common Stock upon conversion of the Securities and the consummation of the transactions contemplated by this Agreement (except such additional steps as may be necessary to qualify the Securities or shares of Common Stock issuable upon conversion thereof for offering by the Initial Purchasers under state securities or Blue Sky laws) has been obtained or made and is in full force and effect, except (a) such as have been already obtained, (b) as may be required under the 1933 Act or the rules and regulations of the Commission thereunder in connection with the transactions contemplated by the Registration Rights Agreement or state securities laws, (c) for the qualification of the Indenture under the Trust Indenture Act of 1939, as amended (the "1939 Act"), (d) as may be required under the Uniform Commercial Code by the Collateral Agreements, (e) as may be required under the 1934 Act or the rules and regulations of the Commission thereunder (the "1934 Act Regulations") in connection with any offer to repurchase the Securities pursuant to the terms of the Securities and (f) as disclosed in the Offering Memorandum.

(xx) Except as disclosed in the Offering Memorandum or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, (i) the Company and each of its Subsidiaries has obtained and holds all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, liens and other rights, privileges and approvals (including with respect to environmental laws) required under any federal, state, local or foreign law or governmental authority ("Permits") for the ownership or current use of all real property owned or leased by the Company or such Subsidiary and for any other property otherwise currently operated by or on behalf of, or for the benefit of, such entity and for the operation of each of its businesses as presently conducted, (ii) all such Permits are in full force and effect, and the Company and each of its Subsidiaries has performed and observed all requirements of such Permits, (iii) no event has occurred 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, (iv) no such Permits contain any restrictions, either individually or in the aggregate, that are materially burdensome to the

Company or any of its Subsidiaries, or to the current operation of any of its businesses or any property currently owned, leased or otherwise operated by such entity, (v) the Company and each of its Subsidiaries reasonably believes that each of its Permits will be timely renewed and complied with, without material expense, and that any additional Permits that may be required of such entity in order to conduct its business as proposed to be conducted will be timely obtained and complied with, without material expense, and (vi) neither the Company nor the Guarantor has any knowledge or any reason to believe that any governmental authority is considering limiting, suspending, revoking or renewing any such Permits on terms materially more burdensome than the terms of such Permit as in effect as the date hereof.

(xxi) Except as otherwise disclosed in the Offering Memorandum or as would not reasonably be expected to result in a Material Adverse Change, (i) neither the Company nor any of its Subsidiaries is or has in the past been in violation of any applicable federal, state, local or foreign statute, law, rule, regulation, ordinance, code or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"); (ii) neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company or the Guarantor, any third party, has used, released, discharged, generated, manufactured, produced, stored, or disposed of in, on, under, or about the real property owned or leased by the Company or any of its Subsidiaries or any improvements thereon (the "Sites") or transported thereto or therefrom, any Hazardous Materials that would reasonably be expected to subject the Company or any of its Subsidiaries to any liability under any Environmental Law; (iii) there are no underground tanks and no Hazardous Materials used, stored or present at or on the Sites that would reasonably be expected to result in liability for the Company or any of its Subsidiaries under applicable Environmental Laws; (iv) to the knowledge of the Company or the Guarantor after due inquiry, there is or has been no condition, circumstance, action, activity or event that could reasonably form the basis of any violation of, or any liability to the Company or any of its Subsidiaries under, any Environmental Law; (v) there is no pending or, to the knowledge of the Company or the Guarantor, threatened, action, proceeding, investigation or inquiry by any regulatory or governmental body or any non-governmental third party with respect to the presence or release of Hazardous Materials, on, from or to the Sites; (vi) neither the Company nor the Guarantor has any knowledge of any past or existing violations of any applicable Environmental Laws by any person relating in any way to the Sites; and (vii) neither the Company nor any of its Subsidiaries has received any complaint, adverse order, directive, citation or adverse notice from any governmental body with respect to any Environmental Law.

(xxii) Except as otherwise disclosed in the Offering Memorandum, (i) the Company and its Subsidiaries each own or possess the valid right to use all trademarks, trade names, service marks, domain names and copyrights (together with the applications for registrations and registrations therefor), non-patent license rights, know-how (including trade secrets and other unpatented and unpatentable proprietary or confidential information, materials, systems or procedures), technologies, inventions and other non-patent intellectual property or non-patent proprietary rights (collectively, "Intellectual Property"), which are material to any of their businesses and are presently used in their businesses, and neither the Company nor any of its Subsidiaries has any reason to believe that it or they will not own or possess or be able to obtain

when needed the valid right to use all Intellectual Property necessary to carry on their businesses as presently proposed to be conducted; (ii) neither the Intellectual Property owned or used by, nor the conduct or operation of the businesses (as presently and proposed to be conducted or operated) of, the Company or any of its Subsidiaries has infringed upon, misappropriated or violated, or, if the businesses are conducted or operated as presently intended, will, to the knowledge of the Company or any of its Subsidiaries, infringe upon, misappropriate or violate, any Intellectual Property of any other person or entity; (iii) to the knowledge of the Company and the Guarantor, none of the Intellectual Property or the patents or patent rights (collectively, the "Patents"), employed by the Company or any of its Subsidiaries has been obtained or is being used by the Company or any such Subsidiary in violation of any contractual obligation binding on the Company, such Subsidiary or any of their respective officers, directors or employees or otherwise in violation of the rights of any persons, except as would not reasonably be expected to result in a Material Adverse Change; (iv) neither the Company nor any of its Subsidiaries has received any written communications or been served with any document relating to any action or proceeding, nor, to the knowledge of the Company or any of its Subsidiaries, is any action or proceeding pending, alleging that the Company or any such Subsidiary has violated, infringed upon or misappropriated, or, by conducting its business as set forth in the Offering Memorandum, would violate, infringe upon or misappropriate, any of the Intellectual Property or Patents of any other person or entity; (v) neither the Company nor the Guarantor knows of any material infringement by others of Intellectual Property or Patents owned by or licensed to the Company or any of its Subsidiaries; (vi) neither the Company nor any of its Subsidiaries has any reason to believe that it does not own or have a valid right to use, or will not own or possess or be unable to acquire or obtain the valid right to use, any Patents necessary to carry on their businesses as presently conducted or as proposed to be conducted; and (vii) neither the Company nor its Subsidiaries has any reason to believe that the Patents owned or used by the Company or any of its Subsidiaries, or the conduct or operation of their businesses has infringed, or that the Patents or the conduct or operation of businesses as presently or proposed to be conducted will infringe, any Patent of any other person or entity. The Company and its Subsidiaries have taken all reasonable steps necessary to secure their interests in, and protect the secrecy, confidentiality and value of, their Intellectual Property and Patents, including without limitation entering into written confidentiality agreements with their employees and contractors.

(xxiii) Neither the Company nor any of its Subsidiaries, nor to the Company's nor the Guarantor's knowledge, any of its or their affiliates, has taken or will take, directly or indirectly, any action designed to cause or result in, or that has constituted or that could reasonably be expected to constitute, the stabilization or manipulation of the price of the shares of Common Stock to facilitate the sale or resale of the Securities.

(xxiv) Neither the Company nor the Guarantor is, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Offering Memorandum, neither of them will be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended (the "1940 Act").

(xxv) Neither the Company nor any of its Subsidiaries is a "holding company" or a "subsidiary company" of a "holding company," as such terms are defined in the Public Utilities Holding Company Act of 1935, as amended, or is a "public utility," as such term is defined in the Federal Power Act, as amended.

(xxvi) The Company and each of its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed

in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(xxvii) The Company and each of its Subsidiaries carry, or are covered by, insurance with insurers of recognized financial responsibility in such amounts, with such deductibles and covering such risks as is commercially reasonable and as the Company and its Subsidiaries deem adequate and prudent for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its Subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes. Such insurance coverage (including deductibles, retentions and self-insurance amounts) complies with the insurance coverage required at the Closing Time (or if any Option Securities are being purchased, at the Date of Delivery) under the Master Disbursement Agreement, dated as of October 30, 2002, by and among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Design & Development, LLC, Deutsche Bank Trust Company Americas, Wells Fargo Bank, National Association and Wells Fargo Bank Nevada, National Association. Neither the Company nor the Guarantor has reason to believe that such insurance coverage cannot be renewed as and when such coverage expires or that similar coverage could not be obtained from similar insurers at a cost that would not reasonably be expected to result in a Material Adverse Change (other than as a result of general market conditions).

(xxviii) Except for matters that would not reasonably be expected to result in a Material Adverse Change, the Company and each of its Subsidiaries is in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"). No "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company or any of its Subsidiaries would have any liability. Neither the Company nor any of its Subsidiaries has incurred or expects to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Section 412 with respect to unpaid or delinquent contributions or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"). Except for matters that would not reasonably be expected to result in a Material Adverse Change, each "pension plan" for which the Company or any Subsidiary would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, that would cause the loss of such qualification.

(xxix) Neither the Company nor any of its Subsidiaries nor, to the best of the Company's or the Guarantor's knowledge, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its Subsidiaries or any beneficial owner of 10 percent or more of the capital stock of the Company or any of its Subsidiaries has, with respect to the Company or any of its Subsidiaries, (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iv) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment.

(xxx) The Offering Memorandum as delivered from time to time shall incorporate by reference the most recent Annual Report of the Company on Form 10-K filed with the Commission (including any amendments thereto), each Quarterly Report of the Company on Form 10-Q and each Current Report of the Company on Form 8-K filed with the Commission since the end of the fiscal year to which such Annual Report relates and the Definitive Proxy Statement of the Company filed on Schedule 14A on April 21, 2003. The documents incorporated or deemed to be incorporated by reference in the Offering Memorandum at the time they were or hereafter are filed with the Commission complied and will comply in all material respects with the requirements of the 1934 Act and the 1934 Act Regulations, and, when read together with the other information in each of the Draft Offering Memorandum and the Offering Memorandum, at the date hereof with respect to the Draft Offering Memorandum and at the time the Offering Memorandum was issued and at the Closing Time (and, if any Option Securities are purchased, at the Date of Delivery) with respect to the Offering Memorandum, did not and will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(xxxi) Neither the Company, the Guarantor nor any of their affiliates, as such term is defined in Rule 501(b) under the 1933 Act (each, an "Affiliate"), have, directly or indirectly, solicited any offer to buy, sold or offered to sell or otherwise negotiated in respect of, or will solicit any offer to buy, sell or offer to sell or otherwise negotiate in respect of, in the United States or to any United States citizen or resident, any security that is or would be integrated with the sale of the Securities in a manner that would require the offered Securities to be registered under the 1933 Act.

(xxxii) The Securities are eligible for resale pursuant to Rule 144A and, other than the shares of Common Stock into which they are convertible, will not be, at the Closing Time, of the same class (within the meaning of Rule 144(A)(d)(3)(i) of the 1933 Act) as securities listed on a national securities exchange registered under Section 6 of the 1934 Act, or quoted in a U.S. automated interdealer quotation system.

(xxxiii) None of the Company, the Guarantor, their Affiliates or any person acting on its or any of their behalf (other than the Initial Purchasers, as to whom neither the Company nor the Guarantor makes any representation) has engaged or will engage, in connection with the offering of the offered Securities, in any form of general solicitation or general advertising within the meaning of Rule 502(c) under the 1933 Act.

(xxxiv) Subject to compliance by the Initial Purchasers with the agreements set forth in Section 2 and the procedures set forth in Section 6 hereof, it is not necessary in connection with the offer, sale and delivery of the offered Securities to the Initial Purchasers and to each Subsequent Purchaser in the manner contemplated by this Agreement and the Offering Memorandum to register the Securities under the 1933 Act or to qualify the Indenture under the 1939 Act.

(xxxv) The Company is subject to the reporting requirements of Section 13 or Section 15(d) of the 1934 Act.

(xxxvi) Each of the Collateral Agreements, when executed and delivered by the Company and the Guarantor and assuming the due authorization and delivery thereof by the Trustee and the Collateral Agent, will be effective to create in favor of the Collateral Agent, for the benefit of the Trustee and the holders of the Debentures, a legal, valid and enforceable security interest in the Collateral (as defined in the applicable Collateral Agreement) described

therein and proceeds and products thereof. In the case of the Pledged Equity Interests (as defined in the Pledge and Security Agreement), when financing statements in appropriate form are filed with the Secretary of State of the State of Nevada (which financing statements shall have been duly completed and delivered to the Collateral Agent at or prior to the Closing Time), and in the case of the Pledged Securities (as defined in the Collateral Pledge and Security Agreement), when the Collateral Pledge and Security Agreement has been executed and delivered by the Guarantor, the Trustee, the Collateral Agent and the Securities Intermediary (as defined therein), the Collateral Agreements shall constitute a fully perfected security interest in, all right, title and interest of the Company or the Guarantor, as the case may be, in such Collateral and the proceeds and products thereof, as security for the obligations secured thereunder, in each case prior and superior in right to any other person or entity.

(b) *Officer's Certificates*. Any closing certificate signed by any officer of the Company or the Guarantor delivered to the Representative or to counsel for the Initial Purchasers shall be deemed a representation and warranty by the Company or the Guarantor to each Initial Purchaser as to the matters covered thereby.

(c) *Reliance*. The Company and the Guarantor acknowledge that the Initial Purchasers and, for purposes of the opinions to be delivered pursuant to Section 5 hereof, counsel to the Company and the Guarantor and counsel to the Initial Purchasers, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

SECTION 2. Sale and Delivery to Initial Purchasers; Closing.

(a) *Initial Securities*. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Initial Purchaser, severally and not jointly, and each Initial Purchaser, severally and not jointly, agrees to purchase from the Company, at the price set forth in Schedule I, the aggregate principal amount of Initial Securities set forth in Schedule II opposite the name of such Initial Purchaser, plus any additional principal amount of Securities that such Initial Purchaser may become obligated to purchase pursuant to the provisions of Section 11 hereof.

(b) *Option Securities*. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Initial Purchasers to purchase up to an additional $50,000,000 aggregate principal amount of Securities at the same price per Security set forth in Schedule I for the Initial Securities, plus accrued interest, if any, from the Closing Time to the Date of Delivery (as defined below). The option hereby granted will expire 30 days after the date hereof and may be exercised in whole or in part from time to time within such 30 day period upon notice by the Initial Purchasers to the Company setting forth the number of Option Securities as to which the Initial Purchasers are then exercising the option and the time and date of payment and delivery for such Option Securities; *provided*, *however*, that Option Securities may not be issued in whole or in part after the period which ends 13 days after the date hereof unless the Initial Purchasers determine, subject to the prompt review and reasonable approval (which shall not be unreasonably withheld or delayed) by the Company, that such Option Securities would not be treated as having been issued with "original issue discount" for purposes of Sections 1271-1275 of the Code and the applicable Treasury regulations promulgated thereunder. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Initial Purchasers, and shall be either (i) the same time and date as the Closing Time or (ii) if other than the Closing Time, such other time and date that is not earlier than three nor later than seven full business days after the exercise of said option; *provided*, *however*, that in no event shall any Date of Delivery be prior to the Closing Time, as hereinafter defined; *provided*, *further*,

that each Date of Delivery shall be within the 30 day period commencing with and including the Closing Time.

(c) *Payment*. Payment of the purchase price for, and delivery of the global certificates for the Initial Securities shall be made at the office of Latham & Watkins LLP, 633 West Fifth Street, Los Angeles, California 90071, or at such other place as shall be agreed upon by the Representative and the Company, at 10:00 A.M. (New York time) on the third business day after the date hereof (unless postponed in accordance with the provisions of Section 11), or such other time not later than ten business days after such date as shall be agreed upon by the Representative and the Company (such time and date of payment and delivery being herein called the "Closing Time"). In addition, in the event that the Initial Purchasers have exercised their option to purchase all or any of the Option Securities, payment of the purchase price for, and delivery of one or more global certificates for such Option Securities, shall be made at the above-mentioned offices of Latham & Watkins LLP, or at such other place as shall be agreed upon by the Company and the Initial Purchasers, on the relevant Date of Delivery as specified in the notice from the Initial Purchasers to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company, against delivery to the Representative for the respective accounts of the Initial Purchasers of one or more global certificates for the Securities to be purchased by the Initial Purchasers. It is understood that each Initial Purchaser has authorized the Representative, for such Initial Purchaser's account, to accept delivery of, receipt for, and make payment of the purchase price for, the Securities that such Initial Purchaser has agreed to purchase. Deutsche Bank Securities Inc., individually and not as representative of the Initial Purchasers, may (but shall not be obligated to) make payment of the purchase price for the Securities to be purchased by any Initial Purchaser whose funds have not been received by Closing Time, or, if any Option Securities are purchased, the Date of Delivery, but such payment shall not relieve such Initial Purchaser from its obligations hereunder.

(d) *Denominations; Registration*. Certificates for the Initial Securities and the Option Securities, if any, shall be in global form. The global certificates representing the Initial Securities and the Option Securities, if any, shall be made available for examination by the Initial Purchasers in The City of New York not later than 10:00 A.M. (Eastern time) on the last business day prior to the Closing Time or the relevant Date of Delivery, or the case may be.

SECTION 3. Covenants of the Company and the Guarantor. Each of the Company and the Guarantor, jointly and severally, covenants with each Initial Purchaser as follows:

(a) *Offering Memorandum*. The Company, as promptly as possible, will furnish to each Initial Purchaser, without charge, such number of copies of the Offering Memorandum and any amendments and supplements thereto and documents incorporated by reference therein as such Initial Purchaser may reasonably request.

(b) *Notice and Effect of Material Events*. Until the date that is the later of the effective date of the Company's registration statement for the resale of the Securities pursuant to the terms of the Registration Rights Agreement or six months from the date hereof, the Company will immediately notify each Initial Purchaser, and confirm such notice in writing, of (x) any filing made by the Company or the Guarantor of information relating to the offering of the Securities with any securities exchange or any other regulatory body or tax authority in the United States or any other jurisdiction, and (y) prior to the completion of the placement of the offered Securities by the Initial Purchasers, any material changes in or affecting the condition, financial or otherwise, or the earnings, business affairs or business prospects of the Company and its Subsidiaries considered as one enterprise that (i) make any statement in the Offering Memorandum false or misleading or (ii) are not disclosed in the Offering Memorandum. In such event or

if during such time any event shall occur as a result of which it is necessary, in the reasonable opinion of any of the Company, the Guarantor or their counsel, the Initial Purchasers or counsel for the Initial Purchasers, to amend or supplement the Offering Memorandum in order that the Offering Memorandum not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances then existing, the Company will forthwith amend or supplement the Offering Memorandum by preparing and furnishing to each Initial Purchaser an amendment or amendments of, or a supplement or supplements to, the Offering Memorandum (in form and substance satisfactory in the reasonable opinion of counsel for the Initial Purchasers) so that, as so amended or supplemented, the Offering Memorandum will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time it is delivered to a Subsequent Purchaser, not misleading.

(c) *Amendment to Offering Memorandum and Supplements*. The Company will advise each Initial Purchaser promptly of any proposal to amend or supplement the Offering Memorandum and will not effect such amendment or supplement without the consent of the Initial Purchasers, which consent shall not be unreasonably withheld or delayed. Neither the consent of the Initial Purchasers, nor the Initial Purchasers' delivery of any such amendment or supplement, shall constitute a waiver of any of the conditions set forth in Section 5 hereof.

(d) *Qualification of Securities for Offer and Sale*. Each of the Company and the Guarantor will use its best efforts, in cooperation with the Initial Purchasers, to qualify the Securities and shares of Common Stock issuable upon conversion of the offered Securities for offering and sale under the applicable securities laws of such states and other jurisdictions as the Initial Purchasers reasonably may designate and to maintain such qualifications in effect as long as required for the sale of the Securities; *provided*, *however*, that neither the Company nor the Guarantor shall be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(e) *DTC*. The Company will cooperate with the Initial Purchasers and use its best efforts to permit the offered Securities to be eligible for clearance and settlement through the facilities of DTC.

(f) *Use of Proceeds*. The Company will use the net proceeds received by it from the sale of the Securities (including contributing approximately $35.1 million of the net proceeds of this offering at the Closing Time (or up to approximately $43.9 million if the Initial Purchasers exercise their option to purchase Option Securities pursuant to Section 2(b) in full) to the Guarantor, which will use such proceeds to purchase U.S. government securities to secure the payment of three years of the scheduled interest payments due on the Securities during the period from the Closing Time (or with respect to any Option Securities that are purchased, the Date of Delivery) up to and including July 15, 2006) in the manner described in the Offering Memorandum under "Use of Proceeds."

(g) *Restriction on Sale of Securities*. During a period of 90 days from the date of the Offering Memorandum, neither the Company not any of its Subsidiaries will, without the prior written consent of the Representative, directly or indirectly, issue, sell, offer or agree to sell, grant any option for the sale of, or otherwise dispose of, any other debt securities of the Company or its Subsidiaries or securities of the Company or its Subsidiaries that are convertible into, or exchangeable for, the offered Securities or such other debt securities.

(h) *PORTAL Designation*. The Company will use its best efforts to permit the Securities to be designated PORTAL securities in accordance with the rules and regulations adopted by the National Association of Securities Dealers, Inc. ("NASD") relating to trading in the PORTAL Market.

(i) *Listing of Common Stock.* The Company will use its best efforts to cause all shares of Common Stock issuable upon conversion of the Securities to be quoted on the Nasdaq National Market (or on any other principal securities exchange or inter-dealer quotation system on which shares of Common Stock issued by the Company are then listed).

(j) *Reservation of Common Stock*. The Company will reserve and keep available at all times, free of preemptive or other similar rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to satisfy any obligations to issue the Common Stock issuable upon conversion of the Securities.

(k) *Restriction on Sale of Common Stock*. During a period of 90 days from the date of the Offering Memorandum, the Company will not, without the prior written consent of the Representative, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or, other than in accordance with the Registration Rights Agreement, file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; *provided*, *however*, that (i) the Company may issue shares of its Common Stock or options to purchase its Common Stock, or Common Stock upon exercise of options, pursuant to any stock option, stock incentive or other stock plan or arrangement described in the Offering Memorandum, but only if the holders of such shares, options, or shares issued upon exercise of such options (other than directors and officers of the Company who are the subject of a separate lock-up agreement with the Initial Purchasers), are not permitted under their option grant to sell, offer, dispose of or otherwise transfer any such shares or options during such 90 day period without the prior written consent of the Representative (which consent may be withheld at the sole discretion of the Representative and (ii) the foregoing restriction shall not apply to the sale of the Securities under this Agreement.

(l) *Reporting Requirements*. During the period when the Offering Memorandum is required to be delivered pursuant to Section 6(a)(vii) hereof, the Company will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and the 1934 Act Regulations.

SECTION 4. Payment of Expenses.

(a) *Expenses*. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing, delivery to the Initial Purchasers and any filing of the Offering Memorandum (including financial statements and any schedules or exhibits and any document incorporated therein by reference) and of each amendment or supplement thereto, (ii) the preparation, printing and delivery to the Initial Purchasers of this Agreement, the Indenture, the Registration Rights Agreement, the Collateral Agreements and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Securities, (iii) the preparation, issuance and delivery of the global certificates for the Securities to the Initial Purchasers, including any transfer taxes, any stamp or other duties payable upon the sale, issuance and delivery of the Securities to the Initial Purchasers and any charges of DTC in connection therewith, (iv) the fees and disbursements of

the Company's and the Guarantor's counsel, accountants and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(d) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Initial Purchasers in connection therewith and including a maximum of $7,500 in connection with the preparation of the Blue Sky Survey and any supplement thereto, (vi) any fees or expenses incurred in connection with the inclusion of the Common Stock issuable upon conversion of the Securities on the Nasdaq National Market, (vii) the fees and expenses of the Trustee, including the fees and disbursements of counsel for the Trustee in connection with the Indenture and the Securities, and (viii) any fees and expenses payable in connection with the initial and continued designation of the Securities as PORTAL securities under the PORTAL Market Rules pursuant to NASD Rule 5322.

(b) *Termination of Agreement*. If this Agreement is terminated by the Representative in accordance with the provisions of Section 5 or Section 10(a)(i) hereof, the Company shall reimburse the Initial Purchasers for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Initial Purchasers.

SECTION 5. Conditions of the Initial Purchasers' Obligations. The obligations of the Initial Purchasers hereunder are subject to the accuracy of the representations and warranties of the Company and the Guarantor contained in Section 1 hereof or in certificates of any officer of the Company or any of its Subsidiaries delivered pursuant to the provisions hereof, to the performance by the Company and the Guarantor of their covenants and other obligations hereunder, and to the following further conditions:

(a) *Opinion of Counsel for Company and the Guarantor*.

(i) At the Closing Time, the Representative shall have received the opinion, dated as of the Closing Time, of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Company and the Guarantor, in form and substance reasonably satisfactory to counsel for the Initial Purchasers to the effect set forth in Exhibit B hereto. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York and the federal law of the United States, upon the opinions of counsel satisfactory to the Representative. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers of the Company and its Subsidiaries and certificates of public officials.

(ii) At the Closing Time, the Representative shall have received the opinion, dated as of the Closing Time, of Schreck Brignone, special Nevada counsel for the Company and the Guarantor, in form and substance reasonably satisfactory to counsel for the Initial Purchasers to the effect set forth in Exhibit C hereto.

(iii) At the Closing Time, the Representative shall have received the opinion, dated as of the Closing Time, of Manuel Alexandre de Oliveira Correia da Silva, special Macau counsel for Wynn Resorts (Macau) S.A., in form and substance reasonably satisfactory to counsel for the Initial Purchasers to the effect set forth in Exhibit D hereto.

(iv) At the Closing Time, the Representative shall have received the opinion, dated as of the Closing Time, of Fulbright & Jaworski, special regional counsel for Wynn Resorts (Macau) S.A., in form and substance reasonably satisfactory to counsel for the Initial Purchasers to the effect set forth in Exhibit E hereto.

(v) At the Closing Time, the Representative shall have received the opinion, dated as of the Closing Time, of Mann & Partners, special Isle of Man counsel for certain Subsidiaries

of the Company, in form and substance reasonably satisfactory to counsel for the Initial Purchasers to the effect set forth in Exhibit F hereto.

(vi) At the Closing Time, the Representative shall have received the opinion, dated as of the Closing Time, of Hoosenally and Neo, special Hong Kong counsel for Wynn Resorts (Macau) Limited, in form and substance reasonably satisfactory to counsel for the Initial Purchasers to the effect set forth in Exhibit G hereto.

(vii) At the Closing Time, the Representative shall have received the opinion, dated as of the Closing Time, as the case may be, of Lionel Sawyer & Collins, counsel for Aruze USA, Inc. ("Aruze USA"), in form and substance reasonably satisfactory to counsel for the Initial Purchasers to the effect set forth in Exhibit H hereto.

(viii) At the Closing Time, the Representative shall have received the opinion, dated as of the Closing Time, of Nagashima Ohno & Tsunematsu, counsel for Aruze Corp. and Mr. Kazuo Okada, in form and substance reasonably satisfactory to counsel for the Initial Purchasers to the effect set forth in Exhibit I hereto.

(b) *Opinion of Counsel for Initial Purchasers*. At the Closing Time, the Representative shall have received the opinion, dated as of Closing Time, of Latham & Watkins LLP, counsel for the Initial Purchasers. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York and the federal law of the United States, upon the opinions of counsel satisfactory to the Representative. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers of the Company and its Subsidiaries and certificates of public officials.

(c) *Officers' Certificate*. At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Final Offering Memorandum (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement), any Material Adverse Change, and the Representative shall have received a certificate of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company, on behalf of (x) Company and (y) the Company, as sole member and control manager of the Guarantor, dated as of the Closing Time, to the effect that (i) there has been no such Material Adverse Change, (ii) except for representations and warranties that speak of a particular date (which representations shall be true and correct in all material respects, or, if qualified by materiality, in all respects, as of such date) the representations and warranties in Section 1 hereof are true and correct in all material respects, or, if qualified by materiality, in all respects, with the same force and effect as though expressly made at and as of the Closing Time, and (iii) the Company and the Guarantor have complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time.

(d) *Accountants' Comfort Letter*. At the time of the execution of this Agreement, the Representative shall have received from Deloitte & Touche, LLP a letter dated such date, in form and substance satisfactory to the Representative containing statements and information of the type ordinarily included in accountants' "comfort letters" to initial purchasers in transactions similar to the offering of the Securities with respect to the financial statements and certain financial information contained in the Offering Memorandum.

(e) *Bring-down Comfort Letter*. At the Closing Time, the Representative shall have received from Deloitte & Touche, LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (d) of this Section, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(f) *Indenture, the Collateral Agreements and the Registration Rights Agreement*. At or prior to the Closing Time, the Company and the Trustee shall have executed and delivered the Indenture, the Guarantor and the Trustee shall have executed and delivered the Pledge and Security Agreement, the Company and the Trustee shall have executed and delivered the Collateral Pledge and Security Agreement, and the Company, the Guarantor and the Representative shall have executed and delivered the Registration Rights Agreement.

(g) *Maintenance of Rating*. Since the date of this Agreement, there shall not have occurred a downgrading in the rating assigned to any of the Company's or any of its Subsidiaries' other debt securities, loans, obligations, guarantees or other debt for borrowed money (collectively, the "Debt Obligations"), including, without limitation, the Credit Agreement, dated as of October 30, 2002, among Wynn Las Vegas, LLC, the several banks and other financial institutions or entities from time to time parties thereto, Deutsche Bank Securities Inc., Deutsche Bank Trust Company Americas, Banc of America Securities LLC, Bear, Stearns & Co. Inc., Bear Stearns Corporate Lending Inc., Dresdner Bank AG, New York and Cayman Island Branches, and JP Morgan Chase Bank; the Loan Agreement, dated as of October 30, 2002, by and among Wynn Las Vegas, LLC, Wells Fargo Bank Nevada, N.A. and the lenders listed on Schedule IA thereto; and the 12% Second Mortgage Notes due 2010 of Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. by any "nationally recognized statistical rating agency," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the 1933 Act, and no such securities rating agency shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's or its Subsidiaries' other Debt Obligations.

(h) The Representative shall have received at the Closing Time, an executed certificate dated the date of the Closing Time, as applicable, from Stephen A. Wynn addressed to the Initial Purchasers and stating that it can be relied on by Latham & Watkins LLP, counsel to Initial Purchasers, and counsel and any special counsel to the Company and Guarantor, which certificate provides that the execution and delivery by Mr. Wynn of the Agreement, dated as of June 13, 2002, by and between Mr. Wynn and the Company and the Buy-Sell Agreement, dated as of June 13, 2002, by and among Mr. Wynn, Mr. Kazuo Okada, Aruze USA, Inc. and Aruze Corp. and the performance by him of his obligations thereunder, do not (i) breach any agreement or instrument with a value in excess of $10.0 million to which he is a party, (ii) breach any other agreement or instrument to which he is a party if that breach would subject him to a penalty or a payment requirement in excess of $10.0 million, or (3) result in a default under any loan agreement or guarantee or other debt for borrowed money in excess of $10.0 million to which he is a party.

(i) *PORTAL*. At the Closing Time, the Securities shall have been designated for trading on PORTAL.

(j) *Lock-Up Agreements*. At the date of this Agreement, the Representative shall have received lock-up agreements, in substantially the form attached hereto as Exhibit A, signed by the persons and entities listed on Schedule III hereto.

(k) *Conditions to Purchase of Option Securities*. In the event that the Initial Purchasers exercise their option to purchase all or any portion of the Option Securities, the representations and warranties of the Company and the Guarantor contained herein and the statements in any certificates furnished by the Company, the Guarantor or any of its Subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representative shall have received:

(i) a certificate, dated as of such Date of Delivery, of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company,

on behalf of each of the Company and the Guarantor, confirming that the certificate delivered at the Closing Time pursuant to Section 5(c) hereof remains true and correct as of such Date of Delivery;

(ii) the opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Company and the Guarantor, in form and substance reasonably satisfactory to counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion by Section 5(a)(i) hereof;

(iii) the opinion of Schreck Brignone, special Nevada counsel for the Company and the Guarantor, in form and substance reasonably satisfactory to counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion required by Section 5(a)(ii) hereof;

(iv) the opinion of Manuel Alexandre de Oliveira Correia da Silva, special Macau counsel for Wynn Resorts (Macau) S.A., in form and substance reasonably satisfactory to counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion required by Section 5(a)(iii) hereof;

(v) the opinion of Fulbright & Jaworski, special regional counsel for Wynn Resorts (Macau) S.A., in form and substance reasonably satisfactory to counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion required by Section 5(a)(iv) hereof;

(vi) the opinion of Mann & Partners, special Isle of Man counsel for certain Subsidiaries of the Company, in form and substance reasonably satisfactory to counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion required by Section 5(a)(v) hereof;

(vii) the opinion of Hoosenally and Neo, special Hong Kong counsel for Wynn Resorts (Macau) Limited, in form and substance reasonably satisfactory to counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion required by Section 5(a)(vi) hereof;

(viii) the opinion of Lionel Sawyer & Collins, counsel for Aruze USA, in form and substance reasonably satisfactory to counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion required by Section 5(a)(vii) hereof;

(ix) the opinion of Nagashima Ohno & Tsunematsu, counsel for Aruze Corp. and Mr. Kazuo Okada, in form and substance reasonably satisfactory to counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion required by Section 5(a)(viii) hereof;

(x) the opinion of Latham & Watkins LLP, special counsel for the Initial Purchasers, dated as of such Date of Delivery, relating to the Option Securities and otherwise to the same effect as the opinion required by Section 5(b) hereof;

(xi) a letter from Deloitte & Touche, LLP in form and substance satisfactory to the Initial Purchasers and dated as of such Date of Delivery, in substantially the same form and substance as the letter furnished to the Representative pursuant to Section 5(e) hereof, except that

the "specified date" on the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery; and

(xii) a certificate, dated as of such Date of Delivery, of Stephen A. Wynn confirming that the certificate delivered at the Closing Time pursuant to Section 5(h) hereof remains true and correct as of such Date of Delivery.

In addition to the foregoing, at each Date of Delivery, since the date of this Agreement there shall not have occurred a downgrading in the rating assigned to any of the Company's or any of its Subsidiaries' Debt Obligations by any "statistical rating agency," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the 1933 Act, and no such securities rating agency shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's or its Subsidiaries' Debt Obligations.

(l) *Additional Documents*. At the Closing Time and each Date of Delivery, counsel for the Initial Purchasers shall have been furnished with such documents and opinions as they reasonably may require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company and the Guarantor in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Representative and counsel for the Initial Purchasers.

(m) *Termination of Agreement*. If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, this Agreement (or, with respect to the Initial Purchasers' exercise of any option for the purchase of Option Securities on a Date of Delivery after the Closing Time, the obligations of the Initial Purchasers to purchase the Option Securities on such Date of Delivery), may be terminated by the Representative by notice to the Company at any time at or prior to the Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 7, 8 and 9 shall survive any such termination and remain in full force and effect.

SECTION 6. Subsequent Offers and Resales of the Securities.

(a) *Offer and Sale Procedures*. Each of the Initial Purchaser, the Company and the Guarantor hereby establish and agree to observe the following procedures in connection with the offer and sale of the Securities:

(i) Offers and Sales. Offers and sales of the Securities shall be made to such persons whom the offeror or seller reasonably believe to be qualified institutional buyers, as defined in Rule 144A under the 1933 Act ("Qualified Institutional Buyers") and in such manner as is contemplated by the Offering Memorandum. Each Initial Purchaser severally agrees that it will not offer, sell or deliver any of the Securities (A) in any jurisdiction outside the United States except under circumstances that will result in compliance with the applicable laws thereof, and that it will take at its own expense whatever action is required to permit its purchase and resale of the Securities in such jurisdictions or (B) to any officer or director of the Company.

(ii) No General Solicitation. No general solicitation or general advertising (within the meaning of Rule 502(c) under the 1933 Act) will be used in the United States in connection with the offering or sale of the Securities.

(iii) Purchases by Non-Bank Fiduciaries. In the case of a non-bank Subsequent Purchaser of a Security acting as a fiduciary for one or more third parties, each third party shall, in the judgment of the applicable Initial Purchaser, be a Qualified Institutional Buyer.

(iv) Subsequent Purchaser Notification. Each Initial Purchaser will take reasonable steps to inform, and cause each of its U.S. Affiliates to take reasonable steps to inform, persons acquiring Securities from such Initial Purchaser or Affiliate, as the case may be, in the United States that the Securities (A) have not been and will not be registered under the 1933 Act, (B) are being sold to them without registration under the 1933 Act in reliance on Rule 144A or in accordance with another exemption from registration under the 1933 Act, as the case may be, and (C) may not be offered, sold or otherwise transferred except (1) to the Company, or (2) in accordance with (x) Rule 144A to a person whom the seller reasonably believes is a Qualified Institutional Buyer that is purchasing such Securities for its own account or for the account of a Qualified Institutional Buyer to whom notice is given that the offer, sale or transfer is being made in reliance on Rule 144A or (y) pursuant to another available exemption from registration under the 1933 Act.

(v) Minimum Principal Amount. No sale of the Securities to any one Subsequent Purchaser will be for less than U.S. $1,000 principal amount and no Security will be issued in a smaller principal amount. If the Subsequent Purchaser is a non-bank fiduciary acting on behalf of others, each person for whom it is acting must purchase at least U.S. $1,000 principal amount of the Securities.

(vi) Restrictions on Transfer. The transfer restrictions and the other provisions set forth in the Offering Memorandum under the heading “Notice to Investors,” including the legend required thereby, shall apply to the Securities except as otherwise agreed by the Company, the Guarantor and the Initial Purchasers.

(vii) Delivery of Offering Memorandum. Each Initial Purchaser will deliver to each Subsequent Purchaser of the Securities from such Initial Purchaser, in connection with its original distribution of the Securities, a copy of the Offering Memorandum, as amended and supplemented at the date of such delivery.

(b) *Covenants of the Company and the Guarantor*. The Company and the Guarantor covenant with each Initial Purchaser as follows:

(i) Integration. The Company agrees that it will not, and will cause its Subsidiaries and use commercially reasonable best efforts to cause its Affiliates (other than its Subsidiaries) not to, directly or indirectly, solicit any offer to buy, sell or make any offer or sale of, or otherwise negotiate in respect of, securities of the Company of any class if, as a result of the doctrine of “integration” referred to in Rule 502 under the 1933 Act, such offer or sale would render invalid (for the purpose of (i) the sale of the Securities by the Company to the Initial Purchasers, (ii) the resale of the Securities by the Initial Purchasers to Subsequent Purchasers or (iii) the resale of the Securities by such Subsequent Purchasers to others) the exemption from the registration requirements of the 1933 Act provided by Section 4(2) thereof or by Rule 144A thereunder or otherwise.

(ii) Rule 144A Information. The Company agrees that, in order to render the Securities eligible for resale pursuant to Rule 144A under the 1933 Act, while any of the Securities remain outstanding and are “restricted securities” within the meaning of Rule 144

under the 1933 Act, it will make available, upon request, to any holder of Securities or prospective purchasers of Securities the information specified in Rule 144A(d)(4), unless the Company furnishes information to the Commission pursuant to Section 13 or 15(d) of the 1934 Act.

(iii) Restriction on Repurchases. Other than pursuant to an effective registration statement, until the expiration of two years after the original issuance of the Securities, the Company will not, and will cause its Subsidiaries and use its commercially reasonable best efforts to cause its Affiliates (other than its Subsidiaries) not to, resell any offered Securities that are "restricted securities" (as such term is defined under Rule 144(a)(3) under the 1933 Act), whether as beneficial owner or otherwise (except as agent acting as a securities broker on behalf of and for the account of customers in the ordinary course of business in unsolicited broker's transactions).

(c) *Qualified Institutional Buyer*. Each Initial Purchaser severally and not jointly represents and warrants to, and agrees with, the Company that it is a Qualified Institutional Buyer and an "accredited investor" within the meaning of Rule 501(a) under the 1933 Act (an "Accredited Investor").

(d) *Restricted Securities*. Each Initial Purchaser understands that the Securities have not been and, except as required by the Registration Rights Agreement, will not be registered under the 1933 Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an exemption from the registration requirements of the 1933 Act.

SECTION 7. Indemnification.

(a) *Indemnification of Initial Purchasers*. The Company and the Guarantor, jointly and severally, agree to indemnify and hold harmless each Initial Purchaser, its affiliates, as such term is defined in Rule 501(b) under the 1933 Act (each, an "Affiliate") and each person, if any, who controls any Initial Purchaser within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Offering Memorandum (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; *provided* that (subject to Section 7(d) below) any such settlement is effected with the written consent of the Company; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representative), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Initial Purchaser through the Representative expressly for use in the Offering Memorandum (or any amendment thereto).

(b) *Indemnification of Company and the Guarantor*. Each Initial Purchaser severally agrees to indemnify and hold harmless the Company, the Guarantor, the Affiliates of any of the foregoing and each person, if any, who controls the Company and the Guarantor within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Offering Memorandum in reliance upon and in conformity with written information furnished to the Company by such Initial Purchaser through the Representative expressly for use in the Offering Memorandum.

(c) *Actions against Parties; Notification*. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability that it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 7(a) above, counsel to the indemnified parties shall be selected by the Representative, and, in the case of parties indemnified pursuant to Section 7(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; *provided, however*, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section or Section 8 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse*. If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 7(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement; provided that an indemnifying party shall not be liable for any such settlement effected without its consent if such indemnifying party, prior to the date of such settlement, (1) reimburses such indemnified party in accordance with such request for the amount of such fees and expenses of counsel as the indemnifying party believes in good faith to be reasonable, and (2) provides written notice to the indemnified party that

the indemnifying party disputes in good faith the reasonableness of the unpaid balance of such fees and expenses.

SECTION 8. Contribution. If the indemnification provided for in Section 7 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantor on the one hand and the Initial Purchasers on the other hand from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Guarantor on the one hand and of the Initial Purchasers on the other hand in connection with the statements or omissions that resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company and the Guarantor on the one hand and the Initial Purchasers on the other hand in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the Guarantor and the total underwriting discount received by the Initial Purchasers, bear to the aggregate initial offering price of the Securities.

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

The Company, the Guarantor and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this Section were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to above in this Section. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section, no Initial Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Securities purchased and sold by it hereunder exceeds the amount of any damages which such Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section, each person, if any, who controls an Initial Purchaser within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Initial Purchaser's

Affiliates shall have the same rights to contribution as such Initial Purchaser, and each person, if any, who controls the Company or the Guarantor within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, or who is an Affiliate of the Company or the Guarantor shall have the same rights to contribution as the Company or the Guarantor, respectively. The Initial Purchasers' respective obligations to contribute pursuant to this Section are several in proportion to the principal amount of Securities set forth opposite their respective names in Schedule II hereto and are not joint.

SECTION 9. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or the Guarantor submitted pursuant hereto shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf any Initial Purchaser or its Affiliates, any person controlling any Initial Purchaser, its officers or directors or any person controlling the Company or the Guarantor and (ii) delivery of and payment for the Securities.

SECTION 10. Termination of Agreement.

(a) *Termination; General*. The Representative may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time or, with respect to any Option Securities, the Date of Delivery (i) if there has been, since the time of execution of this Agreement or since the respective dates as of which information is given in the Final Offering Memorandum (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement), any Material Adverse Change, whether or not arising in the ordinary course of business or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representative, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the Nasdaq National Market, or if trading generally on the American Stock Exchange or the New York Stock Exchange or in the Nasdaq National Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the National Association of Securities Dealers, Inc. or any other governmental authority, or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, or (v) if a banking moratorium has been declared by either Federal or New York or Nevada authorities, or (vi) upon any downgrading, or placement on any watch list for possible downgrading, in the rating of any of the Company's or its Subsidiaries' Debt Obligations by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Exchange Act).

(b) *Liabilities*. If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and *provided further* that Sections 1, 7, 8 and 9 shall survive such termination and remain in full force and effect.

SECTION 11. Default by One or More of the Initial Purchasers. If one or more of the Initial Purchasers shall fail at the Closing Time, or, if any Option Securities are purchased, the Date of Delivery, to purchase the Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representative shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Initial Purchasers, or any other initial purchasers, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms

herein set forth; if, however, the Representative shall not have completed such arrangements within such 24-hour period, then:

(a) if the number of Defaulted Securities does not exceed 10% of the aggregate principal amount of the Securities to be purchased hereunder, each of the non-defaulting Initial Purchasers shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Initial Purchasers, or

(b) if the number of Defaulted Securities exceeds 10% of the aggregate principal amount of the Securities to be purchased hereunder, this Agreement shall terminate without liability on the part of any non-defaulting Initial Purchaser.

No action taken pursuant to this Section shall relieve any defaulting Initial Purchaser from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement, either the Representative or the Company shall have the right to postpone Closing Time or, in the case of any Option Securities, the Date of Delivery, for a period not exceeding seven days in order to effect any required changes in the Offering Memorandum or in any other documents or arrangements. As used herein, the term "Initial Purchaser" includes any person substituted for an Initial Purchaser under this Section 11.

SECTION 12. Tax Disclosure. Notwithstanding anything to the contrary herein or in any related document, from the commencement of discussions with respect to the transactions contemplated hereby, the parties (and each employee, representative or other agent of the parties) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure (as such terms are used in Sections 6011, 6111 and 6112 of the U.S. Code and the Treasury Regulations promulgated thereunder) of the transactions and all materials of any kind (including opinions or other tax analyses) that are provided relating to such tax treatment and tax structure; provided, however, that no party (and no employee, representative, or other agent thereof) shall disclose any other information that is not relevant to understanding the tax treatment and tax structure of the transaction (including the identity of any party and any information that could lead another to determine the identity of any party), or any other information to the extent that such disclosure could result in a violation of any federal or state securities law.

SECTION 13. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Initial Purchasers shall be directed to the Representative at Deutsche Bank Securities Inc., 60 Wall Street, New York, NY 10005, attention of Drew Goldman, notices to the Company or the Guarantor shall be directed to them at Wynn Resorts, Limited, 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, attention of General Counsel.

SECTION 14. Parties. This Agreement shall inure to the benefit of and be binding upon the Initial Purchasers, the Company and the Guarantor and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Initial Purchasers, the Company and their Guarantor and their respective successors and the controlling persons and officers and directors referred to in Sections 7 and 8 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Initial Purchasers, the Company and the Guarantor and their

respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Initial Purchaser shall be deemed to be a successor by reason merely of such purchase.

SECTION 15. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

SECTION 16. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

SECTION 18. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Initial Purchasers, the Company and the Guarantor in accordance with its terms.

Very truly yours,

WYNN RESORTS, LIMITED

By: /s/ RONALD J. KRAMER

Name: Ronald J. Kramer
Title: President

WYNN RESORTS FUNDING, LLC

By: Wynn Resorts, Limited,
its sole member and control manager

By: /s/ RONALD J. KRAMER

Name: Ronald J. Kramer
Title: President

CONFIRMED AND ACCEPTED,
as of the date first above written:

DEUTSCHE BANK SECURITIES INC.
As Representative of the
Initial Purchasers listed on Schedule II

By: /s/ PAUL WHYTE

Authorized Signatory

By: /s/ A. DREW GOLDMAN

Authorized Signatory

Exhibit 31.1

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)) 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) 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
   c) 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 12, 2003

/s/ STEPHEN A.WYNN

Stephen A. Wynn
Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

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)) 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) 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
   c) 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 12, 2003

/s/ JOHN STRZEMP

John Strzemp
Executive Vice President, Chief
Financial Officer and Treasurer
(Principal Financial Officer and
Principal Accounting Officer)

Exhibit 32.1

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 quarterly period ended June 30, 2003 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 Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ STEPHEN A. WYNN

Name: Stephen A. Wynn
Title: Chairman and Chief Executive Officer
(Principal Executive Officer)
Date: August 12, 2003

/s/ JOHN STRZEMP

Name: John Strzemp
Title: Executive Vice President, Chief
Financial Officer and Treasurer
(Principal Financial and Accounting Officer)
Date: August 12, 2003

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.