

**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 March 31, 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

(State or other jurisdiction of
incorporation or organization)

46-0484987

(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 Rule 12b-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.

<u>Class</u>	<u>Outstanding at May 5, 2003</u>
Common stock, \$0.01 par value	79,351,957

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)

	March 31, 2003	December 31, 2002
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 107,410	\$ 109,644
Receivables, net	154	184
Inventories	219	212
Prepaid expenses	2,188	2,010
	<hr/>	<hr/>
Total current assets	109,971	112,050
Restricted cash and investments	743,613	792,877
Property and equipment, net	487,815	420,496
Water rights	6,400	6,400
Trademark	1,000	1,000
Deferred financing costs	57,893	60,159
Other assets	6,331	5,619
	<hr/>	<hr/>
Total assets	\$ 1,413,023	\$ 1,398,601
	<hr/>	<hr/>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of long-term debt	\$ 39	\$ 38
Accounts and construction payables	20,555	10,208
Accrued interest	19,320	8,159
Accrued compensation and benefits	2,124	1,359
Accrued expenses and other current liabilities	933	888
	<hr/>	<hr/>
Total current liabilities	42,971	20,652
Long-term debt	382,964	382,153
	<hr/>	<hr/>
Total liabilities	425,935	402,805
	<hr/>	<hr/>
Minority interest	3,102	4,183
	<hr/>	<hr/>
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; 78,972,511 shares issued and outstanding	790	790
Additional paid-in capital	1,065,649	1,065,649
Deferred compensation—restricted stock	(13,392)	(14,771)
Deficit accumulated from inception during the development stage	(69,061)	(60,055)
	<hr/>	<hr/>
Total stockholders' equity	983,986	991,613
	<hr/>	<hr/>
Total liabilities and stockholders' equity	\$ 1,413,023	\$ 1,398,601
	<hr/>	<hr/>

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 March 31,		From Inception to March 31,
	2003	2002	2003
Revenues:			
Airplane	\$ 50	\$ 474	\$ 1,843
Art gallery	72	65	386
Retail	69	48	333
Water	2	2	34
	<u>193</u>	<u>589</u>	<u>2,596</u>
Expenses:			
Pre-opening costs	8,941	2,680	51,656
Depreciation and amortization	2,173	2,440	23,315
(Gain) / Loss on sale of assets	(5)	95	368
Selling, general and administrative	101	138	1,099
Facility closure expenses	—	—	1,579
Cost of water	21	17	120
Cost of retail sales	39	30	166
Loss from incidental operations	239	75	2,102
	<u>11,509</u>	<u>5,475</u>	<u>80,405</u>
Operating loss	(11,316)	(4,886)	(77,809)
Other income (expense):			
Interest expense, net	(1,650)	(169)	(3,592)
Interest income	2,879	163	10,393
	<u>1,229</u>	<u>(6)</u>	<u>6,801</u>
Minority interest	1,081	—	1,947
Net loss accumulated during the development stage	<u>\$ (9,006)</u>	<u>\$ (4,892)</u>	<u>\$ (69,061)</u>
Basic and diluted earnings per common share:			
Net income:			
Basic	\$ (0.12)	\$ (0.12)	\$ (1.55)
Diluted	\$ (0.12)	\$ (0.12)	\$ (1.55)
Weighted average common shares outstanding:			
Basic	77,834	39,404	44,612
Diluted	77,834	39,404	44,612

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)

	Three Months Ended March 31,		From Inception to March 31,
	2003	2002	2003
Cash flows from operating activities:			
Net loss accumulated during the development stage	\$ (9,006)	\$ (4,892)	\$ (69,061)
Adjustments to reconcile net loss accumulated during the development stage to net cash used in operating activities:			
Depreciation and amortization	2,173	2,440	23,315
Minority interest	(1,081)	—	(1,947)
Amortization of deferred compensation	586	—	720
(Gain) / loss on sale of assets	(5)	95	368
Incidental operations	—	820	6,780
Increase (decrease) in cash from changes in:			
Receivables, net	30	(412)	7,827
Inventories and prepaid expenses	(185)	57	(1,246)
Accounts payable and accrued expenses	(1,739)	470	1,463
Total adjustments	(221)	3,470	37,280
Net cash used in operating activities	(9,227)	(1,422)	(31,781)
Cash flows from investing activities:			
Acquisition of Desert Inn Resort and Casino, net of cash acquired	—	—	(270,718)
Capital expenditures, net of construction payables	(41,555)	(18,469)	(192,355)
Restricted cash and investments	49,264	(1,787)	(743,613)
Other assets	(712)	(1,087)	(7,291)
Proceeds from sale of equipment	5	8,007	9,563
Net cash provided by (used in) investing activities	7,002	(13,336)	(1,204,414)
Cash flows from financing activities:			
Equity contributions	—	—	675,007
Equity distributions	—	—	(110,482)
Proceeds from issuance of common stock	—	—	491,844
Third party fees	—	—	(37,354)
Macau minority contributions	—	—	5,050
Proceeds from issuance of long-term debt	—	—	506,334
Principal payments of long-term debt	(9)	(8)	(153,594)
Payment of deferred financing costs	—	—	(63,200)
Proceeds from issuance of related party loan	—	—	100,000
Principal payments of related party loan	—	—	(70,000)
Net cash (used in) provided by financing activities	(9)	(8)	1,343,605
Cash and cash equivalents:			
Increase (decrease) in cash and cash equivalents	(2,234)	(14,766)	107,410
Balance, beginning of period	109,644	39,268	—
Balance, end of period	\$ 107,410	\$ 24,502	\$ 107,410

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 named “Le Rêve.”

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 Le Rêve, and has demolished some of the buildings that constituted the Desert Inn in anticipation of the construction of Le Rêve on 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 Le Rêve. Valvino continued to operate the Desert Inn golf course until Summer 2002.

In June 2002, Valvino, through its majority owned indirect subsidiary, Wynn Resorts (Macau) S.A. (“Wynn Macau”), entered into an 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.

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 its predecessor company.

On October 25, 2002, the Company completed the initial public offering of its common stock at \$13 per share and 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 Le Rêve and to provide at least \$40 million for investment in Wynn Macau in addition to the \$23.8 million already invested in Wynn Macau.

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

The Company’s efforts have been devoted principally to: (i) through its subsidiaries Wynn Las Vegas, LLC (dba Le Rêve) and Wynn Design & Development, LLC, the design, development, financing and construction of a new resort casino/hotel project in Las Vegas named “Le Rêve” and (ii) the design and pre-construction efforts related to the anticipated project in Macau made possible by the Company’s concession agreement with the government of Macau.

The financial position and operating results of World Travel, LLC and Las Vegas Jet, LLC, which comprise principally the ownership and operation of a corporate aircraft, are included in the Company’s financial statements. 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.

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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 Le Rêve, and in obtaining the concession in 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 March 31, 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 Le Rêve, maintaining ongoing suitability requirements in Nevada and Macau, as well as fulfilling the requirements of Macau's largely untested regulatory framework, which the Company believes is currently inadequate. The completion of the Le Rêve and Macau projects is dependent upon compliance with these rules and regulations. Management anticipates Le Rêve 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 invest at least 4 billion patacas (equivalent to approximately US \$515.6 million at the March 31, 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 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. All significant intercompany accounts and transactions have been eliminated.

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 pursuant to such rules and regulations, although the Company believes that the disclosures herein are adequate to make the information presented not misleading. In the opinion of management, all adjustments (which include only normal recurring adjustments) necessary for a fair presentation of the results for the interim periods have been made. The results for the three months ended March 31, 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

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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 quarter ended March 31, 2002, the Company had no potentially dilutive securities and for all periods presented, the Company has recorded net losses. Accordingly, for the quarter ended March 31, 2003, and for the period from inception to, March 31, 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 March 31, 2003 because to do so would have been anti-dilutive, totaled 2,358,061.

3. Employee Stock-Based Compensation

As of March 31, 2003, the Company has a stock-based employee compensation plan to provide stock compensation arrangements 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 to stock-based employee compensation (amounts in thousands).

	<u>Quarter Ended March 31, 2003</u>	<u>Period from Inception to March 31, 2003</u>
Net loss as reported	\$ (9,006)	\$ (69,061)
Less: total stock-based employee compensation expenses determined under the fair-value based method for all awards	(84)	(393)
Proforma net loss	\$ (9,090)	\$ (69,454)
Basic and diluted loss per share:		
As reported	\$ (0.12)	\$ (1.55)
Proforma	\$ (0.12)	\$ (1.56)

4. Supplemental Disclosure of Cash Flow Information

Cash paid for interest for the quarters ended March 31, 2003 and 2002 and for the period from inception to March 31, 2003 totaled approximately \$1.1 million, \$83,000 and \$2.6 million, respectively, net of amounts capitalized of \$19.8 million, \$0, and \$39.6 million, respectively.

Equipment purchases financed by debt totaled \$28.5 million for the period from inception to March 31, 2003.

Advances and loans converted to contributed capital amounted to \$32.8 million for period from inception to March 31, 2003.

During the period from inception to March 31, 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.

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

During the period from inception to March 31, 2003, the Company reduced the value 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 March 31, 2003 and December 31, 2002, the Company's net liability to Mr. Wynn and other officers was approximately \$80,000 and \$35,000, respectively.

The Company previously 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. Under the new terms, one-half of the net income, if any, of the gallery is retained by the Company. If the gallery incurs a net loss, Mr. and Mrs. Wynn have agreed to reimburse the Company to the extent of that loss. The Company did not make any lease payments during the period from inception to March 31, 2003.

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

6. Property and Equipment

Property and equipment as of March 31, 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	4,325	4,192
Construction in progress	159,549	90,189
	<u>507,216</u>	<u>437,723</u>
Less: accumulated depreciation	(19,401)	(17,227)
	<u>\$ 487,815</u>	<u>\$ 420,496</u>

Construction in progress includes interest and other costs capitalized in conjunction with the Le Rêve project.

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

7. Long-Term Debt

Long-term debt as of March 31, 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 \$25.3 million, due November 1, 2010; effective interest at approximately 12.9%	\$ 344,721	\$ 343,900
\$188.5 Million FF&E Facility; interest at LIBOR plus 4%; (approximately 5.3% and 5.4%, respectively)	38,000	38,000
Note payable—Land Parcel; at 8%	282	291
	<u>383,003</u>	<u>382,191</u>
Current portion of long-term debt	(39)	(38)
	<u>\$ 382,964</u>	<u>\$ 382,153</u>

8. 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 Le Rêve, 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 March 31, 2003, totaled approximately \$137 million. As a result, a total of approximately \$1.1 billion has been committed to the construction of Le Rêve as of March 31, 2003. Of this amount, approximately \$114 million has been spent through March 31, 2003. Future committed costs at March 31, 2003, under the Le Rêve construction contracts, therefore, total approximately \$968.8 million.

Macau

Wynn Macau 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 to invest 4 billion patacas (approximately US \$515.6 million as of March 31, 2003) in one or more casino projects in Macau by June 26, 2009 and to commence operations of its first permanent casino resort in Macau no later than December 2006. If Wynn Macau does not invest 4 billion patacas by June 26, 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.

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company intends to invest additional capital in Wynn Macau as part of the financing of the Macau opportunity including using a portion of the net proceeds it received from its initial public offering (including as a result of the exercise of the overallotment option in connection therewith). The minority investors in Wynn Macau have agreed to participate in this additional investment along with Wynn Resorts to the extent of their proportionate effective interests in Wynn Macau. 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 has entered into a pre-construction services agreement with a third-party joint venture for the preparation and submission of a general contractor's proposal for its first casino resort by such third-party joint venture to design and construct a casino resort in Macau, has obtained the services of architects and designers, and has begun preliminary discussions to arrange the additional financing, and is considering different alternatives, including debt financing or additional equity financing at the Wynn Macau level or at the level of Wynn Macau's intermediary holding companies. At the present time, Wynn Macau has not yet determined the amount of financing that will be required. If Wynn Resorts decides to raise additional equity at the Wynn Resorts level or at the Wynn Macau or intermediary holding company level to fund the Macau opportunity, its stockholders would suffer direct or indirect dilution of their interests. Wynn Macau currently has no commitments relating to any third party financing. 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 Le Rêve project.

In compliance with the Macau concession agreement, Wynn Macau has obtained an uncollateralized bank guarantee from Banco National Ultramarino, S.A. in the required amount of 700 million patacas (approximately US \$90.2 million as of March 31, 2003) 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 \$38.7 million as of March 31, 2003) for the period from April 1, 2007 until 180 days after the end of the term of the concession agreement. Wynn Macau 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 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 Le Rêve's 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 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 Le Rêve, with five-year renewal options.

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

At March 31, 2003 and December 31, 2002, other assets include \$5.5 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.

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

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

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. We also 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 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

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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 Le Rêve utilities in Country Club Lane, resulting in temporary closure of one of three access gates for the plaintiffs. Finally, 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 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 Le Rêve 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 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 Commission's approval of Valvino's application for design review of a maintenance facility that Valvino intends to build on the perimeter of the golf course property. 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.

9. Subsequent Events

Stock-based Compensation

Effective April 1, 2003, the Company granted to its President, 189,723 shares of the Company's common stock, which are restricted until June 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. The Company also granted approximately 200,000 additional nonqualified stock options, which will be recorded under the intrinsic value method in accordance with Company policy and as permitted under SFAS No. 148.

10. 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 March 31, 2003 and December 31, 2002, for the three-month periods ended March 31, 2003 and 2002 and for the period from inception to March 31, 2003.

WYNN RESORTS LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)

CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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, "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.

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING BALANCE SHEET INFORMATION

AS OF MARCH 31, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
ASSETS						
Current assets:						
Cash and cash equivalents	\$ 79,535	\$ 7,317	\$ (1,427)	\$ 21,985	\$ —	\$ 107,410
Receivables, net	—	—	150	4	—	154
Inventories	—	—	219	—	—	219
Prepaid expenses	617	151	1,365	55	—	2,188
Total current assets	80,152	7,468	307	22,044	—	109,971
Restricted cash and investments	—	693,169	23	50,421	—	743,613
Property and equipment, net	80	320,028	166,183	1,524	—	487,815
Water rights	—	—	—	6,400	—	6,400
Trademark	—	1,000	—	—	—	1,000
Deferred financing costs	—	57,893	—	—	—	57,893
Investment in subsidiaries	588,114	11,925	551,868	—	(1,151,907)	—
Other assets	—	6,224	7	100	—	6,331
Intercompany balances	381,092	(464,563)	145,680	(62,209)	—	—
Total assets	\$1,049,438	\$ 633,144	\$ 864,068	\$ 18,280	\$ (1,151,907)	\$1,413,023
LIABILITIES AND STOCKHOLDERS' EQUITY						
Current liabilities:						
Current portion of long-term debt	\$ —	\$ —	\$ 39	\$ —	\$ —	\$ 39
Accounts and construction payable	59	124	19,996	376	—	20,555
Accrued interest	—	19,320	—	—	—	19,320
Accrued compensation and benefits	356	857	897	14	—	2,124
Accrued expenses and other	—	—	925	8	—	933
Total current liabilities	415	20,301	21,857	398	—	42,971
Long-term debt	—	382,721	243	—	—	382,964
Total liabilities	415	403,022	22,100	398	—	425,935
Minority interest	—	—	—	—	3,102	3,102
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	(4,309)	—	(9,083)	—	—	(13,392)
Deficit accumulated from inception during the development stage	(13,107)	(6,953)	(47,966)	(12,163)	11,128	(69,061)
Total stockholders' equity	1,049,023	230,122	841,968	17,882	(1,155,009)	983,986
Total liabilities and stockholders' equity	\$1,049,438	\$ 633,144	\$ 864,068	\$ 18,280	\$ (1,151,907)	\$1,413,023

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
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	\$ —	\$ 3,099	\$ 38	\$ —	\$ —	\$ 38
Accounts and construction payable	9	—	6,974	126	—	10,208
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	8,684	134	—	20,652
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
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
THREE MONTHS ENDED MARCH 31, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Revenues:						
Airplane	\$ —	\$ —	\$ 873	\$ —	\$ (823)	\$ 50
Art gallery	—	—	72	—	—	72
Retail	—	—	69	—	—	69
Royalty	4,567	—	—	—	(4,567)	—
Water	—	—	—	17	(15)	2
Total revenues	4,567	—	1,014	17	(5,405)	193
Expenses:						
Pre-opening costs	3,632	2,922	1,567	1,616	(796)	8,941
Depreciation and amortization	—	10	2,163	—	—	2,173
(Gain) / Loss on sale of assets	—	—	(5)	—	—	(5)
Selling, general and administrative	—	—	131	4,567	(4,597)	101
Facility closure expenses	—	—	—	—	—	—
Cost of water	—	—	12	21	(12)	21
Cost of retail sales	—	—	39	—	—	39
Loss from incidental operations	—	76	163	—	—	239
Total expenses	3,632	3,008	4,070	6,204	(5,405)	11,509
Operating income (loss)	935	(3,008)	(3,056)	(6,187)	—	(11,316)
Other income (expense):						
Interest expense, net	—	(1,644)	(6)	—	—	(1,650)
Interest income	247	2,458	—	174	—	2,879
Equity in loss from Macau	(5,098)	—	—	—	5,098	—
Other income (expense), net	(4,851)	814	(6)	174	5,098	1,229
Minority interest	—	—	—	—	1,081	1,081
Net loss accumulated during the development stage	\$(3,916)	\$(2,194)	\$(3,062)	\$(6,013)	\$ 6,179	\$(9,006)

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
THREE MONTHS ENDED MARCH 31, 2002
(amounts in thousands)
(unaudited)

	<u>Parent</u>	<u>Issuers</u>	<u>Guarantor Subsidiaries</u>	<u>Non-guarantor Subsidiaries</u>	<u>Eliminating Entries</u>	<u>Total</u>
Revenues:						
Airplane	\$ —	\$ —	\$ 685	\$ —	\$ (211)	\$ 474
Art gallery	—	—	65	—	—	65
Retail	—	—	48	—	—	48
Water	—	—	—	17	(15)	2
	<u>—</u>	<u>—</u>	<u>798</u>	<u>17</u>	<u>(226)</u>	<u>589</u>
Expenses:						
Pre-opening costs	—	376	2,534	(46)	(184)	2,680
Depreciation and amortization	—	—	1,995	445	—	2,440
(Gain) / Loss on sale of assets	—	—	26	69	—	95
Selling, general and administrative	—	—	115	53	(30)	138
Cost of water	—	—	12	17	(12)	17
Cost of retail sales	—	—	30	—	—	30
Loss from incidental operations	—	—	75	—	—	75
	<u>—</u>	<u>376</u>	<u>4,787</u>	<u>538</u>	<u>(226)</u>	<u>5,475</u>
Operating loss	<u>—</u>	<u>(376)</u>	<u>(3,989)</u>	<u>(521)</u>	<u>—</u>	<u>(4,886)</u>
Other income (expense):						
Interest expense, net	—	—	(169)	—	—	(169)
Interest income	—	—	163	—	—	163
	<u>—</u>	<u>—</u>	<u>(6)</u>	<u>—</u>	<u>—</u>	<u>(6)</u>
Other income (expense), net	<u>—</u>	<u>—</u>	<u>(6)</u>	<u>—</u>	<u>—</u>	<u>(6)</u>
Minority interest	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
Net loss accumulated during the development stage	<u>\$ —</u>	<u>\$(376)</u>	<u>\$ (3,995)</u>	<u>\$ (521)</u>	<u>\$ —</u>	<u>\$(4,892)</u>

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENT OF OPERATIONS INFORMATION
FROM INCEPTION TO MARCH 31, 2003
(amounts in thousands)
(unaudited)

	Parent	Issuers	Guarantor Subsidiaries	Non-guarantor Subsidiaries	Eliminating Entries	Total
Revenues:						
Airplane	\$ —	\$ —	\$ 6,924	\$ —	\$ (5,081)	\$ 1,843
Art gallery	—	—	386	—	—	386
Retail	—	—	333	—	—	333
Royalty	4,567	—	—	—	(4,567)	—
Water	—	—	—	170	(136)	34
Total revenues	4,567	—	7,643	170	(9,784)	2,596
Expenses:						
Pre-opening costs	8,910	8,336	33,945	5,323	(4,858)	51,656
Depreciation and amortization	—	19	21,225	2,071	—	23,315
(Gain) / Loss on sale of assets	—	—	299	69	—	368
Selling, general and administrative	—	—	891	4,945	(4,737)	1,099
Facility closure expenses	—	—	1,579	—	—	1,579
Cost of water	—	—	62	247	(189)	120
Cost of retail sales	—	—	166	—	—	166
Loss from incidental operations	—	167	1,935	—	—	2,102
Total expenses	8,910	8,522	60,102	12,655	(9,784)	80,405
Operating loss	(4,343)	(8,522)	(52,459)	(12,485)	—	(77,809)
Other income (expense):						
Interest expense, net	—	(2,658)	(934)	—	—	(3,592)
Interest income	417	4,227	5,427	322	—	10,393
Equity in loss from Macau	(9,181)	—	—	—	9,181	—
Other income (expense), net	(8,764)	1,569	4,493	322	9,181	6,801
Minority interest	—	—	—	—	1,947	1,947
Net loss accumulated during the development stage	\$(13,107)	\$(6,953)	\$(47,966)	\$(12,163)	\$ 11,128	\$(69,061)

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION
THREE MONTHS ENDED MARCH 31, 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	\$ (3,916)	\$ (2,194)	\$ (3,062)	\$ (6,013)	\$ 6,179	\$ (9,006)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:						
Depreciation and amortization	—	10	2,163	—	—	2,173
Minority interest	—	—	—	—	(1,081)	(1,081)
Amortization of deferred compensation	586	—	—	—	—	586
(Gain) / Loss on sale of assets	—	—	(5)	—	—	(5)
Equity in loss from Macau	5,098	—	—	—	(5,098)	—
Increase (decrease) in cash from changes in:						
Receivables, net	—	12	16	2	—	30
Inventories and prepaid expenses	(273)	(58)	146	—	—	(185)
Accounts payable and accrued expenses	220	(2,441)	218	264	—	(1,739)
Total adjustments	5,631	(2,477)	2,538	266	(6,179)	(221)
Net cash provided by (used in) operating activities	1,715	(4,671)	(524)	(5,747)	—	(9,227)
Cash flows from investing activities:						
Capital expenditures, net of construction payables	(80)	(40,220)	(37)	(1,218)	—	(41,555)
Restricted cash and Investments	—	49,436	—	(172)	—	49,264
Other assets	—	(625)	13	(100)	—	(712)
Intercompany balances	(1,334)	(4,111)	303	5,142	—	—
Proceeds from sale of equipment	—	—	5	—	—	5
Net cash used in investing activities	(1,414)	4,480	284	3,652	—	7,002
Cash flows from financing activities:						
Principal payments of long-term debt	—	—	(9)	—	—	(9)
Net cash provided by financing activities	—	—	(9)	—	—	(9)
Cash and cash equivalents:						
Increase (decrease) in cash and cash equivalents	301	(191)	(249)	(2,095)	—	(2,234)
Balance, beginning of period	79,234	7,508	(1,178)	24,080	—	109,644
Balance, end of period	\$79,535	\$ 7,317	\$ (1,427)	\$ 21,985	\$ —	\$107,410

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION
THREE MONTHS ENDED MARCH 31, 2002
(amounts in thousands)
(unaudited)

	<u>Parent</u>	<u>Issuers</u>	<u>Guarantor Subsidiaries</u>	<u>Non-guarantor Subsidiaries</u>	<u>Eliminating Entries</u>	<u>Total</u>
Cash flows from operating activities:						
Net loss accumulated during the development stage	\$ —	\$ (376)	\$ (3,995)	\$ (521)	\$ —	\$ (4,892)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:						
Depreciation and amortization	—	—	1,995	445	—	2,440
(Gain) / Loss on sale of assets	—	—	26	69	—	95
Incidental operations	—	—	820	—	—	820
Increase (decrease) in cash from changes in:						
Receivables, net	—	—	(412)	—	—	(412)
Inventories and prepaid expenses	—	(9)	66	—	—	57
Accounts payable and accrued expenses	—	(10)	459	21	—	470
Total adjustments	—	(19)	2,954	535	—	3,470
Net cash provided by (used in) operating activities	—	(395)	(1,041)	14	—	(1,422)
Cash flows from investing activities:						
Capital expenditures, net of construction payables	—	(422)	(17,956)	(91)	—	(18,469)
Restricted cash and Investments	—	(1,788)	1	—	—	(1,787)
Other assets	—	(588)	(499)	—	—	(1,087)
Intercompany balances	—	3,242	4,688	(7,930)	—	—
Proceeds from sale of equipment	—	—	—	8,007	—	8,007
Net cash provided by (used in) investing activities	—	444	(13,766)	(14)	—	(13,336)
Cash flows from financing activities:						
Principal payments of long-term debt	—	—	(8)	—	—	(8)
Net cash provided by financing activities	—	—	(8)	—	—	(8)
Cash and cash equivalents:						
Increase (decrease) in cash and cash equivalents	—	49	(14,815)	—	—	(14,766)
Balance, beginning of period	—	(49)	39,317	—	—	39,268
Balance, end of period	\$ —	\$ —	\$ 24,502	\$ —	\$ —	\$ 24,502

WYNN RESORTS, LIMITED AND SUBSIDIARIES
(A DEVELOPMENT STAGE COMPANY)
CONSOLIDATING STATEMENTS OF CASH FLOWS INFORMATION
FROM INCEPTION TO MARCH 31, 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	\$ (13,107)	\$ (6,953)	\$ (47,966)	\$ (12,163)	\$ 11,128	\$ (69,061)
Adjustments to reconcile net loss accumulated during the development stage to net cash provided by (used in) operating activities:						
Depreciation and amortization	—	19	21,225	2,071	—	23,315
Minority interest	—	—	—	—	(1,947)	(1,947)
Amortization of deferred compensation	720	—	—	—	—	720
(Gain) / Loss on sale of assets	—	—	299	69	—	368
Equity in loss from Macau	9,181	—	—	—	(9,181)	—
Incidental operations	—	—	6,780	—	—	6,780
Increase (decrease) in cash from changes in:						
Receivables, net	—	1	7,831	(5)	—	7,827
Inventories and prepaid expenses	(617)	(152)	(423)	(54)	—	(1,246)
Accounts payable and accrued expenses	415	9,198	(8,548)	398	—	1,463
Total adjustments	9,699	9,066	27,164	2,479	(11,128)	37,280
Net cash provided by (used in) operating activities	(3,408)	2,113	(20,802)	(9,684)	—	(31,781)
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	(80)	(71,915)	(108,832)	(11,528)	—	(192,355)
Restricted cash and Investments	—	(693,169)	(24)	(50,420)	—	(743,613)
Investment in subsidiaries	(597,295)	(11,925)	(551,867)	—	1,161,087	—
Other assets	—	(7,224)	15	(82)	—	(7,291)
Intercompany balances	(381,092)	232,763	92,592	45,720	10,017	—
Proceeds from sale of equipment	—	—	1,646	7,917	—	9,563
Net cash used in investing activities	(978,467)	(551,470)	(837,188)	(8,393)	1,171,104	(1,204,414)
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	491,844	—	—	—	—	491,844
Third party fees	(26,554)	—	(10,800)	—	—	(37,354)
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	—	—	(153,594)	—	—	(153,594)
Deferred financing costs	—	(61,735)	(1,465)	—	—	(63,200)
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	1,061,410	556,674	856,563	40,062	(1,171,104)	1,343,605
Cash and cash equivalents:						
Increase (decrease) in cash and cash equivalents	79,535	7,317	(1,427)	21,985	—	107,410
Balance, beginning of period	—	—	—	—	—	—
Balance, end of period	\$ 79,535	\$ 7,317	\$ (1,427)	\$ 21,985	\$ —	\$ 107,410

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

The following discussion should be read in conjunction with, and is qualified in its entirety by, the condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q. 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 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 will have on the travel and leisure industry and the consequences of the war 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 named “Le Rêve.”

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 Le Rêve on the Desert Inn site, and demolished some of the buildings that constituted the Desert Inn in anticipation of the construction of Le Rêve. 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 Le Rêve. Valvino continued to operate the Desert Inn golf course until Summer 2002.

In June 2002, Valvino, through its majority owned indirect subsidiary, Wynn Resorts (Macau) S.A. (“Wynn Macau”), 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.

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 its predecessor company.

On October 25, 2002, the Company completed the initial public offering of its common stock at \$13 per share and 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 Le Rêve and to provide at least \$40 million for investment in Wynn Macau in addition to the \$23.8 million already invested in Wynn Macau.

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

Our efforts have been devoted principally to: (i) the design, development, financing and construction of Le Rêve, (ii) the design and pre-construction efforts related to the anticipated project in Macau made possible by our concession agreement with the government of Macau. The financial position and operating results of World Travel, LLC and Las Vegas Jet, LLC, which comprise principally 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 Le Rêve and applying for certain permits, licenses and approvals necessary for the development and operation of Le Rêve. We are constructing and plan to operate Le Rêve 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 Le Rêve began with groundbreaking in October 2002 and we expect Le Rêve to commence operations in April 2005. The Company is subject to a number of uncertainties relating to the development of the Le Rêve 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. Le Rêve 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 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 \$515.6 million at the March 31, 2003 exchange rate) in Macau-related projects by June 26, 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 does not invest 4 billion patacas by June 26, 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 a management team specifically for our Macau concession project. Wynn Macau has entered into a pre-construction services agreement with a third-party joint venture to design and construct a casino resort in Macau. In response to a question posed at the Company's Annual Stockholders' Meeting on May 13, 2003, the Company indicated that it anticipated selecting a contractor for the Macau project within two or three days. While the Company is in negotiation with two major international construction firms, the selection process, and the negotiation of definitive construction contracts, will require additional time. However, Wynn Macau will not begin construction or operation of any casino in Macau until a number of objectives and conditions are met, including: obtaining sufficient financing for the Macau project, obtaining the ability to extend credit to gaming customers and enforce gaming debts in Macau and obtaining relief from the Macau government from Macau's complementary income tax on corporations and the withholding tax on dividends. We believe the necessary legislative changes will be introduced in 2003. However, we cannot assure you that such proposed legislative changes will be introduced or, if introduced, will be enacted.

As of March 31, 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 Le Rêve.

We are unable to determine the effect, if any, that Severe Acute Respiratory Syndrome, known as SARS, may have on our Macau project at this time. Consistent with travel warnings issued by the World Health Organization relating to SARS, we have restricted employee travel to Macau and Hong Kong. To date, SARS has not significantly affected the planning of our Macau project. If SARS continues to interfere with business activity in the travel and leisure industry in Asia, that could adversely affect or delay the financing and development of our Macau project.

Results of Operations

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 March 31, 2003. Management expects these losses to continue until planned principal operations have commenced. The Company does not expect that its operating results prior to opening Le Rêve and the Macau project will be indicative of operating results thereafter. We cannot assure you that we will be able to operate either Le Rêve or the Macau project at a profit once they are completed.

Results of Operations for the Three Months Ended March 31, 2003 Compared to the Three Months Ended March 31, 2002

The Company's development operations resulted in a net loss for the three months ended March 31, 2003, of approximately \$9 million, an 84% increase over the net loss of approximately \$4.9 million for the three-month period ended March 31, 2002, due generally to increased development activities.

Total revenues for the three months ended March 31, 2003, of \$193,000 decreased approximately \$396,000 or 67% from total revenues of approximately \$589,000 for the three months ended March 31, 2002. The Company sold its 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 officers of the Company, have decreased by approximately \$424,000 or 89% to \$50,000 for the three months ended March 31, 2003 from \$474,000 during the three months ended March 31, 2002. Offsetting the decrease in aircraft revenues are increases in revenues from the art gallery and the retail shop, due to increased patronage.

Total expenses for the three months ended March 31, 2003 increased approximately \$6 million, or 110% to \$11.5 million, as compared to \$5.5 million for the three months ended March 31, 2002 primarily due to an approximately \$6.2 million or 234% increase in pre-opening costs to \$8.9 million for the three months ended

March 31, 2003 from \$2.7 million for the three months ended March 31, 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. Management expects pre-opening costs to continue to increase as development of Le Rêve, and Macau pre-development activities, progress.

Other income—net for the three months ended March 31, 2003, increased approximately \$1.2 million to approximately \$1.2 million from a loss of \$6,000 during the three months ended March 31, 2002, primarily as a result of an approximately \$2.7 million increase in interest income, offset by an approximately \$1.5 million increase in interest expenses. Higher interest income is attributable mainly to the significant increase in cash from the net proceeds from equity and debt financing activity, while the increased outstanding debt increased the interest expense.

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 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 or discretionary income could harm our business. In particular, terrorist activities in the United States and elsewhere, military conflicts in the Middle East and the recent outbreak of SARS, have had a negative impact on travel and leisure expenditures, including lodging, gaming and tourism. In addition to terrorist activities, military conflicts in the Middle East and the recent outbreak of SARS, other factors affecting discretionary consumer spending, including general economic conditions, disposable consumer income, fears of recession and consumer confidence in the economy, could reduce customer demand for the products and services we will offer, thus imposing practical limits on pricing and harming our operations. Also, in his “State of the State” address on January 20, 2003, in response to the state’s budget deficit, the Governor of Nevada proposed significant increases in cigarette and alcohol taxes, corporate filing fees and gaming gross revenue and slot machine license fees, and also proposed a new gross receipts tax which would levy an additional ¼% tax on gross receipts of Nevada businesses. In response, the Nevada legislature is considering a number of alternative tax increases. Although we cannot currently predict the likelihood of the implementation of any such proposals, the imposition of additional taxes and license fees and/or a state gross receipts tax would, if enacted, significantly increase our tax liabilities and reduce our cash flows and net income accordingly.

Liquidity and Capital Resources

Expected Capital Resources and Commercial Commitments

At March 31, 2003, the Company had approximately \$107.4 million of cash and cash equivalents. In addition, the Company had approximately \$743.6 million in restricted cash and investments from the proceeds of its debt and equity financings. This amount is restricted in accordance with agreements governing the Company’s 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 March 31, 2003, approximately \$663.9 million of the total Le Rêve 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 Le Rêve. The remaining development and construction costs for Le Rêve 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 the Company's common stock and the offering of the Notes, and additional borrowings under the Company's debt facilities. Any delays or change orders with respect to the Le Rêve project could have a material adverse effect on our liquidity and operations. See "Development and Construction Activities."

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 including using a portion of the net proceeds received from our initial public offering (including as a result of the exercise of the over-allotment option in connection therewith). The indirect minority investors in Wynn Macau have agreed to participate in any additional equity investment along with Wynn Resorts to the extent of their proportionate effective interests in Wynn Macau (17.5% in the aggregate). It is expected that significant additional financing, both debt and equity, will be needed to fund the development, construction and operation of one or more casinos in Macau. Wynn Macau entered into a pre-construction services agreement with a third-party joint venture for the preparation and submission of a general contractor's proposal by such third-party joint venture to design and construct a casino resort in Macau. Wynn Macau has also obtained the services of architects and designers and has begun preliminary discussions to arrange the additional financing, and is considering different alternatives, including debt financing or additional equity financing at the Wynn Macau level or at the level of one of Wynn Macau's intermediary holding companies. At the present time, Wynn Macau has not yet determined the amount or composition of financing that will be required to complete its first casino resort. If Wynn Resorts decides to raise additional equity at the Wynn Resorts level or at the Wynn Macau or intermediary holding company level to fund the Macau opportunity, its stockholders would suffer direct or indirect dilution of their interests. Wynn Macau currently has no commitments relating to any third-party financing. 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 Le Rêve project. After construction of Wynn Macau's first casino resort, Wynn Macau intends to satisfy its remaining financial obligations, if any, under its 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 and Maryland, whether through acquisition, investment or development. Any such development would 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 Le Rêve entities and the Wynn Macau 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 Wynn Resorts elects. Any promissory note that Wynn Resorts issues 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 Le Rêve project is delayed, then Wynn Las Vegas' debt service obligations accruing prior to the actual opening of Le Rêve will increase correspondingly. Following the completion of Le Rêve, we expect the Le Rêve 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 Le Rêve entities' business will generate sufficient cash flow from operations or that future borrowings available to the Le Rêve entities under the credit facilities will be sufficient to enable the Le Rêve 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 Le Rêve 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 the second mortgage 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 offering of our common stock have been used in the construction of Le Rêve and as the Macau project evolves. We are required to obtain interest rate protection through interest rate swap or other arrangements with respect to \$325 million of borrowings under the Credit Facilities. However, we cannot assure you that these risk management strategies will have the desired effect, and interest rate fluctuations could have a negative impact on our results of operations.

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

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

Because Wynn Macau's 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 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 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. Wynn Macau intends 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 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

Evaluation of Disclosure Controls and Procedures

The Company's Chief Executive Officer and Chief Financial Officer, have evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-14(c) and 15d-14(c) under

the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as of a date within 90 days prior to the filing date of this quarterly report (the “Evaluation Date”). Based on such evaluation, such officers have concluded that, as of the Evaluation Date, the Company’s disclosure controls and procedures are effective in alerting them on a timely basis to material information relating to the Company (including its consolidated subsidiaries) required to be included in the Company’s periodic filings under the Exchange Act.

Changes in Internal Controls

Since the Evaluation Date, there have not been any significant changes in the Company’s internal controls or in other factors that could significantly affect such controls.

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. We also 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 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 *Le Rêve* utilities in Country Club Lane, resulting in temporary closure of one of three access gates for the plaintiffs. Finally, 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 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 Le Rêve 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 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 Commission's approval of Valvino's application for design review of a maintenance facility that Valvino intends to build on the perimeter of the golf course property. 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 6. Exhibits and Reports on Form 8-K

(a) *Exhibits*

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amended and Restated Articles of Incorporation of the Registrant.(1)
3.2	Third Amended and Restated Bylaws of the Registrant, as amended.(2)
*10.1	Lump Sum Agreement, by and between Wynn Las Vegas, LLC and Wadsworth Golf Construction Company, effective as of February 18, 2003.
*10.2	Employment Agreement, dated as of April 1, 2003, by and between Wynn Resorts, Limited and Ronald J. Kramer.
*99.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*99.2	Certification of Chief Financial Officer 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.

(b) *Reports on Form 8-K*

The Company filed no Current Reports on Form 8-K during the quarter ended March 31, 2003.

SIGNATURE

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

WYNN RESORTS, LIMITED

Dated: May 13, 2003

By: _____ /s/ JOHN STRZEMP

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

CERTIFICATION

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 quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) Designed such disclosure controls and procedures 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 quarterly report is being prepared;
 - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - c) Presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 13, 2003

/s/ STEPHEN A. WYNN

Stephen A. Wynn
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

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 quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) Designed such disclosure controls and procedures 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 quarterly report is being prepared;
 - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - c) Presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 13, 2003

/s/ JOHN STRZEMP

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

LUMP SUM AGREEMENT

By and Between

**WYNN LAS VEGAS, LLC,
a Nevada limited liability company
("Owner")**

and

**WADSWORTH GOLF CONSTRUCTION COMPANY
a Delaware corporation**

("Contractor")

for

**a Golf Course to be located at
3131 Las Vegas Boulevard South,
Las Vegas, Nevada**

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LUMP SUM AGREEMENT

THIS LUMP SUM AGREEMENT (the “**Agreement**”) is made effective as of February 18, 2003 (the “**Effective Date**”), by and between WYNN LAS VEGAS, LLC, a Nevada limited liability company (“**Owner**”), and WADSWORTH GOLF CONSTRUCTION COMPANY, a Delaware corporation, holding Nevada State Contractor’s License No. 0021977 (“**Contractor**”), with respect to the following facts:

RECITALS

A. Owner owns the real property commonly known as 3131 Las Vegas Boulevard South, Las Vegas, Nevada, as more particularly described on Exhibit A attached hereto (the “**Property**”).

B. Owner plans to construct on the Property a first class luxury resort and casino, including high-rise hotel space and low-rise space comprised of casino and gaming areas, restaurants, retail, convention and meeting areas, a showroom, parking structure, clubhouse and exterior features (the “**Casino Improvements**”). Owner will be retaining separate architects, contractors and consultants (“**Other Builders**”) to design and construct the Casino Improvements on the Property.

C. In addition to the Casino Improvements, Owner desires to have constructed on a portion of the Property a championship golf course, consisting of 18 golf holes, a driving range, practice putting green, lake and stream features including a signature waterfall, turf grass conforming to USGA standards, landscaping and irrigation (collectively, the “**Project**”), and desires to engage Contractor to construct, and supervise the construction of, the Project, in full accordance with the Contract Documents (as defined in Section 1.2 of this Agreement), including the Plans and Specifications (as defined in Section 1.2.2 of this Agreement), and Contractor desires to accept such engagement, upon the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor hereby adopt and incorporate the foregoing Recitals and agree as follows:

1. CONTRACT DOCUMENTS AND GOVERNMENTAL REQUIREMENTS.

1.1 Agreement Governs. The intent of the Contract Documents is to include all items appropriate or necessary for the proper execution and Completion of the Work (as defined in Section 2.7.2 of this Agreement) by Contractor to Owner’s satisfaction. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Nothing contained in this Section 1.1 shall relieve Contractor of its obligations under this Agreement, including, without limitation, under Section 5.9 of this Agreement, or shall create a contractual or professional relationship between Owner and

any person or entity other than Contractor. If any provision of the Contract Documents conflicts with any other provision of the Contract Documents, the provision requiring the highest degree of care or performance or the highest quality of materials, as the case may be, shall prevail, unless Contractor is otherwise instructed in writing by Owner. When only one product and manufacturer is specified, this is the basis of the Contract (as defined in Section 1.2.9 of this Agreement), unless substitution or exception is approved in writing by Owner.

1.2 Contract Documents. The “**Contract Documents**” consist of the following documents:

1.2.1 This Agreement, including any exhibits and appendices thereto.

1.2.2 The “**Plans and Specifications**” as approved by Owner and Owner’s Lenders (as defined in Section 14.1 of this Agreement), including, without limitation, all architectural, structural, civil, mechanical, plumbing, electrical, grading utility security and low voltage drawings and specifications, and all supplements, amendments and modifications thereto as approved by Owner and Owner’s Lenders.

1.2.3 The Project Drawings and References as defined by Exhibit B attached hereto.

1.2.4 The Project Construction Schedule (as defined in Section 4.2.1 of this Agreement), and attached hereto as Exhibit C.

1.2.5 Any Submittals as defined in Section 5.11 of this Agreement.

1.2.6 The Schedule of Values (as defined in Section 2.3.3 of this Agreement).

1.2.7 The Technical Studies and Reports (as defined in Section 1.3.1 of this Agreement).

1.2.8 The Permits and Entitlements as set forth on Exhibit D attached hereto.

1.2.9 All supplements, addenda, modifications and amendments to any of the foregoing in this Section 1.2, from time to time approved by Owner in writing, including, without limitation, any executed Change Orders (as defined in Section 13.3 of this Agreement) and Construction Change Directives (as defined in Section 13.5 of this Agreement), and such other documents expressly referred to in the foregoing documents as being a part of the Contract Documents. These Contract Documents form the “**Contract**,” and are as fully a part of the Contract as if attached to this Agreement or repeated in this Agreement.

1.3 Compliance with Contract Documents and Governmental Requirements.

1.3.1 Contractor shall, and shall cause all Subcontractors (as defined in Section 13.11 of this Agreement) to, construct and perform the Work in a good and workmanlike manner in strict compliance with (a) the Contract Documents, including, without limitation, the Plans and Specifications, and all things indicated thereon or which should be inferred therefrom given Contractor's status as a Contractor experienced with construction projects similar in size and complexity to the Work, and the Project Construction Schedule, (b) all Governmental Requirements (as defined in Section 13.9 of this Agreement), and (c) the "**Technical Studies and Reports**" set forth on Exhibit E attached to this Agreement.

1.3.2 Contractor represents to Owner that Contractor is thoroughly familiar with all Governmental Requirements. Governmental Requirements shall supersede the Contract Documents if there is any conflict; provided, however, that if any Governmental Requirement shall necessitate a change to or deviation from the Contract Documents, Contractor shall obtain Owner's written consent in the form of a Change Order prior to implementing such change. Contractor shall be responsible for failing to report to Owner any discrepancy between the Contract Documents and Governmental Requirements. If Contractor performs any part of the Work in violation of any such Governmental Requirements, Contractor shall bear all costs of correction and adverse scheduling impacts; provided, however, that should any governmental authority having jurisdiction over the Work mandate compliance with any changes to applicable Governmental Requirements that have been enacted or have become effective after the Effective Date, Contractor shall, subject to consultation with and written approval by Owner, construct the Work in accordance with such Governmental Requirements, the increased actual cost of which (if any) will be added to the Contract Sum pursuant to a Change Order under Article 3 of this Agreement, unless Contractor should have reasonably anticipated or planned for such change.

1.3.3 Contractor shall furnish, perform and complete all Work required to complete the Project in accordance with the Contract Documents. Contractor shall be responsible for assembling all documentation necessary to obtain, and shall itself obtain or through Project Architect obtain, all permits and other approvals required to be obtained for the timely Completion of the Work from the appropriate governmental authorities or other parties having approval rights relating to the Project.

2. CONTRACT SUM; METHOD OF PAYMENT.

2.1 Contract Sum. Subject to the terms and conditions of this Agreement, Owner shall pay to Contractor for Contractor's complete performance under the Contract, including, without limitation, the construction and completion of all Work for the Project, a lump sum total amount of Sixteen Million Five Hundred Eighty-Five Thousand Nine Hundred Thirteen Dollars and No Cents (\$16,585,913) (the "**Contract Sum**"). Contractor is not and shall not be entitled to any fee, payment, compensation or reimbursement or other sum under this Agreement or the other Contract Documents or arising out of or relating to the Work or the Project, other than the Contract Sum. The

Contract Sum may be adjusted only pursuant to Change Orders as provided for in Article 3 of this Agreement. As stipulated in the OCIP Manual (as defined in Section 10.1.2 of this Agreement), the Contract Sum shall be adjusted downward to remove the cost of certain insurance, as determined pursuant to the OCIP Audit (as defined in Section 10.1.3 of this Agreement).

2.2 Contractor Responsible for Expenditures in Excess of Contract Sum.

2.2.1 The Contract Sum is the maximum cost to Owner for the completion of the Project, including, without limitation, the full performance of all Work and all services by Contractor and its Subcontractors and Vendors (as defined in 13.12 of this Agreement). Contractor shall have sole responsibility to pay for any expenditures, costs and/or expenses in excess of the Contract Sum. If, at any point, Owner reasonably believes that, based on the progress of the Work, the Work cannot be completed for the Contract Sum, Owner shall have the right to require Contractor to provide Owner with satisfactory evidence of funds available to Contractor to pay any anticipated overage, and cause Contractor to provide Owner a perfected first priority lien on or security interest in such funds and execute such security agreements as may be required. Contractor's failure to timely provide such evidence of available funds and/or a perfected first lien, shall constitute a default pursuant to Section 8.1 of this Agreement.

2.2.2 The Contractor acknowledges that the Golf Course Designer, as a part of the normal Golf Course design process will make final adjustments in the field to various aspects of the Golf Course which may affect actual quantities of the Work relative to the estimated quantities. This being a normal process in the design and construction of any Golf Course is anticipated and included as a part of the Work to the extent that the "field adjustments" net out without any material increase or decrease to the original aggregate value of the Work. The unit cost established in Exhibit L shall be used for the purpose of calculating the net value of these adjustments. It is incumbent upon the Contractor to manage this process allowing maximum flexibility to the Designer without affecting the value of the Work. The Contractor shall notify the Owner immediately and prior to commencing upon said adjustments. Any adjustments which increase or decrease the value of the Work shall be considered a change as defined in Article 3 of this Agreement.

2.3 Payment Application.

2.3.1 Except for the retention or withholding specified below, or as otherwise expressly provided in this Agreement, the Contract Sum shall be paid over the course of the Project and in proportion to the Work completed during the applicable pay period, based on the percentage that such completed Work bears to the total Work provided for in the Schedule of Values (as defined in Section 2.3.3 of this Agreement) as reasonably determined by Owner. On or before the last day of each month for which payment is being requested during the term of this Agreement, Contractor shall deliver a statement to Owner and Owner's Lenders on AIA G701 and G702 forms or such other forms as are specified by and acceptable to Owner and Owner's Lenders ("**Payment Application**"), certified by Contractor as correct, and representative of the Work completed during that calendar month.

Contractor shall not submit more than one Payment Application per month unless otherwise requested by Owner. Each Payment Application shall specify:

2.3.1.1 the Work performed during such preceding calendar month;

2.3.1.2 the portion of the Contract Sum to be paid by Owner pursuant to the terms of this Agreement and the Schedule of Values;

2.3.1.3 for each category and portion of the Work: (1) the amount requested on all previous Payment Applications, (2) the amount requested on the current Payment Application, and (3) the amount allocated in the Schedule of Values to the Work yet to be completed;

2.3.1.4 Retainage (as defined in Section 2.3.7 of this Agreement) in the amount provided for pursuant to Section 2.3.7 of this Agreement;

2.3.1.5 the percentage completed of each portion of the Work as of the end of the period covered by the Payment Application, shown as both (1) the percentage obtained by dividing the completed portions of the Work by the total Work referenced in the Schedule of Values, and (2) the percentage obtained by dividing (a) the sum of the payments made to Contractor pursuant to prior Payment Applications and the payment requested in the current Payment Application by (b) the Contract Sum; and

2.3.1.6 such additional information and documentation regarding the progress of the Work and the requested payment under the Payment Application as Owner and/or Owner's Lenders may reasonably require.

2.3.2 All blanks and columns in each Payment Application must be completed.

2.3.3 "**Schedule of Values**" means the budget (as prepared by Contractor and submitted to and approved in writing by Owner) outlining the Work and allocating values among all portions or categories of the Work. The initial Schedule of Values shall be submitted by Contractor to Owner and Owner's Lenders for their prior written approval as a condition precedent to Contractor being paid under Contractor's first Payment Application. The Schedule of Values may be modified only with the prior written approval of Owner. Following any Change Order or Construction Change Directive, the Schedule of Values shall be adjusted by Contractor as necessary, in each case subject to Owner's prior written approval, to reflect accurately the values of the various portions and categories of the Work. The Schedule of Values as approved by Owner shall be used as the basis for all Payment Applications.

2.3.4 Except with Owner's prior written consent, Contractor shall not make advance payments to Subcontractors or Vendors and, except as provided in Section 2.5 of this Agreement, shall not be entitled to payment for the cost of any equipment or materials which have not been delivered and incorporated into the Project or stored at the Property in a manner reasonably satisfactory to Owner and/or Owner's Lenders. Except as expressly provided in the Contractor's Certificate (defined in Section 2.3.6 of this

Agreement), no Payment Application shall include requests for payment of amounts Contractor does not intend to pay promptly to a Subcontractor or Vendor because of a dispute or other reason.

2.3.5 Each Payment Application shall include signed and acknowledged (by a notary) Conditional Waivers and Releases of Liens Upon Progress Payment in the form attached hereto as Exhibit F from Contractor and each Subcontractor and Vendor for all Work performed to date that is covered by such Payment Application, and signed and acknowledged Unconditional Waivers and Releases of Liens Upon Progress Payment in the form attached hereto as Exhibit G from Contractor and each Subcontractor and Vendor for all Work that was covered by the immediately preceding Payment Application. Execution and delivery of such waivers shall be an absolute condition precedent to Owner's duty to pay Contractor pursuant to any Payment Application. Notwithstanding the foregoing, and subject to all other terms of this Agreement, to the extent Contractor fails to provide any of the foregoing waivers and releases of lien when required ("Outstanding Releases"), Contractor shall provide to Owner's and Owner's Lenders' title insurers, from time to time upon Owner's request and as a condition to any progress or other payment to Contractor, such affidavits, indemnities, certificates and other instruments as such title insurers require to issue to Owner and Owner's Lenders, as a condition to any progress or other payment to Contractor, one or more endorsements to their respective title insurance policies insuring the lien free status of the Work and Property (Contractor's failure to cause the title insurer to provide the required endorsement(s) shall be a breach of this Agreement); provided, however, that at no time shall the aggregate of all Outstanding Releases represent Work with an aggregate value in excess of \$200,000. In addition, Owner may at any time direct Contractor to submit an affidavit that all payrolls, invoices for material and equipment, and other indebtedness connected with the Work and associated with a Payment Application have been paid.

2.3.6 Each Payment Application also shall include a "**Contractor's Certificate**," in form and substance identical to Exhibit H attached to this Agreement, signed by Contractor.

2.3.7 In addition to amounts, if any, withheld pursuant to Sections 2.7.6 and 2.8 of this Agreement, Owner hereby gives written notice to Contractor that Owner shall withhold from each payment to Contractor an amount (the "**Retainage**") equal to ten percent (10%) of that payment. All such retainage shall be released as part of final payment to Contractor. After fifty percent (50%) of the Scope of Work has been satisfactorily completed in the Owner's judgment, Owner may elect to reduce the level of retainage withholding to be equal to 5% of the adjusted contract value in the event that the Owner, in its sole discretion, determines that Contractor, its Subcontractors and/or vendors are satisfactorily performing the work in accordance with the contract documents.

2.4 Progress Payments.

2.4.1 Contingent upon the Owner and Owner's lenders receipt of a complete Payment Application and all required submittals under 2.3 of the Agreement, Owner shall make payment of any properly due amounts to Contractor on or about the 25th day of the month following the month for which payment was requested, subject to the

approvals required under this Section 2.4, and less any amount which may be retained or withheld pursuant to this Agreement, including, without limitation, Sections 2.3.7, 2.7.6 and/or 2.8 of this Agreement. This Section 2.4.1 shall constitute a “schedule for payment” as described in Section 624.609(1)(a) of the Nevada Revised Statutes.

2.4.2 Owner may approve or disapprove and/or withhold payment on, in whole or in part, a Payment Application based on any reasonable grounds, including, but not limited to:

2.4.2.1 a failure of Contractor to furnish any required lien releases, insurance certificates, or bonds in a timely manner;

2.4.2.2 a failure of Contractor to make payments promptly to Subcontractors and/or Vendors;

2.4.2.3 Owner’s good faith belief that the Work cannot be completed for the unpaid balance of the Contract Sum;

2.4.2.4 regarding any particular portion of the Work as shown on the Schedule of Values, a determination by Owner that an amount requested attributable to a portion of the Work was not actually completed or the amount requested represents a greater percentage of the Work than actually completed;

2.4.2.5 Owner’s good faith belief that the Work will not be completed by the Scheduled Completion Date as defined in Section 4.2.1;

2.4.2.6 damage to property or Work or injury to persons attributable to the acts or omissions of Contractor, Project Architect, or any Subcontractor or Vendor;

2.4.2.7 unsatisfactory prosecution of the Work;

2.4.2.8 lack of required documentation;

2.4.2.9 deviations from the Contract Documents without an applicable Change Order or Construction Change Directive;

2.4.2.10 the filing or existence of liens or claims against Owner, the Property, the Project or the Work arising out of or relating to Contractor’s performance of the Work or other acts or omissions of Contractor, any Subcontractor or Vendor;

2.4.2.11 a determination by Owner to nullify in whole or in part a prior approval of a Payment Application and/or prior payment made, because of subsequently discovered evidence or subsequent observations which otherwise would allow Owner to withhold payment pursuant to this Section 2.4 or elsewhere in the Contract Documents;

2.4.2.12 Owner's Lenders' inability (if not the fault of Owner) to obtain (1) one or more title insurance endorsements to Owner's Lenders' title policy, showing no intervening or other liens, lien rights or encumbrances upon the Property or any improvements relating to the whole or any portion of the Work prior to any Lender Liens (as defined in Section 15.1 of this Agreement), other than those approved in writing by Owner's Lenders, and insuring the full amount of the disbursement and its priority satisfactory to Owner and Owner's Lenders, and showing no encroachments by any portion of the Work and proper location of foundations, or (2) a satisfactory report under the Nevada Uniform Commercial Code showing no liens or interests (other than those of Owner's Lenders) relating to the whole or any portion of the Work, including, without limitation, any improvements; or any failure of Contractor or any Subcontractor to comply with Section 15.1 of this Agreement;

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

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

2.4.2.15 defective Work not remedied; and/or

2.4.2.16 any other material breach or default or failure to perform by Contractor under the Contract Documents.

2.4.3 If Owner and/or Owner's Lenders do not approve the full amount of the Payment Application, Owner shall provide written notice to Contractor and shall make payment of the lesser of the amount (if any) that Owner and Owner's Lenders have approved pursuant to Section 2.4.1 of this Agreement (less any amount which may be retained or withheld pursuant to Sections 2.3.7, 2.7.6 and/or 2.8 of this Agreement). When the reason(s) for withholding approval are removed to Owner's and Owner's Lenders satisfaction, approval will be made for amounts previously withheld, and Owner will pay such amounts (less amounts properly withheld or retained) with the next regularly scheduled payment.

2.4.4 Within 15 days of Substantial Completion of the work, Contractor shall submit to Owner the Contractors Completion Certificate as defined in Section 4.2.1.1.

2.5 Payments by Contractor. Contractor shall promptly pay each Subcontractor and Vendor, within five (5) business days after receipt of payment from Owner, the amount to which said Subcontractor or Vendor is entitled on account of such Subcontractor's or Vendor's portion of the Work, as reflected in the Payment Application and reflecting Retainage in accordance with Section 2.3.7 of this Agreement or amounts withheld under this Agreement. Contractor shall, by appropriate agreement with each Subcontractor and Vendor, require each Subcontractor and Vendor to make payments to their respective Subcontractors and Vendors in a similar manner.

2.6 Materials Off-Site. All materials which are the subject of a Payment Application shall be stored at all times at the Project, in a bonded warehouse or such other secured facility satisfactory to Owner and Owner's Lenders, or, at the premises of the manufacturer or fabricator (in which event the materials shall be appropriately marked and identified with the applicable purchase contract and physically segregated in an area with access to a public street), until the materials are incorporated into the Project; provided that if the materials are stored with the manufacturer or fabricator, Owner must receive evidence satisfactory to Owner of the creditworthiness of the manufacturer or fabricator and/or Contractor shall procure and deliver or cause to be procured and delivered to Owner such dual obligee performance and labor and material payment bond or bonds, in form, substance and amount satisfactory to Owner and Owner's Lenders, as Owner and Owner's Lenders may require. Furthermore, Contractor shall:

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

2.6.2 take or cause to be taken all actions necessary to maintain, preserve and protect the materials and keep them in good condition and repair, and to comply with all laws, regulations and ordinances relating to the ownership, storage or use of the materials;

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

2.6.4 ensure that Owner and Owner's Lenders may enter upon any property on which the materials may be stored to inspect them at any reasonable time.

2.6.5 If Contractor shall fail to perform any of its obligations under this Section 2.6 after Owner has made payment to Contractor for the materials, Owner or Owner's Lenders may, but shall not be obligated to, after written notice to Contractor, take such actions and expend such sums as may be necessary in their respective judgments to protect and preserve Owner's title and Owner's Lenders' security interest in such materials, and all such expenditures so incurred (including, without limitation, attorneys' fees and disbursements) shall be repayable by Contractor promptly on demand with interest thereon per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

2.7 Final Payment.

2.7.1 Final payment (“**Final Payment**”), consisting of the entire unpaid balance of the Contract Sum, including Retainage held pursuant to Section 2.3.7 of this Agreement, shall be made to Contractor within sixty (60) calendar days after Completion of the Work.

2.7.2 “**Completion of the Work**” shall be deemed to have occurred after Substantial Completion of the Work when (i) the Contract has been completely performed by Contractor in accordance with the Contract Documents as determined by Owner and Owner’s Lenders, including, without limitation, completion of all “punch-list” work (unless Owner has with written notice to Contractor elected to retain sufficient funds to protect it against the nonperformance of such “punch-list” work), (ii) Contractor has delivered each and all of the items described in Sections 2.7.5.1 through 2.7.5.12 of this Agreement, (iii) Owner has accepted the Work in writing, and (iv) the OCIP Audit (as defined in Section 10.1.3 of this Agreement) as it relates to the Project has been completed and any required downward adjustments in the Contract Sum have been made as described in Sections 2.1 and 10.1.3 of this Agreement.

2.7.3 Contractor shall submit, with its final Payment Application, a Full and Unconditional Release of All Claims and Waiver of Liens in the form attached hereto as Exhibit I executed by Contractor, and by any additional parties Owner designates including, without limitation, all Subcontractors and Vendors.

2.7.4 Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance and upon receipt of an acceptable final Payment Application with all required submittals, Owner and/or Owner’s Lenders will promptly make such inspection and, when Owner and Owner’s Lenders find the Work acceptable under the Contract Documents and the Contract fully performed, Owner shall approve the Final Payment.

2.7.5 Notwithstanding anything to the contrary in the Contract Documents, Final Payment shall not become due until Contractor submits to Owner and Owner’s Lenders:

2.7.5.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness and obligations connected with the Work for which Owner or Owner’s Property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;

2.7.5.2 a certificate of the insurer(s) evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be cancelled or allowed to expire until at least 30 calendar days’ prior written notice has been given to Owner;

2.7.5.3 a written statement that Contractor knows of no reason that such insurance will not be renewable to cover the period required by the Contract Documents;

2.7.5.4 if required by Owner or Owner's Lenders, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract or the Work which may then or in the future affect Owner, the Project or Property, and to the extent and in such form as may reasonably be designated by Owner or Owner's Lenders (if a Subcontractor or Vendor refuses to furnish a release or waiver required by Owner, Contractor shall within such time as set forth in Section 5.8 of this Agreement and in accordance with the procedure set forth in Section 5.8 furnish a bond satisfactory to Owner, in Owner's and Owner's Lenders' sole and absolute discretion, to indemnify Owner against such lien and cause it to be paid and released; if such lien remains unsatisfied after payments are made, Contractor shall immediately refund to Owner and indemnify Owner against all monies that Owner is compelled to pay in discharging such lien, including all costs and attorneys' fees);

2.7.5.5 an affidavit certifying that Contractor has paid all taxes and all labor costs, including, without limitation, any union dues, health, welfare, pension plan, and other labor associated contributions;

2.7.5.6 all written guarantees and warranties under the Contract for Contractor, Subcontractors and Vendors; all instructions and warranties furnished by manufacturers, suppliers, or Vendors relating to any materials and equipment incorporated in the Work; all required operation and maintenance manuals for major equipment required under the Contract; as-built drawings required under Section 5.10 of this Agreement;

2.7.5.7 all certificates of occupancy (or their equivalents) relating to or required for the full use and occupancy of all aspects of the Project (and Owner can fully occupy and utilize the Work for its intended use);

2.7.5.8 any documents, instruments, releases, affidavits, certificates and indemnities reasonably required in order to permit Owner and Owner's Lenders to secure endorsements in form and content satisfactory to them to their respective policies of title insurance for the Property, including, without limitation, that no mechanics' or materialmen's liens appear of record, that all Lender Liens are of first priority (including prior to any unrecorded liens or other lien rights), and that there are no encroachments or violations of any recorded covenants, conditions or restrictions affecting the Property;

2.7.5.9 such documents and other items so that Owner will receive and Owner does receive a release and complete refund of all security, bonds and/or cash amounts provided by or on behalf of Owner and held by or for the benefit of any administrative or governmental agency;

2.7.5.10 an accurate list of all Subcontractors and Vendors with their addresses and telephone numbers;

2.7.5.11 a statement of all unresolved claims (and for which payment has been and/or shall be withheld by Owner). Contractor shall separately list by

claim number the specific dollar amounts which have previously been submitted as claims by Contractor in good faith and in full compliance with this Agreement; and

2.7.5.12 such other certificates, instruments and affidavits relating to the Work as Owner or Owner's Lenders may reasonably require.

2.7.6 Any unsatisfied conditions to Final Payment as set forth in this Section 2.7 shall, unless expressly waived in writing by Owner in Owner's sole and absolute discretion, be deemed to be and considered items in dispute allowing Owner to withhold from Final Payment such amounts as permitted by this Agreement. Owner shall give Contractor prior written notice of any such withholding. Contractor shall not be entitled to receive payment on any Payment Application that is inaccurate or incomplete or that contains any material misrepresentation. The rights and remedies of Owner under this Section 2.7 shall be non-exclusive and shall be in addition to all other remedies available to Owner under this Agreement or at law, in equity or otherwise.

2.7.7 Except for such unresolved claims stated in specific dollar amounts which have been previously filed by Contractor in good faith and in full compliance with this Agreement, the submittal by Contractor of its final Payment Application shall constitute a final and irrevocable release and waiver by Contractor of any and all other claims and causes of action for additional costs allowable under the Contract Documents. This shall include, but not be limited to, any and all claims for additional amounts relating to the unresolved claims so identified by Contractor and claims or potential claims of Subcontractors and Vendors arising out of this Contract, whether or not any such claims or potential claims arise in contract or in tort or were known or unknown at the time of submittal of the final Payment Application.

2.8 Withholding. In addition to any amounts withheld from a Payment Application by Owner pursuant to Sections 2.3.7 and/or 2.7.6 of this Agreement, in the event of and during any breach or default or failure to perform by Contractor of its obligations pursuant to the Contract Documents, or any third-party claim against Owner arising out of or connected with the Work, Owner shall have the right (and Contractor hereby expressly authorizes Owner) to withhold such amounts and payments to Contractor as Owner in good faith deems necessary to protect Owner against or compensate Owner for any damage, cost, expense and loss attributable to the foregoing, to cure any breach, default or failure to perform, or to assure the payment of claims of third persons, and at Owner's option to apply such sums in such manner as Owner may in good faith deem necessary or proper to secure protection from or to satisfy such claims. Owner shall give Contractor prior written notice of any such withholding. Owner shall not be deemed in default by reason of withholding payment under this Agreement in good faith.

2.9 Joint Checks. Owner shall have the right (but not the obligation) to issue in its discretion, at any time and from time to time, payment checks for portions of a progress payment or the Final Payment payable jointly to Contractor and the person or persons owed (including, without limitation, any Subcontractor or Vendor). Without limiting the generality of the foregoing, if Contractor fails, neglects, or refuses to pay for labor or services performed or materials or equipment supplied in connection with the Work as payments become due, Owner shall have the right (but not the obligation) upon written

notice to Contractor to make payments directly for any and all such labor, materials, or equipment and to deduct the amount of such payment from the Contract Sum. Owner also shall have the right upon five (5) calendar days' prior written notice to Contractor to stop the performance of the Work by Contractor until payment of all amounts due and owing by Contractor has been made and such failure by Contractor to make such payments shall be a material breach under the Contract; provided, however, Owner shall not have any duty to stop the Work.

2.10 Waiver. Owner's payment of any item pursuant to any Payment Application or otherwise shall not constitute approval of the Work or the Payment Application, or result in Owner's waiver of any claims, all of Owner's rights being specifically reserved. A progress payment or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. The acceptance of Final Payment by Contractor, a Subcontractor, and/or a Vendor shall constitute a waiver of all claims by that payee, except those previously made in writing and identified by that payee as unsettled at the time of the Payment Application for the Final Payment.

2.11 Deposits and Payments. If any deposits are required for the purchase of any materials, such deposits will be specifically identified by category and credited against amounts as billed in that category. Contractor agrees to receive and hold all payments to it by Owner as trust funds to be applied only to the payment of the Contract Sum. Contractor will, promptly upon written request from Owner, account for any and all funds theretofore received by Contractor from Owner. Contractor agrees to arrange to purchase such materials or equipment in advance of the time for installation in the Project as may be deemed advisable by Owner or Contractor, provided such purchases in excess of Fifty Thousand Dollars (\$50,000.00) are approved by Owner and Owner's Lenders. Upon payment to Contractor of approved deposit amounts, Contractor shall provide Owner with an assignment of Contractor's rights relating to such deposit made and agreement for purchase of such item.

2.12 Title to Materials. Contractor represents and warrants to Owner that (i) title to all of the Work and materials and equipment incorporated into the Work or covered by any Payment Application will pass to Owner upon the earlier of incorporation in the Work or receipt of payment by Contractor, and such title shall be free and clear of all liens, claims, security interests or encumbrances; (ii) the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract Documents; (iii) Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in this Agreement; and (iv) no Work covered by a Payment Application and no material or equipment incorporated in the Work will have been acquired or incorporated into the Work by Contractor, or by any other person performing Work or furnishing materials and equipment for the Project, subject to an agreement under which an interest in the Work or an encumbrance on the Work or the Property is retained by the seller or otherwise imposed by Contractor or such other person. Subject to the terms of this Agreement, including any modifications or waivers of rights provided herein (including, without limitation, Section 15.1 hereof), the provisions of this Section shall not be a bar to Contractor's lien rights as to the Property under Nevada state

law as to Work for which Contractor has not yet received payment (and to the extent Contractor is entitled to payment).

2.13 Maintenance of Books and Records. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract and as are otherwise reasonably satisfactory to Owner. Contractor's books, records, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, cancelled checks, pay requests, invoices, bills and statements and all other data relating to or arising out of the design and construction of the Work, shall at all times be made available to Owner and Owner's Lenders for inspection, audit, and copying during normal working hours in Buckeye, Arizona. Contractor shall preserve in Buckeye, Arizona, all such records for a period of at least three (3) years after the Completion of the Work or for such longer period as may be required by law.

3. CHANGES IN THE WORK.

3.1 Change Orders.

3.1.1 Changes in the Work (as defined in Section 13.1 of this Agreement), regardless of impact, shall be made only in accordance with a Change Order or Construction Change Directive. No Change in the Work will increase the Contract Sum, or extend the Scheduled Completion Date, without an accompanying Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or an extension of the Scheduled Completion Date. Notwithstanding anything to the contrary, any and all approvals, consents, Change Orders, and other documents under this Agreement affecting Owner's rights and/or the Work shall be effective only if signed by Owner.

3.1.2 Once the actual cost of such Change in the Work and corresponding extension, if any, in the Scheduled Completion Date have been determined pursuant to this Article 3, prior to using such actual cost to make any increase in the Contract Sum, and prior to extending the Scheduled Completion Date, such actual cost and/or extension, as the case may be, shall be reduced and offset by any and all reductions or Changes in the Work which result in a reduced Contract Sum and/or an advancement of the Scheduled Completion Date, as the case may be (i.e., Changes in the Work shall be netted out). Additions and deletions to the Work shall be priced in accordance with the unit cost as established herein. The unit pricing represents the total cost per unit of the Work including Subcontractor markup. Except for Material Changes in the Work, the Contractor's fee shall not be adjusted. Any increase or decrease in the Contract Sum as a result of net Material Changes in the Work shall not exceed the sum of: (i) the aggregate additional amounts (if any) actually paid by Contractor to its Subcontractors and Vendors for the applicable Change in the Work, plus a mark-up on such amounts of not more than five percent (5%) to Contractor, and (ii) the increase (if any) in the actual Cost of the Work (as defined in Section 13.6 of this Agreement) incurred by Contractor with respect to the applicable Change in the Work to the extent (if any) performed by Contractor directly, plus a mark-up

on any such increase incurred by Contractor of not more than ten percent (10%) to Contractor.

3.1.3 At any time and from time to time prior to Completion of the Work, Owner may request Contractor to make Changes in the Work. If Owner desires a Change in the Work, Owner may, in its sole and absolute discretion and in writing, request a Change Proposal from Contractor (a “**Change Proposal Request**”). A Change Proposal Request shall set out, in reasonable detail, the Changes in the Work requested by Owner. Within ten (10) calendar days following its receipt of a Change Proposal Request, Contractor shall issue a Change Proposal (as defined in Section 13.4 of this Agreement). Contractor also shall issue a Change Proposal: (i) when Contractor reasonably believes that a Change in the Work is necessary or desirable (pursuant to a right set forth in this Agreement); or (ii) when a Change in the Work is made necessary by Governmental Requirements. Any material Changes in the Work shall require Owner’s Lenders’ prior approval.

3.1.4 If Contractor refuses or fails to timely provide a Change Proposal requested by Owner, or modifies or alters a Change Proposal Request, or if Owner and Contractor are unable to agree in writing upon the terms of the Change Proposal requested by Owner, including, but not limited to: (i) the amount of increase or decrease in the Contract Sum, or (ii) the length of extension or advancement, if any, of the Scheduled Completion Date, Owner: may (1) issue a Construction Change Directive pursuant to Section 3.2 of this Agreement; (2) require Contractor to obtain at least three bids from qualified Subcontractors to perform such Change in the Work, and Owner may designate the Subcontractor from said bidders to perform such Change in the Work, and/or (3) engage other contractors, subcontractors and/or laborers to perform such Change in the Work, and Contractor shall cooperate fully with any of such persons, and any such hiring by Owner or issuance of a Construction Change Directive shall not affect this Agreement in any manner (other to provide for a reduction in the Contract Sum, equal to the amount of any Work reflected in the Schedule of Values not being performed by Contractor) and shall not be deemed to be a constructive termination.

3.1.5 No dispute between Owner and Contractor relating to: (i) a change in the Contract Sum or the Scheduled Completion Date due to any Change in the Work, or (ii) any Change in the Work (either additive or reductive) shall entitle Contractor to walk off the Project or to slow down the Work.

3.2 Construction Change Directive.

3.2.1 Owner may, by Construction Change Directive, without invalidating or breaching the Contract, order a Change in the Work. Upon receipt of a Construction Change Directive from Owner, Contractor shall promptly proceed with the Change in the Work involved (including implementing any reductions in the Work) and advise Owner of the Contractor’s agreement (in which case Contractor shall sign and return the Construction Change Directive) or disagreement with the method, if any, provided in the Construction Change Directive for determining the proper adjustment, if any, in the Contract Sum and/or the Scheduled Completion Date.

3.2.2 A Construction Change Directive signed and unmodified by Contractor indicates the agreement of Contractor therewith, including the method, if any, provided in the Construction Change Directive for determining the adjustment, if any, in the Contract Sum and/or the Scheduled Completion Date. Upon Contractor's written acceptance and delivery thereof to Owner of the unmodified Construction Change Directive, that Construction Change Directive shall become a Change Order. If Contractor fails to advise Owner of its agreement or disagreement with the proposed adjustment in the Contract Sum and/or the Scheduled Completion Date within ten (10) calendar days after the delivery of the Construction Change Directive to Contractor, then the Construction Change Directive shall be deemed approved by Contractor and shall become a Change Order, and Contractor shall have no right to any adjustment to the Contract Sum and/or the Scheduled Completion Date in excess of the adjustments, if any, provided in the Construction Change Directive.

3.2.3 If Contractor disagrees with the method or adjustment in the Contract Sum and/or the Scheduled Completion Date within the ten (10)-calendar day time period provided for in Section 3.2.2 above, the method and the adjustment shall be submitted to an appropriate consultant for a recommendation or binding resolution as Owner may elect. If the parties are unable within a reasonable period of time (as determined by Owner) to reach an agreement or binding resolution by the consultant (if Owner elects) under the prior sentence or otherwise, the matter shall be resolved after Completion of the Work, in accordance with Section 15.11 of this Agreement.

3.2.4 After Owner has issued a Construction Change Directive and pending final determination of the adjustment, if any, in the Contract Sum, any amount not in dispute may be included in Payment Applications to be paid by Owner.

3.3 Surety Waiver. Change Orders or Construction Change Directives as described in this Agreement shall not be subject to inspection or approval by any sureties issuing any performance or labor and material payment bonds in connection with the Project, whether or not the Change Orders (or Construction Change Directives) encompass "substantial" changes in the scope of Work undertaken by Contractor. Contractor shall cause any sureties, in issuing any performance or payment bonds in connection with the Project, to expressly waive any of their respective rights to approve any Change Orders or Construction Change Directives executed by Owner and Contractor.

4. STARTING AND COMPLETION DATE; DELAYS IN THE WORK.

4.1 Commencement of Work. Contractor shall commence the Work in accordance with the Project Construction Schedule no later than February 18, 2003 ("**Date of Commencement**"); provided that commencement of the construction phase of the Work shall commence upon Owner's issuance to Contractor of a written notice to proceed with the construction phase of the Work. If Owner fails to issue such a written notice to proceed in accordance with the Project Construction Schedule, and if no default has occurred under Section 8.1 of this Agreement, the Scheduled Completion Date shall be extended pursuant to Change Order in accordance with Article 3 of this Agreement by one day for each full day that Owner fails to issue such notice to proceed.

4.2 Completion of the Work.

4.2.1 Contractor shall proceed expeditiously with adequate forces, and shall achieve Substantial Completion of the Work (as defined in [Section 13.10](#) of this Agreement) not later than January 27, 2005 (the “**Scheduled Completion Date**”), subject to any Excusable Delays (as defined in [Section 13.8](#) of this Agreement). Subject to [Section 4.2.2](#) below, if any Excusable Delays occur and subject to the procedures set forth in [Section 4.2.5](#) of this Agreement, the Scheduled Completion Date shall be extended by one day for each full day of Excusable Delay delaying “critical path” items. The Scheduled Completion Date also shall be extended or accelerated as the parties may agree pursuant to any Change Order(s) approved by Owner (if any). If minor items remain to be completed after Substantial Completion of the Work (the “**Punchlist Items**”), Contractor shall complete the Punchlist Items and achieve Completion of the Work, within a reasonable time, but in any case not later than sixty (60) calendar days following Substantial Completion of the Work. Contractor has prepared and delivered to Owner a “**Project Construction Schedule**” indicating the time required to complete each portion of the Work. The Owner approved Project Construction Schedule is attached hereto as [Exhibit C](#) and incorporated in this Agreement by this reference. The Project Construction Schedule may not be changed without the prior written approval of Owner (and Owner’s Lenders as to material changes) and shall identify and label the “critical path” items.

4.2.1.1 Within 15 days of Substantial Completion of the Work (as defined in [Section 13.10](#)), Contractor shall submit to Owner the Contractors Completion Certificate ([Exhibit M](#)).

4.2.2 If any Excusable Delay occurs and as a condition precedent to the granting of an extension of time, Contractor shall within five (5) calendar days of the beginning of such Excusable Delay, give Owner written notice of the Excusable Delay, which notice shall include an explanation of the Excusable Delay and its impact on the critical path items of construction (including a description, as fully as practicable, at that time, of the nature, cause and expected duration of the delay), and shall set forth Contractor’s proposed new Scheduled Completion Date. If Owner and Contractor agree on the Excusable Delay and its effect, all in accordance with [Section 4.2.5](#) of this Agreement, any extension of the Scheduled Completion Date shall be reflected in a Change Order which must be approved by Owner (and Owner’s Lenders as to material changes) in writing in order to give effect to any extension of the Scheduled Completion Date. If Owner and Contractor are unable to agree, any issue of Excusable Delays shall be resolved after Completion of the Work, in accordance with [Section 15.11](#) of this Agreement.

4.2.3 Contractor shall keep the Project Construction Schedule up-to-date and revised on a monthly basis. The up-to-date Project Construction Schedule as revised shall be provided by Contractor to Owner on a monthly basis. Contractor also shall forward to Owner and Owner’s Lenders each month a monthly summary report of the progress of various parts of the Work under the Contract, describing the existing status of the Work, rate of progress, estimated time of completion, cause of any Delays in the Work (as defined in [Section 13.7](#) of this Agreement), and a comparison of actual progress with the most recent Project Construction Schedule. If Owner reasonably determines at any time that the progress of the Work, or any portion of the Work, is behind the periods set forth in the

Project Construction Schedule or reasonably believes that the Work will not be complete by the Scheduled Completion Date, then immediately following written notice from Owner, Contractor shall submit to Owner for its review and approval a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work, and Owner shall have the right to require Contractor to work its construction crews and Subcontractors and other personnel overtime, and to direct Contractor to take all other necessary action, including, without limitation, increasing the number of personnel and implementing double shifts. Such overtime work and other actions shall continue until such time as the Work has progressed so that it complies with the stage of completion required by the Project Construction Schedule. Additional costs incurred due to such overtime work and other actions shall be at Contractor's sole cost and expense and shall not result in any adjustment in the Contract Sum. Owner's exercise of any of its rights under the Contract Documents including, but not limited to, rights regarding a Change in the Work, or Owner's exercise of any of its remedies, including, but not limited to, Owner's rights under Section 8.2 of this Agreement, or Owner's rights to require correction or re-execution of any Work, shall not under any circumstances be construed as interference with Contractor's performance of the Work.

4.2.4 Other than as expressly allowed and solely to the extent provided for under Section 8.5 of this Agreement, Contractor agrees for itself and its agents and for its Subcontractors and Vendors, and will cause each Subcontractor to agree by its subcontract with Contractor for performance of the Work and each Vendor to agree by its agreement or purchase order with Contractor for materials, supplies, equipment, and/or related services for the Work, that it will make no claim or claims against the Property, Project, Owner (or any party affiliated or associated with Owner or any assets of Owner), or Owner's Lenders for damages or losses incurred as a result of or arising out of Delays in the Work, including, but not limited to, any Excusable Delays (as defined in Section 13.8 of this Agreement). Lost time from any Excusable Delays in the Work, if claimed by the Contractor and approved by Owner in accordance with this Agreement, solely and completely will be compensated and balanced by an extension of the Scheduled Completion Date. The Contractor and each Subcontractor and Vendor shall accept any such extensions at no additional cost to Owner, and waive and relinquish any right to payments of any kind for any Delays in the Work, including, without limitation, for any Excusable Delays.

4.2.5 To the extent Contractor or any Subcontractor is delayed at any time in the progress of the Work by an Excusable Delay, then the Scheduled Completion Date shall be reasonably extended by Change Order in accordance with the procedures described this Section 4.2.5 and in Article 3.

4.2.5.1 Notwithstanding any other provision of the Contract Documents, any item that cannot be demonstrated as being on or affecting the critical path of the Work shall not result in an extension of time to perform the Work in the event such item is delayed. Further, to the extent any Delay in the Work could have been prevented or reduced if Contractor had, with diligence and due care and its best skill and attention consistent with the terms of the Contract Documents, performed its duties and responsibilities under the Contract Documents, such delay will not entitle Contractor to an extension of the Scheduled Completion Date (except for that portion, if any, of such Delay

in the Work which could not have been reduced consistent with the foregoing, and subject to the other requirements of the Contract Documents, including this Section 4.2.5).

4.2.5.2 Extensions of the Scheduled Completion Date for the Work will be authorized by Owner only if (a) Contractor has been necessarily delayed in meeting such Scheduled Completion Date by a cause which constitutes an Excusable Delay; (b) the completion of the Work by the Scheduled Completion Date is actually and necessarily delayed by such cause; (c) the effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures, including planning, scheduling and rescheduling, whether before or after the occurrence of the cause of delay, and (d) Contractor has met any notice requirements set forth in this Agreement and the other Contract Documents for it to be entitled to any extension of time. All extensions of time to which Contractor is entitled hereunder will be acknowledged by Change Order.

4.2.5.3 The period of any extension of time for delay shall be only that which is necessary to make up the time actually lost for a Work item or items specifically identifiable on the Project Construction Schedule as being on or affecting the critical path of the Work at the time in which the delay occurs.

4.2.5.4 Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently but only for the actual period of delay in completion of the Work irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of Contractor or Subcontractor or for which Contractor or Subcontractor is responsible, and would of itself, irrespective of the concurrent causes, have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. Further all such extensions shall be netted out with any reductions in the Scheduled Completion Date, before implementing any such extension or increase pursuant to a Change Order.

4.2.5.5 It shall in all cases be presumed that no extension, or further extension, of time is due unless Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of Owner and a Change Order is entered into pursuant to Article 3 of this Agreement. Contractor shall maintain adequate records supporting any claim for an extension of the Scheduled Completion Date.

5. OBLIGATIONS OF CONTRACTOR.

5.1 Project Staffing. Contractor shall provide at all times a sufficient and competent organization (duly licensed, registered, trained and/or qualified to the extent required under applicable laws), which shall include, but not be limited to, Project Manager, General Superintendent, Irrigation Superintendent, Lake and Stream Superintendent, foremen, engineers, inspectors, flagmen, skilled and common laborers, and such other personnel as may be necessary or desirable to prosecute and achieve Completion of the Work properly and expeditiously within the time periods required under this Agreement.

5.2 General Supervision of Construction. The individuals who shall be responsible on behalf of Contractor for supervising the Project are Scott Boyer ("**Project**

Manager”), Ted Thornburg (“**General Superintendent**”), Dwayne Kraagerud (“**Project Superintendent**”), Scott Boyer (“**Assistant Superintendent**”), Ruben Martinez (“**Layout Man**”), Wade Turner, Seve Reyes, Cruz Rodriguez (“**Shaping Crew**”), Honario Hernandez (“**Irrigation Foreman**”). Except for reasons beyond its control, Contractor shall not change the individuals serving as the Project Manager, General Superintendent, Project Superintendent, Assistant Superintendent, Layout Man, Shaping Crew or Irrigation Foreman during the term of this Agreement without the prior written approval or direction of Owner. The Superintendent shall be at the Property on a full-time basis and at all times while any Work is being performed. The Project Manager shall spend such time at the Property as is necessary or desirable to so supervise and direct the Work along with the Superintendent. Subject to Article 7 of this Agreement, Contractor shall be solely responsible for all construction performed pursuant to the Contract Documents, including, without limitation, the coordination and implementation of all techniques, procedures and sequences with respect to the Work.

5.2.1 Unless otherwise provided in the Contract Documents, Contractor shall provide, furnish, supply and pay for all labor, materials, tools, supplies, equipment, machinery, water, utilities, transportation, and all other facilities and services (whether temporary or permanent and whether or not incorporated into the Work) necessary or desirable for proper execution and timely completion of the Work.

5.2.2 Contractor shall: (i) obtain all permits, including, without limitation, all trade permits, and all governmental approvals, licenses, and inspections necessary for the proper and timely execution and completion of the Work and shall pay all costs and/or fees for obtaining the same, (ii) procure, maintain, and provide to Owner copies (or originals if requested by Owner) of all certificates of inspection, authorizations, bonds, permits and licenses, and pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work and as required by any Governmental Requirements and/or any governmental authority or other party having jurisdiction over the whole or any part of the Work, and (iii) fully comply with all Contract Documents in the performance of the Work or any part of or event relating to the Work.

5.2.3 Contractor shall inspect and keep reasonable records of all materials and labor entering into the Work or on the Property.

5.2.4 Contractor shall supervise and direct all such construction work in accordance with the highest standard for construction in Las Vegas, Nevada.

5.2.5 Contractor shall be responsible to Owner for all acts and/or omissions of Contractor’s employees and agents, Subcontractors and Vendors, and Contractor shall defend, hold harmless and indemnify any Indemnitee (as defined in Section 11.1 of this Agreement) from and against any and all loss, liability, costs, damages, claims or causes of action, including, without limitation, attorneys’ fees, costs and expenses, which may arise or be incurred by any Indemnitee by reason of any acts and/or omissions of Contractor’s employees and agents, Subcontractors and/or Vendors or of any person for which any of the foregoing may be responsible or liable.

5.2.6 Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of Owner or Owner's Lenders, by any request, approval or consent of Owner, or by tests, inspections or approvals required or performed by persons other than Contractor.

5.2.7 Contractor shall require and ensure that each Subcontractor and Vendor comply with all applicable requirements set forth in the Contract Documents for Contractor.

5.2.8 At all times during performance of the Work on the Project, including, without limitation, during any partial use or occupancy of the Project by Owner or others, Contractor shall not use (and shall ensure that its Subcontractors, Vendors and any other persons performing Work on the Project do not use) Owner's toilet facilities and the Project's permanent toilet facilities. Contractor also shall perform (and shall cause its Subcontractors and Vendors to perform) all Work on the Project so as to cause the least inconvenience and disruption to Owner's business which may require performance of Work at hours when Owner's business is least active.

5.2.9 Except to the extent the Contract Documents expressly provide otherwise, if any dispute arises between Owner and Contractor, Contractor shall proceed with the performance of its obligations under the Contract with reservation of all rights and remedies it may have under the Contract unless the Contract is terminated by Owner. Notwithstanding any provision of this Contract or the other Contract Documents to the contrary, during the pendency of any dispute, action or proceeding (including in respect of any Change Order) between Contractor and Owner, so long as Owner continues to pay all undisputed amounts hereunder, Contractor shall continue to perform the Work diligently and in accordance with the Contract so as to complete the Work on or before the Scheduled Completion Date. Notwithstanding any provision to the contrary herein or in the other Contract Documents, Contractor shall not be relieved of any of its obligations hereunder unless and to the extent of a final judgment resolving any such dispute, action or proceeding. Contractor recognizes and acknowledges that the provisions of this Section and the Completion of the Work on a timely basis notwithstanding any dispute, action or proceeding are fundamental to the contractual relationship established pursuant to this Contract, shall be specifically enforceable, and that Owner would not have entered into this Contract but for Contractor's agreement set forth herein. Contractor acknowledges that it understands and has duly considered and consulted with counsel concerning the significance of this provision.

5.3 Site Meetings and Visits by Owner. Contractor shall hold weekly meetings (or more frequently if necessary or desirable) at the Property for the Project with some or all of the following: Owner, Other Builders, and Subcontractors and Vendors, as required, to resolve any outstanding issues, to clarify requests for additional information and to discuss the progress of the Work. Contractor shall be responsible for securing attendance of its Subcontractors, Vendors and other personnel at such meetings. Unless otherwise directed by Owner, Contractor shall be responsible for the meeting minutes. Meeting minutes shall be in writing and distributed in a timely fashion so that they can be received and reviewed by all recipients prior to the next meeting. Owner, Owner's Lenders, Other Builders and any other party designated in writing by Owner shall have complete and

unfettered access to the Property, the Project and the Work at all times. Contractor shall, at all times, provide Owner, Owner's Lenders, Other Builders and Owner's other representatives and contractors access to the Work in preparation and progress wherever located. Visits to the Property or observations of the Work by Owner, Owner's Lenders, Other Builders, or any party designated by Owner or Owner's other representatives, shall in no way relieve Contractor from its obligations to carry out the Work in accordance with the Contract Documents.

5.4 Independence of Contractor; Taxes. Contractor is an independent contractor and shall pay all federal and state taxes and contributions for Social Security, unemployment insurance and income withholding tax and other taxes that are measured by wages paid to Contractor's employees, as well as all sales, consumer, employment, use and similar taxes for the Work or portions of the Work provided by or through Contractor or any Subcontractor or Vendor or relating to their operations or property. Nothing contained in the Contract Documents or otherwise shall be deemed or construed to (i) make Contractor the agent, representative, servant or employee of Owner, or (ii) create any partnership, joint venture, or other association or relationship between Owner and Contractor. Any approval, review, inspection, direction or instruction by Owner or any party on behalf of Owner in respect to the Work or services of Contractor shall relate to the results Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status or obligation to perform the Work in accordance with the Contract Documents.

5.5 Clean-up and Other Duties.

5.5.1 Contractor shall maintain sufficient labor, and appropriate tools and materials, including, but not limited to, dumpsters, at the Property for the Project, and shall at all times keep the Work, the Project and the Property free from accumulation of waste materials, rubbish, dirt, debris and dust. Contractor shall maintain streets leading to the Project and used as a means of ingress or egress in a clean condition, and shall remove from these areas spillage and tracking arising from the performance of the Work, and shall promptly repair any damage to same. Contractor shall minimize the impact and effect of the Work on properties adjoining and nearby the Property, and shall take all necessary or desirable precautions to prevent any debris including, but not limited to, fugitive dust, from entering or interfering with any adjacent or nearby property.

5.5.2 Upon Substantial Completion of the Work, Contractor shall in accordance with Governmental Requirements: (i) remove all debris, rubbish, unused materials, tools, construction equipment and machinery from the Property, and (ii) leave the Property and improvements in a neat, clean and broom-clean condition.

5.5.3 If Contractor fails to clean up as provided in the Contract Documents, Owner may do so and upon written notice to Contractor charge the cost to Contractor.

5.5.4 Contractor shall not directly contact or communicate with any neighbor or resident in the vicinity of the Project, but shall promptly forward to Owner all communications from or relating to any such person.

5.6 Secure Project/Security/Safety of Personnel.

5.6.1 Contractor shall secure, protect, and be responsible for the safety of the Work, materials, supplies, tools and equipment and all other improvements and personal property for the Project, whether or not incorporated into the Work or located at the Property. Contractor shall bear the cost of, and be liable for, and promptly shall remedy, all loss and damage to any of them from any cause whatsoever (even if not covered by Contractor's insurance), except loss or damage caused solely by Owner's gross negligence or willful misconduct. Owner will not in any manner be responsible for any such loss or damage (or for the cost of insurance against such loss or damage), except loss or damage caused solely by Owner's gross negligence or willful misconduct.

5.6.2 Contractor shall provide all necessary or desirable measures for security at and on the portion of the Property where the Work is being performed in connection with the Project, including, but not limited to, fences, gates, cameras, and patrols. Without limiting any of Contractor's obligations herein or under the Contract, Owner may elect to provide and/or maintain security of its own choosing for the whole or portions of the Work and/or the Property and/or adjacent property, but Owner shall not have any obligation to do so and shall not have any responsibility or liability of any kind to any party or person relating to Owner's obtaining or failing to obtain any security for the Property.

5.6.3 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, and without limiting the foregoing, shall take all reasonable precautions for the safety of, and shall provide for all reasonable protections to prevent injury to, any of its employees, Project Architect, Subcontractors, Vendors, and all other persons (including, without limitation, Owner, Owner's Lenders, and Other Builders) on the portion of the Property where the Work is being performed in connection with the Project or adjacent to or nearby the same. In connection with the Work, Contractor shall give any required notices and otherwise comply with Governmental Requirements bearing on the safety of persons or property or their protection from damage, injury or loss. Contractor shall also, and shall cause all Subcontractors and Vendors to, comply with Owner's "**Project Construction Safety and Health Guidelines**" in the form attached hereto as Exhibit J.

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

5.8 Mechanic's Liens; Stop Notices. If any mechanics', materialmen's or other liens or stop notice claims (other than a lien or stop notice which is the result solely of Owner's failure to issue payment to Contractor in breach of this Agreement) are filed by anyone in relation to the labor, services, materials or supplies rendered or supplied to the Work, Contractor, at its sole cost and expense, shall obtain a bond in an amount and with a

bonding company satisfactory to Owner in Owner's and Owner's Lenders' sole and absolute discretion, and file with the appropriate court a petition to substitute the bond for such lien or claim within five (5) working days after receipt of notice thereof (or such lesser period in any loan documents relating to Owner's Lenders), and obtain a court order within thirty (30) calendar days after filing such petition, allowing substitution of the bond for such lien or claim. Owner shall have the right to withhold an amount equal to twice the sum of all such liens and claims from amounts otherwise payable by Owner to Contractor under the Contract, regardless of whether the 30-calendar day period has expired. Owner shall give Contractor prior written notice of any such withholding. If Contractor fails to have such lien or claim discharged as described above, Owner may (but shall have no obligation to) cause such liens and claims to be discharged and the expense of discharging, including, without limitation, any payment by Owner, the amount of any obligation assumed by Owner by bond, indemnity, or otherwise, as well as Owner's attorneys' fees and costs in connection therewith, shall promptly be repaid to Owner by Contractor with interest thereon per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date such expenses, fees or costs were incurred by Owner until the date repaid by Contractor.

5.9 Contractor's Familiarity.

5.9.1 Execution of this Agreement by Contractor is Contractor's representation and warranty to Owner that the Contract Documents that exist as of the Effective Date (including, without limitation, the Project Design Criteria and Drawings) are, full and complete, and that the same are now sufficient to enable Contractor to determine the Contract Sum, to construct the Work in accordance with the Contract, and otherwise timely to fulfill all of its obligations under the Contract, including, but not limited to, Contractor's obligation to complete the Work for an amount not in excess of the Contract Sum on or before the Scheduled Completion Date. Contractor further represents and warrants to Owner that Contractor: (i) is highly experienced with construction projects substantially similar to the Work, (ii) has had ample time to familiarize itself with, and has fully reviewed and familiarized itself with (and will continue to review and familiarize itself with) (a) the Contract Documents, including, without limitation, the Project Design Criteria and Drawings, (b) the Governmental Requirements, and (c) the Technical Studies and Reports, and (iii) has visited and examined the Property (and will continue to do so), has investigated all physical, legal, and other conditions affecting the Work, and fully is familiar with all of the conditions on, under, about and affecting the portion of the Property on which the Work will be performed in connection with the Project.

5.9.2 Contractor has taken (and will continue to take) field measurements and verified (and will continue to verify) field conditions, and carefully compared such field measurements and conditions and other information known to Contractor with the Contract Documents and has not found any omissions, errors or discrepancies. Contractor's duty to carefully study and compare Contract Documents with each other and with field measurements and report to Owner, in writing, any errors, inconsistencies, discrepancies, ambiguities, conflicts or omissions is ongoing and extends for the full term of the Work, and Contractor shall not proceed on that portion of the Work where any such errors, omissions, inconsistencies, ambiguities, discrepancies, or conflicts are found without prior written instruction from Owner.

5.9.3 Without limiting the generality of the foregoing, Contractor specifically represents and warrants to Owner that it has satisfied itself as to: (1) the nature, location, and character of the Work and the portion of the Property on which the Work will be performed in connection with the Project, including, without limitation, all improvements and obstructions on and under such portion of the Property, both natural and man-made; (2) the nature, location, and character of the general area in which the Project is located, including, without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to achieve Completion of the Work pursuant to and in accordance with the Contract and for no greater than the Contract Sum and by the Scheduled Completion Date.

5.9.4 In connection with the foregoing, Contractor represents and warrants to Owner that it (i) has determined the Contract Sum with respect to all of the foregoing, and (ii) has no knowledge of any errors, inconsistencies, discrepancies, omissions, ambiguities, or conflicts in any or all of, or between or among any of the Contract Documents, and that if it becomes aware of any such errors, inconsistencies, discrepancies, omissions, ambiguities, or conflicts, it promptly will notify Owner in writing and take appropriate steps (with the prior written approval of Owner) to address the same.

5.9.5 Further articulation of the Contract Documents shall not be the basis for any change to the Contract Sum or Scheduled Completion Date. If Contractor encounters any unforeseen conditions during the course of the Work, it shall promptly notify Owner in writing and Changes in the Work, if any, shall be made by Change Order. Any conditions that Contractor reasonably should have foreseen given Contractor's status as a Contractor experienced with Construction projects of similar size and complexity as the Work and Contractor's review of the Property, the Contract Documents, the Technical Studies and Reports, shall not be a basis for an increase in the Contract Sum or extension of the Scheduled Completion Date. The failure of the Contractor fully to acquaint itself with any provision of the Contract Documents or other matter shall not in any way relieve it from responsibility for performing the Work in accordance with the Contract Documents, and for the Contract Sum and by the Scheduled Completion Date.

5.9.6 Neither Owner nor any person on behalf of Owner has made representations or warranties, oral or written, to Contractor or any of its agents with respect to the conditions of the Property or improvements thereon, or regarding the completeness, correctness, or adequacy of any Technical Studies and Reports or Contract Documents.

5.10 Record Drawings. At Substantial Completion of the Work and as a condition precedent to Final Payment, Contractor shall furnish to Owner record (i.e., "as built") drawings showing the effect of Change Orders and Construction Change Directives, any Change in the Work not authorized by Change Order or Construction Change Directive, general construction, mechanical, electrical, and all other Work, and indicating the Work as actually completed and installed. These as-built drawings shall consist of carefully drawn markings on a set of reproducible mylar of the Plans and Specifications (and electronically when available). Contractor shall maintain at the Property one current record copy of the Plans and Specifications, Change Orders, Construction Change Directives, approved

Submittals and other modifications, in good order and marked to record changes and selections made during construction.

5.11 Shop Drawings. Contractor shall prepare or cause to be prepared and review, approve and submit to Owner shop drawings, product data, samples and similar submittals (“**Submittals**”) required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or Other Builders at the Property. Submittals made by Contractor which are not required by the Contract Documents and/or are not submitted in compliance with the Contract Documents may be returned without action. Contractor shall perform no portion of the Work requiring a Submittal unless such Submittal has been approved in writing by Owner. Such Work shall be in accordance with the Submittals as approved by Owner. In submitting shop drawings, product data, samples and similar Submittals, Contractor represents and warrants that it has determined and verified materials, field measurements and field construction criteria related to them, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by any approval by Owner of any Submittal unless Contractor has specifically informed Owner in writing of such deviation at the time of the Submittal, and Owner has given prior written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar Submittals by reason of any approval by Owner.

5.12 Subcontractors.

5.12.1 Contractor hereby represents and warrants that it is (and will at all times while performing Work be) licensed and qualified to act in the capacity of a general contractor under the laws of the State of Nevada in connection with the Project and that it will contract with all Subcontractors as are necessary for Completion of the Work and that all Subcontractors will be properly licensed and qualified to act in the capacity of subcontractors under the laws of the State of Nevada at all times while performing Work in connection with the Project. Contractor shall furnish to Owner in writing, for prior written acceptance by Owner prior to the date on which Contractor awards or executes any subcontracts, the names of qualified, responsible, and reputable Subcontractors proposed for the principal portions of the Work. Contractor shall not contract with any Subcontractor if such Subcontractor is or has been rejected by Owner. Contractor shall not be required to contract with any Subcontractor against whom it has a reasonable objection. Contractor shall not make any substitution for any Subcontractor that has been accepted by Owner in writing, unless such substitution is first accepted by Owner in writing. At the request of Owner, Contractor shall provide copies of the licenses for Contractor and any Subcontractor to Owner. Contractor shall not permit any Subcontractor to perform Work on the Project without first obtaining a copy of such Subcontractor’s valid license to perform such Work.

5.12.2 All Work performed for or on behalf of Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between Contractor and such Subcontractor (and where appropriate, between Subcontractors and their Subcontractors and/or Vendors) which shall contain provisions that: (i) preserve and protect the rights of Owner under the Contract with respect to the Work to be performed under the

subcontract, so that the subcontracting of the Work shall not prejudice such rights and shall require that such Work be performed in accordance with the requirements of the Plans and Specifications and other Contract Documents and for the provision of information for Contractor to comply with its obligations under the Contract; and (ii) require that the subcontract and any purchase orders may not be assigned by Subcontractor or any Vendor but permit the assignment of the subcontract and any purchase orders by Contractor to Owner or a third party designated by Owner, including Owner's Lenders, and such assignees shall have the right to enforce such subcontracts and purchase orders.

5.12.3 All subcontract agreements shall conform to the requirements of the Contract Documents. Contractor shall not waive or fail to exercise any material or significant right or remedy under any subcontract or waive any material or significant default under any subcontract without Owner's prior written approval. Contractor shall direct and supervise each Subcontractor fully and shall have full and complete authority with respect to such direction and supervision subject to the terms of the Contract Documents. Notwithstanding the exercise of any of Owner's rights of approval or disapproval in the subcontracting process or the process of managing subcontracts, Contractor shall be responsible and liable to Owner for all acts and/or omissions of Subcontractors and/or Vendors.

5.12.4 Contractor hereby assigns to Owner all its interest in all subcontract agreements and purchase orders now existing or hereafter entered into by Contractor for performance of any part of the Work, which assignment will be effective only upon acceptance by Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in said writing. Such assignment may not be withdrawn by Contractor prior to the end of the Warranty Period (as defined in Section 12.2 of this Agreement), and Owner may accept said assignment at any time prior to the end of the Warranty Period. Upon such acceptance by Owner: (i) Contractor shall promptly furnish to Owner the originals of the designated subcontract agreements and purchase orders, and (ii) Owner shall be required to compensate the designated Subcontractor(s) or Vendor(s) only for compensation accruing to same for Work done or materials delivered from and after the date as of which Owner accepts in writing assignment of such subcontract agreement(s) or purchase order(s). All sums due and owing by Contractor to the designated Subcontractor(s) or Vendor(s) for work performed or material supplied prior to the date as of which Owner accepts in writing assignment of the subcontract agreement(s) or purchase order(s), and all other obligations of Contractor accruing prior to Owner's written acceptance of such assignment, shall constitute a debt and an obligation solely between such Subcontractor(s) or Vendor(s) and Contractor, and Owner shall have no liability with respect to such sums or any other obligations of Contractor.

5.13 Cooperation.

5.13.1 Contractor acknowledges that a portion of the Project will attach to and/or be joined into the Casino Improvements. Accordingly, in connection with the Work on the Project, Contractor shall cooperate fully with Owner and Other Builders of the Casino Improvements and shall schedule, coordinate and sequence its Work with that of Owner and the Other Builders in order to minimize the (i) cost of the work for Owner and such Other Builders and (ii) the time needed to achieve Substantial Completion of the Work.

Upon Owner's request, Contractor shall at all times provide the Other Builders with access to the Work in preparation and progress wherever located and with any and all information concerning the Project and its progress, including, without limitation, the Project Construction Schedule and the Plans and Specifications (as the same may be amended from time to time), especially as they relate to the portions of the Work that will be attached to and/or joined into the Casino Improvements. Contractor further shall afford the Other Builders a reasonable opportunity for the introduction and storage of their materials and equipment on the portion of the Property relating to the Project and shall permit the execution of their work on the portion of the Property relating to the Project, and Contractor shall connect its Work with theirs as and when required under the Contract Documents. If any part of Contractor's Work depends in part for proper execution or results upon the work of the Other Builders (or vice versa), Contractor shall, prior to proceeding with such Work, promptly report in writing to Owner any apparent discrepancies or defects in such other work or activities that would render it unsuitable for proper execution or results or incompatible with Contractor's Work. Failure of Contractor to do so shall constitute an acknowledgement and agreement by Contractor that the Other Builders' completed or partially completed work is fit and proper to receive Contractor's Work and such construction and/or activity is fully compatible with Contractor's Work. Should Contractor or its Subcontractors, Vendors or any other person performing Work for or on behalf of Contractor on the Project cause any damage or loss to the work of the Other Builders, Contractor shall promptly remedy such damage or loss. Owner also shall require the Other Builders promptly to remedy any damage or loss to the Work of the Contractor caused by such Other Builders or their subcontractors or any other person performing work on the Casino Improvements for or on behalf of such Other Builders. Notwithstanding the foregoing, any costs caused by defective work shall be borne by the party responsible therefor.

5.13.2 Contractor and its Subcontractors and Vendors shall use all best efforts to work without causing labor disharmony, coordination difficulties, delays, disruptions, impairment of guarantees or interferences of any other obligations of any of Owner's other contractors, engineers, inspectors and consultants, including, without limitation, Other Builders.

5.13.3 Contractor will not engage in, nor commit its personnel to engage in, any other projects while performing Work on the Project to any extent that such other projects may materially and adversely affect the quality or efficiency of the Work required to be performed by Contractor in connection with this Project or which will otherwise be detrimental to the carrying on and completion of this Project.

6. RIGHTS OF CONTRACTOR.

6.1 General Authority and Powers. Subject to the provisions of this Agreement and the other Contract Documents, Contractor shall have full power and authority to:

6.1.1 Specify all techniques and sequences of construction, furnish and select all labor, construction equipment, tools, machinery, and all other facilities and services appropriate, necessary or desirable for the proper completion of the Work, and to

execute and deliver contracts and agreements with Subcontractors and Vendors (subject to Owner's prior written approval to the extent required by this Agreement) for the performance or provision of every service or supply deemed by Contractor to be necessary or appropriate for the construction of the Work in accordance with the Contract Documents.

6.1.2 Dismiss Subcontractors, Vendors and employees of Contractor who, in Contractor's reasonable opinion, are not properly performing the tasks which shall have been assigned to them.

6.1.3 Perform, supervise, or direct any and all other tasks which Contractor shall reasonably deem to be necessary or appropriate to facilitate the construction of the Work in accordance with the Contract Documents.

Notwithstanding any other provision of the Contract, including, but not limited to, this Article 6, Contractor and its Subcontractors and Vendors shall access the Project and confine all activities and Work on the Project to the areas as directed by Owner.

6.2 Selection of Materials; Variation from Plans. Unless otherwise specified or provided for in the Contract Documents or in any written notice from Owner (which shall thereafter become part of the Contract Documents to the extent expressly so provided in such written notice), Contractor shall select all materials, appliances, mechanical devices, supplies and equipment to be incorporated into the Work. Contractor shall promptly notify Owner in writing if any items in the Contract Documents shall not be readily available, and Owner shall have the right (but not the obligation) to designate an available substitute item pursuant to Change Order. Nothing in this Section 6.2 or elsewhere in this Agreement shall derogate from Contractor's responsibility to select, order, and timely purchase such items. If Contractor does not timely order or arrange for delivery of items or materials required for the Work, Owner may (but is not obligated to) arrange for delivery or order such items and materials and in such event the Contract Sum shall be reduced by the cost of such items and materials arranged for or ordered by Owner.

7. RIGHTS OF OWNER.

7.1 Generally. Solely Todd Nisbet and Darrell Richards shall have the authority to act on behalf of Owner under this Agreement, subject to Owner's right to withdraw, substitute or replace Todd Nisbet and/or Darrell Richards, with notice to Contractor. Contractor shall take direction and instruction from Todd Nisbet or Darrell Richards on behalf of Owner, with regard to the Property, Work and Project. Notwithstanding any provision in this Agreement to the contrary, Owner shall have the right to require Contractor to remove any employee of Contractor (including, without limitation, the Project Manager, General Superintendent, Project Superintendent, Assistant Superintendent, Layout Man, Shaping Crew, Irrigation Foreman) from the Project and to terminate any Subcontractor and/or Vendor whose work is not deemed satisfactory by Owner, who is abusive of Owner's property, who employs vile language, who is disorderly, or as to whom Owner has any other reasonable objection.

7.2 Partial Occupancy Or Use. Owner may occupy or use any completed or partially completed portion of the Work at any stage, including opening

portions of the Project to the public. Notwithstanding any other provision of the Contract, any such partial occupancy or use shall not: (i) constitute final acceptance of any Work, (ii) relieve Contractor of responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, or from any other unfulfilled obligations or responsibilities under the Contract Documents, (iii) commence any warranty period under the Contract Documents (provided Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy), or (iv) entitle Contractor to any Retainage. Contractor and Owner shall cooperate in all aspects of Owner's partial use and occupancy of the Work and Project, including, without limitation, scheduling, allocation of costs of utilities, access and storage, any cost impacts as may mutually be agreed upon between Owner and Contractor, and all other arrangements. Unless and until Owner issues a Certificate of Substantial Completion pursuant to Section 13.10 of this Agreement for such portion of the Work partially occupied or used by Owner, Owner shall not be obligated to pay Retainage relating to such portion of the Work at that time partially used or occupied by Owner, and it is the express intent of Contractor and Owner that Contractor waive the benefits of Section 624.620 of the Nevada Revised Statutes.

7.3 Owner's Right to Award Separate Contracts. Owner reserves the right to award separate contracts to persons other than Contractor (including, but not limited to, Other Builders) or to use its own forces to perform work or other activities on the Project (including, without limitation, pursuant to Article 3 and Sections 8.3 and 8.5 of this Agreement or otherwise) or on the Property.

8. CONTRACTOR'S DEFAULTS AND OWNER'S REMEDIES.

8.1 Contractor's Defaults. Each of the following occurrences is a default of Contractor under the Contract:

8.1.1 The failure of Contractor to perform the Work in a diligent, expeditious, workmanlike and careful manner strictly in accordance with the Contract, including, but not limited to, in compliance with all Governmental Requirements, or any other failure of Contractor to comply with the Contract or to perform any material obligations under the Contract (including, without limitation, the failure of Contractor to pay timely Subcontractors and Vendors for Work performed or material supplied for the Project or the failure of Contractor to achieve Substantial Completion of the Work or Completion of the Work within the time periods prescribed by Section 4.2.1 of this Agreement), unless Contractor takes and completes corrective action satisfactory to Owner, in Owner's sole and absolute discretion, with respect to any such failure within five (5) calendar days following written notice from Owner specifying the failure or other default (unless a different, specific time period for Contractor's performance is set forth in this Agreement, in which case Contractor shall have such specified period in lieu of such five (5)-calendar day period within which to take and complete corrective action); provided, however, that if the nature of Contractor's failure or default (excluding any failure to pay Subcontractors or Vendors, any failure to achieve Substantial Completion of the Work or Completion of the Work within the time periods prescribed by Section 4.2.1 of this Agreement, and any failure or default of the type referred to in Sections 8.1.2, 8.1.3, 8.1.4, 8.1.5 or 8.1.6 of this Agreement) is such that corrective action cannot be reasonably completed within the aforesaid five (5)-calendar day period, then Contractor shall (unless such default or failure is

a second occurrence in which event Contractor shall not have any right to cure except within said five (5)-calendar day period) not be in default under this Agreement if it commences corrective action within such five (5)-calendar day period and thereafter diligently completes such corrective action within the shortest feasible time (but in no event longer than sixty (60) calendar days) and in a manner satisfactory to Owner, in Owner's sole and absolute discretion; and provided, further, that no cure period shall apply in the case of any failure or default which, by its nature, cannot be cured.

8.1.2 The making by Contractor of any general assignment for the benefit of creditors; the filing by or against Contractor of a petition to have Contractor adjudged a bankrupt or be discharged of its debts or of a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Contractor, the same is dismissed within ten (10) business days of the filing; or the appointment of a trustee or receiver to take possession of all or a significant portion of Contractor's assets.

8.1.3 The recordation of a mechanics' or materialmen's lien on the Property or the Work by a Subcontractor or Vendor or any other person performing Work relating to the Project, provided that Contractor, at its sole cost and expense, does not obtain a bond in an amount and with a bonding company satisfactory to Owner in Owner's and Owner's Lenders' sole and absolute discretion, and file with the appropriate court a petition to substitute the bond for such lien within five (5) working days after receipt of notice of such lien (or such lesser period in any loan documents relating to Owner's Lenders), and obtain a court order within thirty (30) calendar days after filing such petition, allowing substitution of the bond for such lien.

8.1.4 Failure of Contractor for three (3) successive calendar days or an aggregate of five (5) calendar days in any thirty (30) calendar day period (other than Sundays or national holidays), to have an adequate number of Subcontractors at the Property who are actively and productively working on the Project, unless Excusable Delays exist for such absence.

8.1.5 Failure of Contractor for five (5) calendar days following a request from Owner to provide Owner with evidence of satisfactory funds (and a perfected first priority lien therein) available to make up any overage with regard to the Contract Sum as required under Section 2.2 of this Agreement.

8.1.6 Owner's good faith belief that Contractor will not complete the Work within the time periods required under the Contract Documents or within the Contract Sum.

8.2 Owner's Remedies. In the event of any default of Contractor specified under Section 8.1 above (which is not an all-inclusive list of defaults), or any other default of or failure to perform by Contractor under the Contract, which is not cured within the express applicable time period (if any), set forth in Sections 8.1.1 through 8.1.6 above, Owner may, without prejudice to any other rights or remedies of Owner:

8.2.1 terminate the Contract, reduce the scope of Contractor's services, or suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine by written notice specifying the effective date of such termination, reduction, suspension, delay or interruption; provided, however, the right of Owner to terminate the Contract or reduce, suspend, delay, or interrupt the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity. If Owner elects to delay, suspend or interrupt the Work or reduce the scope of Contractor's services due to a default by Contractor, Contractor shall not be entitled to any further payments under the Contract unless and until such default is cured or Owner and Contractor reach mutual agreement in writing on a resolution of such default, nor shall Contractor be entitled to the benefits under Sections 8.3 or 8.5 of this Agreement with regard to any such termination, reduction, suspension, delay or interruption. No increase or upward adjustment shall be made in the Contract Sum for any such termination, reduction, suspension, delay or interruption, and in no event shall Owner be liable for, or shall Contractor or any Subcontractor, Vendor or any other party performing any Work on the Property be entitled to, any lost opportunity, lost profit or consequential damages claimed or alleged by Contractor, any Subcontractor, Vendor or any other party performing any Work on the Property and relating to any such termination, reduction, suspension, delay or interruption. If Owner first elects to suspend, delay or interrupt the Work, Owner also may at any time thereafter elect to terminate the Contract. Upon termination of the Contract, Owner may: (a) enter upon the Property and take possession of all materials of any kind that have been paid for, that are to be incorporated into the Work, or to which Owner has any ownership rights or interest, and finish the Work and provide the materials therefor or contract with others to do so by whatever method Owner deems expedient; (b) accept assignment of such subcontracts or purchase orders, if any, as Owner may specify in writing; and/or (c) pursue any other rights or remedies provided for under the Contract Documents or available at law, in equity or otherwise. In case of such termination, Contractor shall not be entitled to receive any further payment unless and until the Work is finished, at which time Contractor shall be entitled, subject to the terms of the Contract Documents, to receive only such additional payments under the Contract, if any, as are provided in Section 8.6 of this Agreement. If a court determines that reduction, suspension, delay or interruption of the Work or termination of Contractor pursuant to this Section 8.2 was wrongful, such reduction, suspension, delay or interruption of the Work or termination will be deemed converted to a suspension, delay, interruption or termination for convenience pursuant to Section 8.3 or 8.5, as the case may be, of this Agreement, and Contractor's exclusive remedy for wrongful reduction, suspension, delay or interruption of the Work or termination shall be limited to the recovery of the payments required upon a termination for convenience as set forth in Section 8.3 of this Agreement or the adjustment, if any, in the Contract Sum and/or Scheduled Completion Date required under Section 8.5 of this Agreement, as the case may be; or

8.2.2 cure such default, and the cost of curing defaults, including, but not limited to, compensation for any additional services and any other expenses arising from or related to such default (including, but not limited to, those listed in Section 8.6 of this Agreement) shall upon written notice to Contractor be deducted from any payments then or thereafter due to Contractor under the Contract Sum. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner upon Owner's demand and such amounts shall bear interest per annum at the prime

rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

8.3 Termination for Convenience. Owner, for convenience or otherwise, may terminate Contractor's services at any time upon five (5) calendar days prior written notice to Contractor. If Owner terminates Contractor's services under this Section 8.3 (and without limitation of any of Owner's rights with respect to a default or a breach by Contractor), Owner's sole obligation and liability to Contractor shall be to reimburse Contractor (and Contractor's exclusive remedy shall be to receive reimbursement) for (i) the Cost of the Work incurred (and not cancelable or refundable) by Contractor for Work properly performed by Contractor up to the date of termination and approved by Owner in accordance with the Contract, but not in excess of the portion of the Contract Sum equitably allocable to such Work (and less the portion of the Contractor's fee to be paid pursuant to clause (ii) below) based on the value the percentage of such properly performed and completed Work by Contractor bears to the total value of the Work included within the Contract Sum, plus (ii) a pro rata portion of the Contractor's fee (as set forth on the Owner-approved Schedule of Values) based on the percentage obtained by dividing the Work properly performed and completed through the effective date of such termination for convenience by the total Work required to be performed by Contractor under this Agreement, less all payments previously made to Contractor under the Contract and any amounts owed by Contractor to Owner under the Contract. Any sum due to Contractor pursuant to the preceding sentence shall be promptly paid by Owner, and any overpayment shall be promptly refunded by Contractor to Owner.

8.4 Contractor's Cooperation Following Termination. If Owner terminates this Agreement pursuant to a right set forth in the Contract Documents, Contractor, upon receipt of Owner's termination notice, shall: (i) place no further orders or subcontracts for materials, equipment, services, or facilities, (ii) discontinue the Work on that date specified in the notice and thereupon vacate the Property and remove all equipment and materials owned by Contractor therefrom, (iii) promptly execute or cause the execution of any and all required documents and assignments of right to Owner in connection with the termination of Contractor's Work and (iv) deliver to Owner all such documents and all materials, equipment, or other items or things for whose cost the Contractor requests or has requested reimbursement under this Agreement. Owner, however, shall not be obligated to pay or reimburse Contractor for any costs for which Contractor may be liable to Subcontractors or Vendors on account of cancellation, termination, or restocking charges of any kind that are due to Contractor's failure to bind such Subcontractors and Vendors to the terms and conditions of this Contract relating to termination. Any of Contractor's equipment, machinery and supplies not removed from the Property within seven (7) calendar days from the date of Owner's request may be removed and stored by Owner at Contractor's sole risk and expense.

8.5 Suspensions By Owner.

8.5.1 Owner's Right To Suspend For Convenience. Owner may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as Owner elects (and without limitation of any of Owner's rights with respect to a breach or default by Contractor) by

giving Contractor five (5) calendar days' written notice specifying which portion of the Work is to be suspended, delayed, reduced or interrupted and the effective date of same. Such suspension, delay, reduction or interruption shall continue until Owner terminates the same by written notice to Contractor. No such suspension, delay, reduction or interruption by Owner shall constitute a breach or default by Owner under the Contract Documents. Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

8.5.1.1 **Payment Upon Suspension For Convenience.** In the event of a suspension, delay, or interruption for convenience by Owner, any necessary equitable adjustment shall be made by Change Order pursuant to Sections 3.1.2 and 4.2.5 of this Agreement (i) for an unavoidable increase, if any, in the Contract Sum, and/or an extension, if necessary, in the Scheduled Completion Date, caused solely by such suspension, delay or interruption ordered by Owner for convenience, but only if and to the extent such delay, suspension or interruption exceeds a period of twenty (20) consecutive calendar days following commencement of the construction phase of the Work, and (ii) for any reduction in the Contract Sum, and acceleration of the Scheduled Completion Date, relating to any such suspension, delay, interruption or reduction by Owner under this Section 8.5. No increase or upward adjustment shall be made in the Contract Sum for any such suspension, delay, interruption or reduction, and in no event shall Owner be liable for, or shall Contractor or any Subcontractor or Vendor or any other person performing any Work be entitled to, any lost opportunity, lost profit or consequential damages as a result of any suspension, delay, interruption or reduction by Owner under this Section 8.5.

8.5.1.2 Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay, or interruption by another cause for which Contractor or a Subcontractor or Vendor is responsible.

8.6 Payment to Contractor Upon Termination for Cause.

8.6.1 If Owner terminates the Contract for Contractor's breach or default (and subject to the satisfaction by Contractor of the conditions set forth in Section 8.6.3 below), Contractor shall thereafter be entitled, as and when provided in Section 8.2 of this Agreement, to reimbursement only of such amount (if any), by which:

8.6.1.1 the Cost of the Work for Work actually and properly completed by Contractor (and not cancelable or refundable) in accordance with this Agreement and the other Contract Documents up to the date of such termination (but not to exceed the portion of the Contract Sum fairly allocable to the Work so completed), exceeds:

8.6.1.2 the total of (i) all payments theretofore made to Contractor under the Contract Documents, and (ii) all damages and other costs and expenses incurred by Owner, directly or indirectly, arising out of or as a result of Contractor's breach or default, including, without limitation: (1) the cost of any additional consultants' services, or managerial and administrative services required thereby, (2) any additional costs incurred

in retaining another Contractor or other Subcontractors, (3) any additional financing, interest or fees and other costs that Owner must pay, including by reason of a delay in completion of the Work, Owner's termination of Contractor and the finishing of the Work by another method after such termination, (4) attorneys' fees and expenses, and (5) any other damages, costs, and expenses Owner may incur as a result of Contractor's breach or default, including if Owner elects to complete the Project after such termination, the amount by which the actual cost of completing the Project (including the actual cost of components of the Project that are not part of the Work) is greater than what such actual cost (including the actual cost of the components of the Project that are not part of the Work) would have been if Contractor had fulfilled its obligations under the Contract Documents, and if Owner elects to not complete the Project after such termination, all damages suffered by Owner arising out of Contractor's breach of this Agreement.

8.6.2 If the amount referred to in Section 8.6.1.2 of this Agreement exceeds the amount referred to in Section 8.6.1.1 of this Agreement, Contractor shall pay the difference to Owner immediately upon Owner's demand and such amount shall bear interest per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

8.6.3 Any reimbursements or payments to be made to Contractor under this Section 8.6 are expressly conditioned on (i) Contractor previously having delivered to Owner possession and unfettered access to the Work and Property and all materials, equipment, tools and the like (undamaged and in good condition) which Owner has paid for and/or been billed for; (ii) Contractor previously having delivered to Owner all the items listed in, and having performed all the obligations described in, Sections 2.7.5.1 through 2.7.5.12 of this Agreement; and (iii) Contractor previously having complied with such other obligations under the Contract Documents as Owner and/or Owner's Lenders reasonably require.

8.7 Cumulative Remedies. The rights and remedies of Owner under this Article 8 shall be non-exclusive, and shall be in addition to all other rights and remedies available to Owner under the Contract or at law, in equity or otherwise.

9. CONTRACTOR'S REMEDIES.

9.1 Contractor's Remedies.

9.1.1 If payment from Owner for a Payment Application (exclusive of amounts properly retained or withheld or in dispute under the Contract), approved by Owner and Owner's Lenders in accordance with this Agreement, has not been received by Contractor within thirty (30) calendar days of the date payment is due pursuant to this Agreement, Contractor may cease work until such payment has been received, in which case the Scheduled Completion Date will be extended by the number of days of the cessation of Work. If payment of undisputed amounts to which Contractor is otherwise then entitled pursuant to the terms of this Agreement are not paid by Owner to Contractor within thirty (30) calendar days after written notice by Contractor (following the 30-calendar day period noted above) that the same are past due, Contractor may terminate this Agreement upon five (5) additional business days' written notice to Owner.

9.1.2 If Contractor terminates this Agreement with cause in accordance with this Agreement, Contractor shall be entitled, as its exclusive remedy, to the recovery of the amounts (if any) to which Contractor would have been entitled had Owner, pursuant to Section 8.3 of this Agreement, terminated this Agreement for convenience effective as of the date this Agreement is so terminated by Contractor. Contractor, notwithstanding any provision of this Agreement or otherwise, shall in no event be entitled to or seek recovery of any other amounts (including, without limitation, consequential damages, lost profits, lost opportunities, overhead, or similar amounts) in the event of any reduction in the scope or scale of the Work or any suspension, delay, interruption or termination thereof, including, but not limited to, under Sections 8.2, 8.3, 8.5 or this Section 9.1 of this Agreement.

10. INSURANCE.

10.1 Owner Controlled Insurance Program.

10.1.1 The Owner, at its expense, has implemented an Owner Controlled Insurance Program (“**OCIP**”) to furnish certain insurance coverages with respect to activities on the Property for the Project. The OCIP will be for the benefit of Owner, Contractor, and Subcontractors of all tiers (unless specifically excluded) who have employees at the Project. Such coverage applies only to Work performed under the Contract Documents at the Property. The OCIP shall not include, and Owner shall not be responsible for providing, any insurance coverages other than those specifically identified in the OCIP Manual (defined in Section 10.1.2 of this Agreement). In addition, the first \$25,000 of each loss or damage covered under the Builder’s Risk Insurance policy, or uninsured losses, shall be paid for by the responsible Contractor or Subcontractor. The Builder’s Risk insurance provided by Owner also does not cover loss of, or damage to, any tools, implements, equipment, scaffolds, form work, machinery, cranes, consumables, office trailers, tool sheds, temporary structures or anything else which is not intended to become a permanent part of the finished Project. Contractor and eligible Subcontractors must provide their own insurance for activities off the Property and automobile liability pursuant to the OCIP Manual, and the costs of such insurance for Contractor and Subcontractors shall be solely Contractor’s and Subcontractor’s responsibility. To the extent Contractor and or any Subcontractor becomes ineligible for the OCIP or is no longer covered by the OCIP, Contractor and such Subcontractor shall provide all required insurance under the OCIP Manual.

10.1.2 Details concerning the OCIP are provided in the “**OCIP Manual**” which is attached hereto as Exhibit K and incorporated herein by this reference, and which has been made available to Contractor and has been or will be made available to its Subcontractors, for use in preparing their bids and estimates and in planning the performance of their Work. Contractor and each Subcontractor will participate in the OCIP established for the Project in accordance with the OCIP Manual. Participation in the OCIP is mandatory but not automatic. Contractor shall, and Contractor shall cause all Subcontractors to, complete all forms, submit the information required and abide by the mandates established in the OCIP Manual. Any exceptions to this requirement must be approved by Owner in writing in advance.

10.1.3 Within 60 days of the date of this Agreement, the Contractor shall provide to the Owner the estimated total cost of insurance for the Project as described in the OCIP Manual. The contract sum will be adjusted pursuant to change order downward to reflect this estimated OCIP credit. At the end of the Project, prior to Final Payment, a final audit will be conducted (the “**OCIP Audit**”) to determine the exact amount of the credit based on the insurance provided under the OCIP, and the Contract Sum will be adjusted pursuant to Change Order downward (but not in any event upward) to reflect the exact amount of the credit determined pursuant to the OCIP Audit. Contractor shall carefully review all Subcontractor and pricing information to ensure that Owner is not required to pay a second time, as part of the Contract Sum, insurance coverages Owner has already purchased under the OCIP. Contractor also shall ensure that the net cost, if any, of any Change Order entered into pursuant to this Agreement excludes any costs for insurance coverages Owner is furnishing under the OCIP, and Contractor shall expressly identify in any Change Order any credits owing to Owner in connection with such Change Order for cost savings to be realized in connection with the Change Order as a result of Owner’s furnishing of the insurance coverages provided under the OCIP.

10.2 Evidence of Coverage.

10.2.1 **Carriers Acceptable To Owner.** All policies required of Contractor and Subcontractors pursuant to this Agreement shall be maintained with insurance carriers that are acceptable to Owner and licensed in the State of Nevada.

10.2.2 **Failure to Comply.** Neither the Contractor nor any of its Subcontractors shall be entitled to receive payment for any Work performed, or to commence operations or Work on the Property or elsewhere until such time as they provide acceptable evidence of compliance with the requirements of this Article 10. Any additional costs or delays caused by or arising out of any failures to comply with this Article 10, including the failure to furnish acceptable certificates of insurance prior to the Date of Commencement, shall be solely the responsibility of Contractor and its Subcontractors.

10.3 Deductibles. If any policy required to be purchased pursuant to this Agreement is subject to a deductible, self-insured retention or similar self-insurance mechanism which limit or otherwise reduces coverage, the deductible, self-insured retention or similar self-insurance mechanism shall be the sole responsibility of Contractor in the event of any loss arising out of the acts or omissions of Contractor, any Subcontractor or vendor or other person performing Work on or at the Project.

10.4 Cooperation by the Parties. Owner and Contractor shall fully cooperate with each other in connection with the collection of any insurance monies that may be due in the event of a loss. Owner and Contractor shall promptly execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining recovery of any such insurance monies.

10.5 Duration. All General Liability, Automobile Liability, Worker’s Compensation and Employer’s Liability insurance required by Owner shall be kept in force without interruption until Completion of the Work. Contractor and its Subcontractors shall maintain completed operations insurance for a period of two (2) years after Completion of

the Work for non-OCIP covered scope. The Builder's All-Risk Insurance shall remain in force until Contractor has achieved Completion of the Work in its entirety in accordance with this Agreement.

11. INDEMNIFICATION.

11.1 Indemnity. To the fullest extent permitted by law, Contractor hereby indemnifies and agrees to protect, defend, and hold Owner, Wynn Resorts, LLC, The Wynn Group, Wynn Design and Development LLC, Valvino Lamore, LLC, and Owner's Lenders and their respective subsidiaries, affiliates, and parent companies, and their respective members, officers, directors, employees, agents, shareholders, trustees, beneficiaries, heirs, administrators, personal representatives, advisors, attorneys, and successors and assigns (collectively "**Indemnitees**" and singularly an "**Indemnitee**") harmless from and against any and all claims, liabilities, obligations, losses, suits, actions, legal or administrative proceedings, damages, costs, expenses, awards, or judgments, including, without limitation, attorneys' fees and costs (whether or not suit is filed) (collectively "**Claims**" and singularly a "**Claim**"), any Indemnitee(s) may suffer or incur or be threatened with, and whether based on statutory, contractual, tort, common law or other theory, that are: (i) imposed by law; (ii) arising, by reason of, or relating directly or indirectly to (a) the death of or bodily injury to any person or persons, including, without limitation, employees of Contractor, (b) injury to property (including loss of use and the Work itself or the Casino Improvements, and including all costs for repair or replacement of Work, materials, supplies or equipment (whether on or off the Property or in transit) and including whether lost, stolen, damaged or destroyed), equipment, or material, including, without limitation, any of the same resulting or arising out of the performance of the Work performed by Contractor or any Subcontractor or Vendor, or any other person performing Work in connection with the Project for, on behalf of, or under the direction of Contractor, (c) violation of or failure to comply with or abide by any Governmental Requirements or variations from the Contract Documents in the actual construction of the Work, (d) any infringement of the rights of any third party, including, without limitation, copyright and patent rights (in connection with which Contractor shall pay all royalties and license fees), (e) any stop notices, mechanics' liens or similar claims relating to any labor, services, materials, goods or equipment, whether provided by Contractor, Subcontractor, Vendor or any other person performing Work in connection with the Project, and (f) any breach or alleged breach of Contractor's warranties, representations, obligations, covenants or agreements set forth in the Contract, and/or (iii) relating to or arising out of or resulting from, directly or indirectly, the performance of the Work, or from any act or omission of Contractor, or any Subcontractor or Vendor, or any other person performing Work in connection with the Project for, on behalf of, or under the direction of Contractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable or responsible at law, in equity, under the Contract Documents or otherwise, regardless of whether or not such Claim is caused in whole or in part by an Indemnitee; provided, however, that such indemnification obligation, as to a respective Indemnitee, shall not extend to Claims to the extent, but only to the extent, that such result from the gross negligence or willful misconduct of such Indemnitee.

11.1.1 The indemnification obligations under this Article 11 or otherwise under the Contract Documents shall apply to and include those Claims arising from the negligent, tortuous, intentional or other acts of the indemnifying parties, and such

indemnification obligations are primary to any insurance in the names of the Indemnitees. Such indemnification obligations shall not be limited in any way by any limitation on the amount or type of insurance coverages carried whether pursuant to the Contract Documents or otherwise, the amount of insurance proceeds available or paid, or any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor or other person or entity under workmen's compensation acts, disability benefit acts or other employee benefit acts.

11.1.2 The indemnification obligations under this Article 11 or otherwise under the Contract Documents also shall not be construed to negate, abridge, or reduce other rights or obligations of Contractor, including, but not limited to, any obligation of indemnity which would otherwise exist at law, in equity, or otherwise in favor of an Indemnitee.

11.1.3 The indemnification obligations under this Article 11 or otherwise under the Contract Documents, including defense costs, shall include all attorneys' fees, investigation costs, expert witness fees, court costs, and other costs and expenses incurred by any Indemnitee. If any Claim occurs or is threatened, Contractor shall promptly notify Owner and shall defend Owner and the other Indemnitees with counsel reasonably acceptable to Owner, at Contractor's expense, unless Owner elects to defend itself, in which case Contractor shall pay for Owner's reasonable defense costs.

11.1.4 Contractor shall use all best efforts to cause all subcontracts, purchase orders or other agreements with Subcontractors or Vendors, or any other person performing Work in connection with the Project for, on behalf of, or under the direction of Contractor, to include the same indemnity as that given by Contractor in this Article 11 in favor of the Indemnitees.

11.2 Survival of Indemnification Provisions. The indemnification obligations set forth in this Article 11 shall apply irrespective of whether or not any Subcontractors or Vendors obtain or fail to obtain any required insurance coverages, shall apply during the performance of the Work, and shall survive any termination of the Contract or the Completion of the Work.

12. WARRANTY OBLIGATIONS.

12.1 Contractor's Warranty. Contractor guarantees and warrants to Owner that (a) the Work, whether performed by Contractor's own personnel or by any Subcontractors or Vendors, shall be first class in quality, free from all faults and defects whatsoever (including, without limitation, patent, latent or developed defects or inherent vice), and in strict conformance with the Contract Documents and the highest standard for construction practices and quality applicable to first class, championship golf course, and (b) all materials, appliances, mechanical devices, supplies, and equipment incorporated into the Work shall be new and first class in grade and quality and shall strictly meet the specifications and requirements set forth in the Contract Documents. If requested by Owner at any time and from time to time, Contractor will furnish satisfactory evidence to Owner as to the kind and quality of materials, appliances, mechanical devices, supplies and equipment incorporated or to be incorporated into the Work. All Work not conforming to the

requirements of this Section 12.1 (including, without limitation, substitutions or deviations not properly approved and authorized by Owner in writing by Change Order), shall be considered defective.

12.2 Contractor's Warranty Period. While Contractor, Subcontractors and Vendors shall be responsible for strict compliance with the requirements of Section 12.1 above throughout the course of the Work, the "**Warranty Period**" shall commence upon Final Payment and shall extend for a period of twelve (12) months, from the date of Final Payment or for such longer period as may be set forth in an applicable manufacturer's warranty or prescribed under Governmental Requirements or otherwise (the "**Warranty Period**"). Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents or under applicable law, in equity or otherwise, or reduce the period of any other similar warranty or guaranty that may apply at law or otherwise to the Work. Establishment of the time periods as described in this Article 12 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

12.3 Compliance With Contract Documents. Upon receipt of Owner's written notice (whether during the course of the Work, during the Warranty Period, or during any longer period of time as may be prescribed by Governmental Requirements or otherwise), Contractor shall, at Contractor's sole cost and expense and at no cost to Owner, promptly perform all corrective services (including, without limitation, furnishing all labor, materials, equipment and other services at the Property and elsewhere) to Owner's satisfaction as may be necessary to remedy any defective workmanship or omissions in the Work, including, without limitation, promptly correcting or replacing any Work rejected by Owner or which is incomplete, defective or fails to conform strictly to the Contract Documents, whether observed before or after Completion of the Work and whether or not fabricated, installed, or completed. Without in any way limiting the foregoing, if within twelve (12) months after Final Payment, or within such longer period of time as may be applicable, any of the Work is found by Owner not to be in accordance with the Contract Documents or Governmental Requirements or otherwise defective or incomplete, Contractor shall correct and/or replace it promptly after receipt of a written notice from Owner to do so. Contractor's compliance with its obligations as stated in this Article 12, and Owner's acceptance of such corrective services, shall at all times be determined by ascertaining whether Contractor has achieved strict compliance to Owner's satisfaction with both the written and inferable requirements contained in the applicable Contract Documents approved by Owner and Governmental Requirements.

12.4 Warranty Costs. All costs incurred by Contractor in fulfilling Contractor's remedial warranty obligations as set forth in this Article 12 shall be solely Contractor's responsibility, including, without limitation, costs for additional testing and inspections and compensation for the services of other professionals or consultants made necessary thereby. Contractor also shall, as part of Contractor's warranty and guarantee at Contractor's own cost and expense, repair or replace any other damaged components, material, finishes, vehicles and other Work or portions of the Project or other property,

including, without limitation, the Casino Improvements, damaged, affected or otherwise made necessary by or resulting from such defective, non-conforming or incomplete Work, to return the same to their original condition.

12.5 Timeliness of Corrective Services. To the extent possible, Contractor shall fully perform all warranty and corrective services to Owner's satisfaction within five (5) calendar days of the receipt of Owner's written notice of defective workmanship. If the corrective services require more than five (5) calendar days for completion, Contractor shall submit, within five (5) calendar days of receipt of Owner's written notice, a comprehensive written proposal itemizing all corrective actions necessary which Contractor is prepared to and shall immediately undertake and diligently pursue to enable the Work to achieve strict compliance with the latest Contract Documents, including the latest Plans and Specifications. In performing such corrective Work, Contractor shall perform its Work so as to cause the least inconvenience and disruption to Owner's business which may require performance of Work at hours when Owner's business is least active. Contractor shall not be entitled to the extra costs, if any, incurred in connection with performing corrective Work during non-business hours. Additionally, the provisions of this Agreement relating to cooperation with Owner, access, avoidance of disruption and related matters as set forth therein also shall apply to the performance of any warranty-related work.

12.6 Warranty Survival. Contractor's warranty and guarantee obligations set forth in this Article 12 shall apply to Work done by Subcontractors or Vendors, as well as to Work done by employees of Contractor, and such provisions shall survive acceptance of the Work, any termination of the Contract, and Completion of the Work. Contractor shall be responsible to fully indemnify and hold the Indemnitees harmless from any and all liens, claims, lawsuits, costs and expenses which may arise out of the failure of the Contractor (or any Subcontractor or Vendor) to fulfill its warranty obligations pursuant to this Contract and/or the Contractor's failure to enforce the termination by Owner of all or any portion of the Work being performed by Subcontractors and Vendors of every tier.

12.7 Owner's Right To Correct. In the event Contractor fails to timely correct incomplete, nonconforming or defective Work following Owner's written notice described in Section 12.5 above, Owner shall have the right to correct or arrange for the correction of any defects or omissions in the Work at Contractor's sole cost and expense and not as part of the Contract Sum. Contractor shall bear all costs incurred by Owner in correcting such defective Work, including, but not limited to, additional costs for redesigns, replacement contractors, materials, equipment and all services provided by Owner's personnel. Owner shall be entitled to withhold and offset, subject to any notice requirements, all costs incurred during any such corrective work against any funds which are otherwise due or which may become payable to the Contractor. If payments due Contractor are not sufficient to cover such amount, Contractor shall immediately upon demand pay the difference to Owner and such difference shall bear interest per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

12.8 Owner's Right to Supplement Work of Contractor. If the Contractor violates or breaches any of the terms, conditions or covenants of the Contract,

then Owner may, without prejudice to any other remedy it may have, provide such labor and materials as are reasonably necessary to remedy such deficiency including the right to hire another contractor to supplement the Work of the Contractor and deduct (after giving written notice to Contractor) all costs thereof from any money due or thereafter becoming due to the Contractor by all such amounts. If payments due Contractor under the Contract Sum are not sufficient to cover such amount, Contractor shall immediately upon demand pay the difference to Owner and such difference shall bear interest per annum at the prime rate (as then published by Bank of America) plus two percent (2%) from the date of demand until paid.

12.9 Acceptance of Non-Conforming Work. Owner may, in its sole and absolute discretion, elect to accept a part of the Work which is not in accordance with the requirements of the Contract Documents. In such case, the Contract Sum shall be reduced as appropriate and equitable. Owner's acceptance of any non-conforming Work shall not waive or otherwise affect Owner's right to demand that Contractor correct any other defects or areas of non-conforming Work.

12.10 Warranty Exclusions. Contractor's warranty obligations shall not apply to defects caused by ordinary wear and tear.

12.11 Written Guaranty. All guarantees and warranties specified in the Contract, including Contractor's general warranty in this Article 12, shall be executed in writing by Contractor and each Subcontractor and Vendor, as applicable, on their respective letterhead, signed jointly by Contractor and Subcontractor or Vendor, as applicable, and furnished to Owner upon commencement of the respective term of each such guarantee and warranty and as a condition precedent to Final Payment. Owner shall, in addition to the guarantee and warranty provided for in this Article 12, also have the benefit of, and Contractor shall assign to Owner in form and substance satisfactory to Owner, all warranties, service life policies, indemnities and guarantees with respect to any and all materials, appliances, mechanical devices, supplies and equipment incorporated into the Work and given by the manufacturer, retailer, or other supplier, which shall be supplied and assigned to Owner promptly after such is received by or becomes available to Contractor and as a condition precedent to Final Payment. Further, at Owner's request, Contractor shall assist Owner in enforcing all such warranties, guarantees, policies and indemnities.

13. DEFINITIONS. In this Agreement, the following terms shall have the respective meanings set forth below.

13.1 "Change in the Work" means variations, modifications, additions, reductions, deletions or changes to the Work from that indicated in the Contract Documents as constituted from time to time which are not Material Changes in the Work.

13.2 "Material Change in the Work" means any single variation, modification, addition, reduction, deletion or Change to the Work from that indicated in the Contract Documents as constituted from time to time valued at five percent (5%) or more of the current Contract Sum.

13.3 “Change Order” means a Change Proposal or Construction Change Directive agreed to in writing by Owner and Contractor. Change Orders can modify the Contract Sum and/or the Scheduled Completion Date, and each Change Order must state whether, and by how much, the Contract Sum and/or the Scheduled Completion Date will be modified as a result of the respective Change Order. Change Orders will be effective only when in a writing executed by both Contractor and Owner.

13.4 “Change Proposal” means a written proposal prepared and signed by Contractor setting forth (i) the Changes in the Work requested by Owner or proposed by Contractor, (ii) the amount of adjustment, if any, in the Contract Sum (using the formula in Section 3.1.2 of this Agreement), and (iii) the extent of adjustment, if any, in the Scheduled Completion Date. A Change Proposal is only a proposal unless and until signed in writing and accepted by Owner as a Change Order.

13.5 “Construction Change Directive” means a written order, requested by Owner, prepared by Owner, and signed by Owner, and given to Contractor, directing a Change in the Work and stating a proposed basis for adjustments, if any, in the Contract Sum and/or the Scheduled Completion Date, or any of them or any combination of them. Owner may by Construction Change Directive, without invalidating or breaching the Contract, order a Change in the Work.

13.6 “Cost of the Work” means costs actually and necessarily incurred by Contractor in the proper performance of the Work, without markup or other add-on. Such costs shall be at rates not higher than the standard then paid in Las Vegas, Nevada except with Owner’s prior written consent. The Cost of the Work shall include only the following items set forth in Sections 13.6.1 through 13.6.8 hereinbelow.

13.6.1 Labor Costs.

13.6.1.1 Wages and salaries, charged at Contractor’s normal and customary rates which shall be no higher than the then-applicable market rates in Las Vegas, Nevada, of construction workers directly employed by Contractor to perform the construction of the Work at the Property or, with Owner’s prior written consent, at off-site workshops.

13.6.1.2 A reasonable labor burden on wages and salaries included in the Cost of the Work under Section 13.6.1.1 above, defined as a percentage of such actual wages and salaries of Contractor’s construction workers described in Section 13.6.1.1 above, and which percentage shall differ on a trade-by-trade basis (“**Labor Burden**”). Items within and covered by the percentage Labor Burden shall not include any mark-up or fee of any kind and shall include vacation and similar benefits and worker’s compensation customarily provided by Contractor to its construction workers described in Section 13.6.1.1 above. Items covered by or included within the Labor Burden shall not be separately or otherwise included in the Cost of the Work.

13.6.2 Subcontract Costs. Payments made by Contractor to Subcontractors in accordance with the terms of the Contract Documents and the requirements of subcontracts approved in writing in advance by Owner.

13.6.3 Costs of Materials and Equipment Incorporated in the Completed Construction. Costs of materials and equipment incorporated or to be incorporated in the completed construction, including costs of transportation and costs of excess materials required to provide a reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Owner at the Completion of the Work or, at Owner's option, shall be sold by Contractor and proceeds from such sales shall be credited to Owner as a deduction from the Cost of the Work.

13.6.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

13.6.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Contractor at the Property and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by Contractor. Costs for items previously used by Contractor shall mean fair market value.

13.6.4.2 Costs of removal of debris (created in the normal course of performance of the Work) from the Property.

13.6.5 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.

13.6.6 Emergencies. Reasonable out-of-pocket costs which are actually incurred by Contractor in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

13.6.7 Reimbursables and General Requirements Costs. Out-of-pocket costs actually incurred by Contractor for the following, and without any mark up:

13.6.7.1 Reasonable telegrams, long-distance telephone calls, postage and parcel delivery charges, telephone service at the Property and petty cash expenses of the Property office, all as related to the Project.

13.6.7.2 Fees, taxes and assessments for the building permits for the Work and for other permits, licenses and inspections of the Work for which Contractor is required by the Contract Documents to pay, and third party expediting and processing fees, if any, for obtaining the foregoing permits only if approved in advance in writing by Owner.

13.6.7.3 Reasonable rental charges for temporary facilities (including trailers, fences, dumpsters, storage facilities and portable toilets), machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Contractor, including costs for transportation, installation, minor repairs and replacements, emptying, dismantling and removal, whether rented from Contractor or others.

13.6.7.4 Reasonable costs for offsite storage of materials or equipment if approved in writing by Owner.

13.6.7.5 Sales or use taxes to the extent approved in writing by Owner for inclusion in the Cost of the Work.

13.6.7.6 Royalties and license fees paid for the use of a particular design, process or product if expressly required by Owner under the Contract Documents.

13.6.8 Costs Not to be Reimbursed. Notwithstanding anything to the contrary in the Contract Documents or otherwise, the Cost of the Work shall not include:

13.6.8.1 Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the Property office, except for solely Steve Harrell as Project Manager but only to the extent of their time devoted to Work at the Project performed by Contractor.

13.6.8.2 Expenses of Contractor's principal office and offices other than the Property office.

13.6.8.3 Overhead and general expenses.

13.6.8.4 Contractor's capital expenses, including interest on Contractor's capital employed for the Work.

13.6.8.5 Rental costs of machinery and equipment, except as otherwise specifically provided in this Agreement.

13.6.8.6 Costs due to the negligence or fault of, or failure to comply with the terms and conditions of this Agreement or any of the other Contract Documents or any subcontracts or purchase orders, by Contractor, any Subcontractor or Vendor, including, without limitation, the cost of correction and/or replacement of any damaged, defective or nonconforming Work, disposal of materials and equipment incorrectly ordered or supplied, and replacement of materials and equipment incorrectly ordered or supplied, or making good any damage to property (including, without limitation, the Casino Improvements) not forming part of the Work.

13.6.8.7 Cost of any insurance maintained (except as otherwise expressly provided in this Agreement).

13.6.8.8 Costs of repairing Work or the Casino Improvements damaged by Contractor, Subcontractors, and/or Vendors.

13.6.8.9 Costs of occupational or business licenses, fees or taxes required by reason of Contractor's general operations, and costs of trade associations with which Contractor is associated.

13.6.8.10 Costs incurred by Contractor in satisfying its indemnification obligations pursuant to Article 11 of this Agreement or any other provision of this Agreement or the other Contract Documents.

13.6.8.11 Costs associated with Work performed by Contractor pursuant to Article 12 of this Agreement.

13.6.8.12 Costs of labor and materials for any portion of the Work and/or Project not performed by Contractor (or not performed or supplied pursuant to a written agreement with Contractor or any of its Subcontractors or Vendors), including, but not limited to, electronics, audio visual equipment, security systems, and other similar items whether or not in the Plans and Specifications and the other Contract Documents.

13.6.8.13 Payments on account of materials, supplies, and equipment until delivered and suitably stored at the Property for subsequent incorporation or consumption in the Work, except as may otherwise be expressly provided in this Agreement.

13.6.8.14 Payments of any kind to Contractor or any other consultant, engineer or contractor, other than as expressly provided in this Agreement.

13.6.8.15 Costs which would cause the Contract Sum (as may be adjusted from time to time in strict accordance with this Agreement) to be exceeded.

13.6.8.16 Costs incurred by Contractor in preparing, modifying or amending Change Proposals, or analyzing, responding to, or disputing Construction Change Directives.

13.6.8.17 Any costs incurred by Contractor relating to a Change in the Work without a Change Order or Construction Change Directive.

13.6.8.18 Additional costs incurred by Contractor in complying with an Owner directive or notice under this Agreement, other than as expressly provided in this Agreement.

13.6.8.19 Labor Costs (as defined in Section 13.5.1 of this Agreement) incurred in obtaining permits, licenses or inspections.

13.6.8.20 Any costs not specifically and expressly described in Sections 13.5.1 through 13.5.8 of this Agreement.

13.6.8.21 Costs for materials which Owner ordered or for which Owner arranged delivery pursuant to this Agreement.

13.6.9 No Duplication. Notwithstanding the breakdown or categorization of any costs in this Section 13.6 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

13.7 “Delays in the Work” means delays in the Work which, notwithstanding Contractor’s best and most diligent efforts to re-deploy its forces or that of Subcontractor, or re-schedule or re-sequence the Work, actually cause Substantial Completion of the Work to occur after the Scheduled Completion Date.

13.8 “Excusable Delays” means (i) based on Contractor’s extensive experience in constructing projects of similar scope and complexity, based on Contractor’s representations and other terms contained in Section 5.10 of this Agreement, and based on and taking into account the Technical Studies and Reports, unforeseeable and/or unanticipatable Delays in the Work which are beyond Contractor’s control and caused by unusually excessive rain or other unforeseeable excessive inclement weather, unforeseeable material shortages, fire, earthquake, riot, industry-wide labor disputes affecting the general Las Vegas, Nevada area and not limited to the Project (and not a jurisdictional dispute), national or state emergencies, acts of war or government moratorium, or (ii) delays that are the fault solely of Owner, but only if such delays affect critical path items and only after written notice from Contractor to Owner of such delay and Owner’s failure to cure such delay within five (5) business days after receipt of such written notice from Contractor, all in accordance with and subject to Section 4.2.5 of this Agreement.

13.9 “Governmental Requirements” means all applicable laws, consents, approvals, ordinances, codes, rules, directives, orders, statutes, permits (including, without limitation, those listed on Permits and Entitlements attached hereto as Exhibit D), regulations, entitlements, standards, mitigation measures, policies, covenants, conditions and restrictions, whether federal, state or local, or governmental, administrative or private. The term Governmental Requirements shall also include, without limitation, the terms of the OCIP (as defined in Section 10.1.1 of this Agreement) and any other insurance applicable to the Work.

13.10 “Substantial Completion of the Work” means the stage in the progress of the Work when the Work is complete and ready for reasonable commercial use in the sole opinion of Owner with the exception of the final 90 days of scheduled grow-in which is maintained by the Owner. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled; all designated or required governmental inspections and certifications have been made and posted, including, without limitation, the temporary certificate of occupancy and/or its equivalent; the designated instruction of Owner in the operation of all systems has been completed; and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner could utilize the facility comprising the Project on that date (in the manner described above), and all elements and utilities in and under the Project are fully functionable and operable as provided in the Contract, and the Completion of the Work by Contractor would not materially interfere with or hamper Owner’s intended use, occupancy or enjoyment of the Project. When Contractor considers that the Work, or a portion of the Work which Owner agrees in writing to accept separately, is substantially complete, Contractor shall so notify Owner in writing. Upon receipt of Contractor’s notice, Owner will make an inspection to determine whether the Work or designated portion of the Work is substantially complete in accordance with the Contract Documents. If Owner’s inspection discloses an item which is not in accordance with the requirements of the Contract Documents, Contractor shall, before

issuance of the Certificate of Substantial Completion (as defined below), diligently and expeditiously complete or correct such item upon notification by Owner. Contractor shall then submit a request for another inspection by Owner to determine Substantial Completion of the Work. When the Work (or designated portion of the Work, if applicable) is substantially complete as determined by Owner and Owner's Lenders, Owner will prepare a "**Certificate of Substantial Completion**" which shall establish the date of Substantial Completion of the Work.

13.11 "Subcontractor" means any person or entity who has a contract with or is engaged or employed by Contractor, or with any other Subcontractor, or is engaged or employed by Contractor or any other Subcontractor, at any tier to construct or perform a portion of the Work and/or provide construction related services at the Project, and includes, without limitation, each of their respective employees, agents and representatives and any party any of them may be responsible or liable for at law, in equity or under the Contract Documents.

13.12 "Vendor" means any person or entity which has a purchase order or other agreement to provide materials, supplies, equipment and/or related services for the Work and/or provide installation services at the Project, through a contract, purchase order or other arrangement with Contractor or any Subcontractor at any tier, and includes, without limitation, their respective employees, agents, and representatives and any party any of them may be responsible or liable for at law, in equity or under the Contract Documents.

13.13 "Work" means all skilled, unskilled and professional labor, services, fabrication, materials, supplies, tools, equipment, fixtures, hardware, materials, and other things which are appropriate, desirable or necessary for Contractor to design, construct and complete the Project and otherwise fulfill its obligations under and in strict compliance with the Contract Documents, including, without limitation, all responsibilities and obligations of Contractor relative to Punchlist Items.

14. OWNER'S LENDERS

14.1 Owner's Lenders. Contractor acknowledges and agrees that Owner has provided notice to Contractor, and Contractor shall before entering into any subcontract or purchase contract provide notice to every Subcontractor and Vendor, that Owner's funds for construction of the Project, including payment of the Contract Sum, shall be borrowed and or derived substantially from one or more lenders providing financing for the Project from time to time ("**Owner's Lenders**"), and Owner's ability to obtain such funds shall be subject to one or more loan documents and conditions precedent to advances thereunder. The term "Owner's Lenders" shall also mean and include any and all trustees, intercreditor agents, disbursement agents, administrative agents, consultants, architects, inspectors, construction managers, auditors and engineers appointed or retained directly or indirectly by or on behalf of any of Owner's Lenders.

14.2 Payments. Owner's Lenders shall have the right at any time and from time to time to make payment directly to Contractor and/or by joint payee check to Contractor and any Subcontractor or Vendor, for Work performed under the Contract.

14.3 Audit Rights. Owner's Lenders shall have and be entitled to all of the same audit and inspection rights as Owner has under this Agreement.

14.4 Access. Owner's Lenders shall have and be entitled to all of the same rights to access and inspect the Property, Project and Work, wherever located, as Owner has under the Contract documents, at reasonable times and upon reasonable notice and subject to reasonable safety precautions.

14.5 Material Changes. Contractor acknowledges and agrees that certain material Changes in the Work, including those that increase the Contract Sum and/or extend the Scheduled Completion Date, shall be subject to the prior approval of Owner's Lenders and shall not become effective without such approval.

14.6 General Cooperation. Contractor agrees to cooperate fully with all such Owner's Lenders. Contractor agrees to (a) provide written notice to Owner's Lenders of any Change in the Work, material change in the manner or amounts paid to Contractor, extension or acceleration of the Scheduled Completion Date, or material change in the Plans and Specifications, (b) authorize Subcontractors and Vendors to communicate directly with Owner's Lenders regarding the progress of the Work, (c) provide Owner's Lenders with reasonable working space and access to telephone, copying and telecopying equipment, (d) communicate with Owner's Lenders and, on request to execute, provide and/or deliver as the case may be, such documents, certificates, consents, invoices and instruments, and other information, as Owner's Lenders may reasonably request with respect to the Work, the Project and/or payment of the cost thereof, (e) enter into such amendments to the Contract as Owner's Lenders may reasonably request, (f) make adjustments and modifications of the payment procedures provided for in the Contract as may be reasonably requested by Owner's Lenders in connection with permitting the disbursement of loan proceeds to pay for the Work, (g) otherwise facilitate Owner's Lenders' review of the construction of the Project, and (h) enter into a consent to assignment in favor of Owner's Lenders consenting to the collateral assignment of the Contract to Owner's Lenders.

15. MISCELLANEOUS PROVISIONS.

15.1 Subordination. Notwithstanding any other provision of the Contract Documents, and notwithstanding the provisions of Section 108.225 (and any related Section) of the Nevada Revised Statutes, Contractor agrees for itself and for every Subcontractor and Vendor and every other person performing any services or providing any materials relating to the Work, that any and all liens and lien rights and benefits (including enforcement rights) Contractor and or any of the other foregoing parties may or do have under applicable law (including, without limitation, Nevada Revised Statutes Sections 108.221 to 108.246), shall at all times be subordinate and junior to any and all liens, security interests, mortgages, deeds of trust and other encumbrances of any kind (on the Property and otherwise) in favor of any of Owner's Lenders ("**Lender Liens**"), notwithstanding that Work may be or is commenced or done on, and materials may be or are furnished to, the Property prior to any Lender Liens being imposed upon or recorded against the Property or any of Owner's assets and before expiration of the time fixed under applicable laws for the filing of mechanics and materialmen's liens. Contractor shall, and Contractor shall cause every Subcontractor and Vendor at every tier, and any other person performing services or providing materials

relating to the Work to, sign and deliver to Owner and Owner's Lenders from time to time upon request by Owner or any of Owner's Lenders: (a) written and recordable acknowledgments and restatements of the provisions of this Section 15.1 and the subordination described herein, and (b) such affidavits, certificates, releases, indemnities, waivers and instruments (and in form and content) as Owner's or Owners Lenders' title insurers shall require to allow such insurers to issue such title endorsements as Owner or Owner's Lenders require (including insuring first priority of Lender Liens). Contractor's, or any other party's, failure to provide the items required in clauses (a) and (b) hereinabove upon request, or Owner's or Owner's Lenders' inability to obtain at any time endorsements to Owner's Lenders' title policies (or issuance of initial title policies) insuring first priority of Lender Liens, including, without limitation, senior to any mechanics' or materialmen's lien or lien rights, shall constitute a material default and breach of the Contract Documents and failure of a condition precedent to any payment by Owner owed to Contractor under the Contract or otherwise.

15.2 Time is of the Essence. Time is of the essence of this Agreement and each of the terms and conditions of this Agreement, including, without limitation, in the Completion of the Work in the manner set forth in the Contract. Whenever action must be taken under this Agreement during a period of time that ends on a Saturday, Sunday or federal or state holiday, then such period of time shall be extended until the next day which is not a Saturday, Sunday or such holiday.

15.3 Entire Agreement; Modification; Waiver. This Agreement and the other Contract Documents (including, without limitation, the Plans and Specifications and any amendments, modifications and supplements thereto) constitute the entire understanding and agreement of the parties to this Agreement concerning the Project and the Work, and supersede all prior or contemporaneous written or oral understandings or agreements of the parties, and there are no other agreements or understandings between the parties, with respect the Project and the Work. Each and all of the Exhibits A through and including L referenced in this Agreement are hereby expressly incorporated herein by this reference. No modifications of the Contract shall be binding unless executed in writing by the parties to this Agreement. No waiver of any of the provisions of the Contract shall be binding unless executed in writing by the waiving party, and any such waiver shall not constitute a waiver of any other provision of the Contract, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

15.4 Headings. Section and other headings are not to be considered part of this Agreement, have been included solely for the convenience of the parties, and are not intended to be full or accurate descriptions of the contents.

15.5 Assignment; Successors to be Bound. Contractor shall not assign its rights or delegate its duties under this Agreement or any other Contract Document, unless Owner shall have given Owner's written consent prior to any such assignment or delegation. Owner shall have the right to assign Owner's rights and delegate Owner's duties under this Agreement without Contractor's consent upon a sale, transfer or other disposition or hypothecation of the Property, including, without limitation, to any Owner's Lenders, and Contractor hereby agrees to execute any necessary consents required to facilitate such assignment. Owner may also, without Contractor's consent but with notice to Contractor,

change its name from time to time. Owner may designate new representatives from time to time by giving Contractor written notice. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement, and their respective permitted transferees, successors, assigns and legal representatives.

15.6 Intent of Parties. Contractor and Owner acknowledge that applicable Nevada Revised Statutes in certain circumstances, among others (i) regulate the process by which an owner can withhold payment(s) to a contractor or subcontractor, including the amount(s) that can be withheld, and (ii) regulate when and how an owner or a contractor can terminate a construction contract and the available remedies upon such termination. It is the express intent of the parties to this Agreement that Contractor completely and unconditionally waive to the fullest extent allowable each and all of those Nevada Revised Statutes that are inconsistent with the provisions of this Agreement, including those with regard to the matters described in the foregoing clauses (i) and (ii). Provided, however, Owner and Contractor acknowledge that some applicable provisions of the Nevada Revised Statutes cannot be waived. Accordingly, to the extent the foregoing waiver by Contractor is expressly prohibited by applicable Nevada Revised Statutes as to certain provisions thereof, Contractor's foregoing waiver shall not be deemed to extend to those non-waivable provisions of the Nevada Revised Statutes. In such circumstances, if any, where one or more provisions of this Agreement are in conflict with provisions of the Nevada Revised Statutes that cannot be waived, the offending portions of the provision in this Agreement shall be interpreted so as to be consistent with the non-waivable sections of the Nevada Revised Statutes. To the extent such interpretation renders any portions of this Agreement ineffective, it is the intent of the parties that only such offending portion shall be so deemed, and the remainder of the provisions in this Agreement shall be of full force and effect.

15.7 Governing Law. This Agreement has been executed in, and shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada.

15.8 Survival. The provisions of this Agreement, including Contractor's covenants, representations, guaranties, releases, warranties and indemnities and the benefit thereof, shall survive as valid and enforceable obligations notwithstanding any termination, cancellation or expiration of the Contract, acceptance of the Work, Completion of the Work or completion of the Project, or any combination of them.

15.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.10 Unenforceability of this Agreement. If any term, provision, covenant or condition of this Agreement or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, such invalidity, voidness or unenforceability shall not impair, diminish, void, invalidate or affect in any way any other terms, provisions, covenants and conditions of this Agreement or any application thereof, all of which shall continue in full force and effect.

15.11 Dispute Resolution. This Agreement and all other Contract Documents shall be governed by the laws of the State of Nevada. Disputes between Owner and Contractor and relating to the Contract and/or the Work shall be resolved as follows: The parties shall first attempt to resolve disputes through direct negotiations in good faith. If a dispute cannot be settled through direct negotiations, then any party may submit the dispute for non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association by filing demand for mediation with the other party and with the American Arbitration Association, such mediation to occur in Las Vegas, Nevada or in such other place as the parties may mutually agree upon. Except for provisional remedies, no party may seek relief through any judicial or non-judicial forum until direct good faith negotiations and mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect has been pursued and the mediation was unsuccessful in resolving the dispute. Each party shall pay an equal, pro rata share of the mediation service's fees and costs and of the mediator's fees and costs. The mediation submission may be made concurrently with the filing of a complaint or other appropriate action or proceeding for relief, but, in such event, mediation shall proceed in advance of legal, equitable or other proceedings (other than those associated with provisional remedies) which shall be stayed pending mediation for a period not exceeding sixty (60) calendar days from the date of filing and service of the complaint or other action for relief, unless stayed for a longer period by mutual agreement of the parties or by court order. In the event of a dispute arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover the actual attorneys' fees reasonably incurred in prosecuting such dispute. In the event a dispute arises between Owner and Contractor, Contractor shall continue to perform in accordance with the Contract, without interruption or delay (subject to Owner's rights under the Contract).

15.12 Notices. Any notice, request, demand, instruction or other communication to be given under the Contract Documents, shall be in writing and shall be hand-delivered or sent by Federal Express or a comparable overnight or mail service, or sent by confirmed facsimile transmission or mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, to Contractor or Owner, as the case may be at its address set forth below:

To Contractor:

Steve Harrell, President, CEO
Wadsworth Golf Construction Company
600 N. 195th Ave. Buckeye, Arizona 85326 (623)
853-9100 (623) 853-0217

To Owner:

Kenn Wynn, President
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No.: (702) 733-4738
Telephone No. : (702) 733-4812

and

Todd Nisbet, Executive Vice President –
Project Director
Wynn Design and Development LLC
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile No.: (702) 733-4715
Telephone No.: (702) 733-4497

Contractor shall concurrently with delivery to Owner provide to Owner's Lenders copies of all notices at an address or addresses to be provided, with copies to:

Pamela B. Kelly
Latham & Watkins
633 West Fifth Street, Suite 4000
Los Angeles, California 90071
Telephone No.: (213) 891-8726
Facsimile No.: (213) 891-8763

Notice will be deemed to have been given upon the earlier of receipt or, if made by Federal Express or confirmed facsimile, one business day after sending, or if made by U.S. Mail, three calendar days after sending. The addressees and addresses for the purpose of this paragraph may be changed by giving notice as provided in this Agreement; provided, however, that unless and until such written notice is actually received, the last addressee and address stated in this Agreement will continue in effect for all purposes.

15.13 Confidentiality. Owner considers all information (regardless of form) pertaining to the Project to be confidential and proprietary, including information which is prepared or developed by or through Contractor, Owner or Owner's other contractors, unless otherwise stated to Contractor in writing. Contractor shall not, and shall not allow, suffer or permit any Subcontractors or Vendors to, disclose any such information without Owner's prior written consent. Contractor shall obtain similar written agreements from each and every Subcontractor and Vendor as Owner may reasonably request. Contractor shall not issue any news releases or any other advertising pertaining to the Work or the Project, including advertising its participation in the Project, without obtaining Owner's prior written approval. Contractor hereby agrees not to use the name of Owner's Property or premises, or any variation thereof, or any logos used by Owner, in connection with any of Contractor's business promotion activities or operations without Owner's prior written approval. Contractor shall require its Subcontractors and Vendors to comply with the requirements imposed upon Contractor by this Section 15.13, including obtaining Owner's prior written consent to the form and content of any promotional or advertising publications or materials which depict or refer to their respective roles in providing Work for the Project. Neither Contractor nor any Subcontractor or Vendor shall post, erect or place on the Property, the Work, Owner's premises or the Project any sign, banner, billboard or display for marketing, advertising, promotional or other similar reasons, and no trade names or other identification shall appear on any item of the Work or at any place on the

Project where such name or identification will be seen by the general public, except as approved in writing by Owner. The Contract Documents are the property of Owner and are for use solely with respect to the Work and are not to be used by Contractor or any Subcontractor on any other projects or for any other purpose, and all copies of the foregoing shall be returned or suitably accounted for to Owner upon Completion of the Work.

15.14 Legal Fees. The losing party shall promptly pay to the prevailing party all costs and reasonable attorneys' fees incurred in connection with any legal action, including mediation, in whole or in part, based on a breach of the Contract or other dispute arising out of or in connection with the Contract.

15.15 Third-Party Beneficiaries. Notwithstanding any provision of this Agreement to the contrary, no Subcontractor or Vendor shall be, or be considered to be, a third-party beneficiary of, or entitled to assert any rights under, this Agreement.

15.16 Statute Of Limitations. Notwithstanding any provision of the Contract Documents to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract Documents, which would not be visible or apparent upon conducting a reasonable investigation, and which is not discovered by Owner until after the date which, but for this Section, would be the date of the commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by Owner.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties to this Agreement have executed and delivered this Agreement as of the date and year hereinabove first set forth.

CONTRACTOR

WADSWORTH GOLF CONSTRUCTION COMPANY

a Delaware corporation

By: _____ /s/ Stephen Harrell

Name: _____ Stephen Harrell

Title: _____ President

OWNER

WYNN LAS VEGAS, LLC,

a Nevada limited liability company,

as the Borrower

By: _____ /s/ W. Todd Nisbet

Name: _____ W. Todd Nisbet

Title: _____ Executive Vice President – Project Director

EXHIBITS

- A – Property Description
- B – Project Drawings and References
- C – Project Construction Schedule
- D – Permits and Entitlements
- E – Technical Studies And Reports
- F – Conditional Waiver And Release Upon Progress Payment
- G – Unconditional Waiver And Release Upon Progress Payment
- H – Golf Course Contractor’s Advance Certificate
- I – Full and Unconditional Release of All Claims and Waiver of Lien
- J – Project Construction Safety And Health Guidelines
- K – OCIP Manual
- L – Unit Prices
- M – Golf Course Contractor’s Completion Certificate

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT A

PROPERTY DESCRIPTION

August 5, 2002 M. Smith/P. Burn HS 311.004.02 This legal describes the parcel of land for the Le Rêve Golf Course Property, generally located in the North Half (N1/2) of Section 16, Township 21 South, Range 61 East, M.D.M., Clark County, Nevada.

That Parcel Of Land Shown As Parcel A2 In File 122 At Page 45 Of Records Of Survey, Being A Portion Of Lot 1 as Recorded In Book 100 Of Plats, At Page 20, Official Records Of Clark County, Nevada, Lying Within The North Half (N1/2) Of Section 16, Township 21 South, Range 61 East, M.D.M., Clark County, Nevada, More Particularly Described As Follows:

Beginning At The Northeast Corner Of Lot 1 Of Book 100 Of Plats, At Page 20, Official Records Of Clark County, Nevada; Thence Along The Boundary Lines Of Said Lot 1 The Following Twelve (12) Courses;

1. South 00°51'51" West, 2010.71 Feet;
2. South 41°09'59" East, 192.03 Feet;
3. South 00°05'02" West, 172.90 Feet;
4. South 89°54'58" East, 5.00 Feet;
5. North 45°05'02" East, 21.21 Feet;
6. South 00°05'02" West, 70.00 Feet;
7. North 44°54'58" West, 21.21 Feet;
8. North 89°54'58" West, 25.00 Feet To The Beginning Of A Curve, Concave To The North And Having A Radius Of 138.00 Feet;
9. Westerly Along Said Curve To The Right, Through A Central Angle Of 36°06'02", An Arc Length Of 86.95 Feet To A Point Of Non-Tangency, To Which A Radial Line Bears South 36°11'04" West;
10. South 36°11'04" West, 27.56 Feet;
11. North 01°49'10" East, 11.00 Feet;
12. North 88°10'59" West, 2475.94 Feet;

Thence Departing Boundary Lines Of Said Lot 1, North 01°49'06" East, 429.97 Feet; Thence North 16°49'06" East, 1916.22 Feet To The Northerly Line Of Said Lot 1; Thence Along The Northerly Line Of Said Lot 1 The Following Three (3) Courses;

1. South 89°06'35" East, 488.31 Feet;
2. North 73°09'06" East, 131.27 Feet;

EXHIBIT A-1

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT A (cont'd.)

3. South 89°06'35" East, 1314.31 Feet To The **Point Of Beginning.**

Together With Lots 70-84 Of That Certain Final Map Entitled "Desert Inn Country Club Estates Unit 2", Recorded In Book 7 Of Plats, At Page 58, Official Records Of Clark County, Nevada.

And

Together With Lots 7-18, 21,22,24,25, 28-31, 33-35, 41,42, 44-58 Of That Certain Final Map Entitled "Desert Inn Country Club Estates", Recorded In Book 3 Of Plats, At Page 36a, Official Records Of Clark County, Nevada, Together With Those Portions Of Land Described In A Deed Recorded December 22, 1957, As Instrument Number 104199, Official Records Of Clark County, Nevada;

And

Together With That Portion Of The Northeast Quarter (Ne 1/4) Of Section 16, Township 21 South, Range 61 East, M.D.M., Nevada, Described By Metes And Bounds As Follows:

Beginning At A Point Distant North 89°06'35" West 380 Feet And South 00°53'56" West 190 Feet From The Northeast Corner Of The Said Section 16; Thence East A Distance Of 15 Feet To A Point; Thence South A Distance Of 30 Feet To A Point; Thence West A Distance Of 15 Feet To A Point; Thence North A Distance Of 30 Feet To The Point Of Beginning.

And

Together With That Portion Of The Northeast Quarter (Ne ¼) Of Section 16, Township 21 South, Range 61 East, M.D.M., Nevada, Described By Metes And Bounds As Follows:

Beginning At A Point Distant South 89°06'35" East 1535 Feet And South 00°53'56" West 1220 Feet From The Northwest Corner Of The Said Ne ¼ Section 16; Thence East A Distance Of 85 Feet To A Point; Thence South A Distance Of 85 Feet To A Point; Thence West A Distance Of 85 Feet To A Point; Thence North A Distance Of 85 Feet To The Point Of Beginning.

And

EXHIBIT A-2

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT A (cont'd.)

Together With An Easement For A Sewer Pressure Line Described As Follows:

That Portion Of The Northeast Quarter Of (Ne ¼) Of Section 16, Township 21 South, Range 61 East, M.D.M., Nevada Being Five (5) Feet On Each Side Of The Following Described Center Line Beginning At A Point Distant North 89°06'04" West 203 Feet And South 0°51'50" West 225 Feet From The Northeast Corner Of The Said Ne ¼ Section 16; Thence A South 42°00' West A Distance Of 1350 Feet To The Water Refining Plant. BASIS OF BEARINGS

South 88°45'06" East, Being The South Line Of The Southwest Quarter (Sw 1/4) Of The Northeast Quarter (Ne 1/4) Of Section 16, Township 21 South, Range 61 East, M.D.M., Clark County, Nevada, As Shown In Book 100 Of Plats, At Page 20, Official Records Of Clark County, Nevada.

End Of Legal Description.

Paul Burn, Pls
Professional Land Surveyor
Nevada Certificate No. 11174

EXHIBIT A-3

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT B

PROJECT DRAWINGS AND REFERENCES

1. Drawing List/Overview as prepared by Butler/Ashworth Architects, dated October 10, 2002.
2. Letter of Intent as prepared by Wynn Design and Development dated January 31, 2003 and returned signed by Wadsworth Golf Construction February 1, 2003.
3. Le Rêve Golf Course Specifications CD as prepared by Butler/Ashworth Architects dated September 20, 2002.
4. Scope of Work Clarifications (Divisions 1, 2, 3 and 10) dated February 18, 2003 as prepared by Wynn Design and Development.
5. Project Management Requirements as prepared by Wynn Design and Development dated February 18, 2003.
6. Golf Course Maintenance Facility Drawings as listed on Drawing List/Overview as prepared by Butler/Ashworth Architects, dated January 20, 2003.
7. Golf Course Technical Drainage Study Drawings as listed on Drawing List/Overview as prepared by Lochsa Engineering, dated July 12, 2002.

EXHIBIT B-1

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT C

PROJECT CONSTRUCTION SCHEDULE

1. Construction Schedule as provided by Wadsworth Golf Construction Company, Inc., dated February 18, 2003.
2. Le Rêve Hotel Construction Schedule as provided by Marnell Corrao Associates dated January 31, 2003.

EXHIBIT C-1

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT D

PERMITS AND ENTITLEMENTS

1. Department of Air Quality Management Dust Permit # 200208069; issued to Wynn Design and Development on August 9, 2002 by the Clark County Department of Air Quality Management.
2. Clark County Building Department Grading Permit #02 34807 GD6, dated February 5, 2003.
3. Revised Le Rêve Golf Course Use Permit #0301-02 as approved by the Clark County Department of Comprehensive Planning, dated May 16, 2002.

EXHIBIT D-1

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT E

TECHNICAL STUDIES AND REPORTS

1. Technical Drainage Study for Wynn Resort A as prepared by Carter Burgess, dated June 2001.
2. Update to Onsite Technical Drainage Study for Le Rêve formerly Wynn Resort A as prepared by Carter Burgess, dated January 8, 2002.
3. Addendum #1 to the Update to Onsite Technical Drainage Study for Le Rêve formerly Wynn Resort A as prepared by Carter Burgess, dated March 2002.
4. Department of Public Works Approval Letter for Update to the Technical Drainage Study for Le Rêve, dated April 1, 2002.
5. Le Rêve Golf Course Geotechnical Report as prepared by Western Technologies, Inc., dated August 22, 2002.
6. Soil Particle and Drainage Analysis as prepared by Hummel & Company, Inc. Report dated May 16, 2002.
7. Irrigation Well Sample, Analysis and Report as prepared by Converse Consultants dated June 9, 1999.
8. Technical Drainage Study for Le Rêve Golf Course as prepared by Lochsa Engineering dated July 2002.
9. Addendum #1 to the Technical Drainage Study for Le Rêve Golf Course as prepared by Lochsa Engineering dated September 6, 2002.
10. Supplement #1 to Addendum #1 of the Technical Drainage Study for Le Rêve Golf Course as prepared by Lochsa Engineering dated September 12, 2002.
11. Department of Development Services Approval Letter for Technical Drainage Study for Le Rêve Golf Course dated September 25, 2002.
12. Desert Inn Country Club & Spa Irrigation As Built Drawings as prepared by Gordons Irrigation Consulting dated November 20, 1985.
13. Contamination Assessment as prepared by Terracon dated September 10, 2002.

EXHIBIT E-1

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

14. Pre-Demolition Asbestos Survey as prepared by Terracon dated September 17, 2002.
15. Addendum to the Geotechnical Evaluation as prepared by Western Technologies dated September 6, 2002 (original dated August 23, 2002).
16. Grow-in Equipment List as prepared by Wynn Design and Development dated February 18, 2003.

EXHIBIT E-2

LE RÊVE

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Project Description: _____
 Period Ending: _____
 Work Performed: _____
 Work Performed by: _____
 Under Contract to: _____
 Contract Date: _____

Original Contract Amount:	_____
Change Order Amounts (increases in Contract Price):	_____
+	_____
Change Order Amounts (decreases in Contract Price):	_____
-	_____
Adjusted Contract Amount:	_____
Work Completed to Date:	_____
Less Retainage Not Yet Due:	_____
-	_____
Net Amount Due to Date:	_____
Less Payments Received to Date:	_____
-	_____
Total Payments Due:	_____

Upon receipt by the undersigned of a check from **WYNN LAS VEGAS, LLC** in the sum of \$_____ payable to _____, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of WYNN LAS VEGAS, LLC; WYNN DESIGN & DEVELOPMENT, LLC; VALVINO LAMORE, LLC for WYNN LAS VEGAS, LLC Project#_____ Description _____, located at 3131 Las Vegas Blvd., South, Las Vegas, Nevada to the following extent.

This release covers a progress payment for labor, services, equipment or materials furnished to **WYNN LAS VEGAS, LLC** through _____ only and does not cover any retentions retained before or after the release date.

DATED this ____ day of _____, 200__

 By: _____
 Title: _____

OWNER, OFFICER or PARTNER

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this ____ day of _____, 200 __ personally appeared before me, a Notary Public, _____ who acknowledged to me that (s)he has read the foregoing, that the same is true and correct and that (s)he is authorized to execute the same.

NOTARY PUBLIC, in and for said County and State

EXHIBIT F-2

LE RÊVE

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Project Description: _____
 Work Performed: _____
 Work Performed by: _____
 Under Contract to: _____
 Contract Date: _____

Original Contract Amount:	_____
Change Order Amounts (increases in Contract Price):	_____
+	_____
Change Order Amounts (decreases in Contract Price):	_____
-	_____
Adjusted Contract Amount:	_____
Work Completed to Date:	_____
Less Retainage Not Yet Due:	_____
-	_____
Net Amount Due to Date:	_____
Less Payments Received to Date:	_____
-	_____
Total Payments Due:	_____

The undersigned has been paid and has received progress payments totaling \$ _____ for labor and/or materials furnished to WYNN LAS VEGAS, LLC; WYNN DESIGN & DEVELOPMENT, LLC; VALVINO LAMORE, LLC for the WYNN LAS VEGAS, LLC

Project # _____ Description _____, located at 3131 Las Vegas Blvd., South, Las Vegas, Nevada, and does hereby unconditionally release any mechanic's lien or claim upon any bond and any rights thereto that the undersigned has on the above referenced job for any and all materials and work furnished pursuant to any change orders, on or before the date of _____.

The undersigned does hereby represent and warrant that the undersigned has or will fully pay for all labor and materials, any and all union, welfare, pension, vacation or other contributions or benefits required to be made on account of the employment of such laborers and mechanics so provided by the undersigned and does hereby agree to indemnify and hold each of the foregoing, the Project, work of improvement and real property, free and harmless from any and all claims or liens arising or resulting from any non payment of any of the foregoing through the date indicated herein.

THIS RELEASE COVERS A PROGRESS PAYMENT FOR LABOR, SERVICES, EQUIPMENT AND/OR MATERIAL FURNISHED TO **WYNN LAS VEGAS, LLC** THROUGH THE ABOVE REFERENCED DATE ONLY AND DOES NOT COVER ANY RETENTION OR ITEMS FURNISHED AFTER SAID DATE.

DATED this ____ day of _____,

**CONTRACT AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT G (cont.)

200__

By: _____

Title: _____

OWNER, OFFICER or PARTNER

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this ____ day of _____, 200 __ personally appeared before me, a Notary Public, _____ who acknowledged to me that (s)he has read the foregoing, that the same is true and correct and that (s)he is authorized to execute the same.

NOTARY PUBLIC, in and for said County and State

EXHIBIT G-2

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT H

**[ADVANCES SHALL ONLY BE MADE IF THE GOLF COURSE CONTRACTOR'S
ADVANCE CERTIFICATE IS IDENTICAL TO THE FORM BELOW—NO
ALTERATIONS WILL BE ACCEPTED]**

GOLF COURSE CONTRACTOR'S ADVANCE CERTIFICATE

[Letterhead of Golf Course Contractor]

Date: [____], 20[__]
Advance Date: [____], 20[__]

Deutsche Bank Trust Company Americas,
as Disbursement Agent
31 West 52nd Street
New York, New York 10019
Attn: Amy Sinensky

with a copy to:

Deutsche Bank Trust Company Americas
as Bank Agent
c/o Deutsche Bank Securities Inc.
200 Crescent Court, Suite 550
Dallas, Texas 75201
Attn: Gerald Dupont

Wells Fargo Bank Nevada, National Association
as FF&E Agent
Attn: Corporate Trust Services
MAC: U1228-120
299 South Main Street, 12th Floor
Salt Lake City, Utah 84111

Wells Fargo Bank, National Association,
as Indenture Trustee
MAC: N9303-121
Corporate Trust Operations
6th & Marquette Avenue
Minneapolis, Minnesota 55479
Attn: Michael Slade

EXHIBIT H-1

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT H (cont.)

Re: Advance Request No. [____] under Master Disbursement Agreement dated as of October 30, 2002 (the "Disbursement Agreement") of Wynn Las Vegas, LLC, a Nevada limited liability company ("Wynn Las Vegas"), Wynn Las Vegas Capital Corp., a Nevada corporation ("Capital Corp."), and Wynn Design & Development, LLC, a Nevada limited liability company ("Wynn Design") and jointly and severally with Wynn Las Vegas and Capital Corp., the "Company").

Ladies and Gentlemen:

In connection with the development, construction and operation of the Le Rêve Casino Resort project (the "Project"), [_____] (the "Golf Course Contractor") hereby represents to its knowledge, information and belief as follows:

1. Pursuant to our requisition dated [____], 2002 ("Requisition Request") we have requested \$_____.
2. That certain construction contract, dated as of [____], 20[___] between the Golf Course Contractor and Wynn Resorts Holdings, LLC and/or Wynn Las Vegas together with all amendments, modifications and supplements entered into in accordance with the Disbursement Agreement (the "Golf Course Construction Contract") is in full force and effect. The Golf Course Contractor is not in default under any term of the Golf Course Construction Contract and, to the Golf Course Contractor's knowledge, the Company is not in default under any term of the Golf Course Construction Contract.
3. The "Work" (as defined in the Golf Course Construction Contract) performed to date has been performed in accordance with the Golf Course Construction Contract and the "Project Schedule" (as defined in the Golf Course Construction Contract) in effect on the date hereof. Invoices submitted, including the current Requisition Request, are in accordance with Section [____] of the Golf Course Construction Contract.
4. After giving effect to the payments contemplated in the Requisition Request, the Golf Course Contractor will have been paid all amounts due to it under the Golf Course Construction Contract through the end of the period covered by the Requisition Request (other than "Retainage" as defined in the Golf Course Construction Contract) and all subcontractors, vendors or materialmen engaged or employed by Golf Course Contractor will have been paid all amounts due to them through the end of the period covered by the Requisition Request (other than retainage amounts under the applicable subcontract) in each case, except to the extent that such amounts or such payment (or a portion thereof) is subject to a good faith contest which is being diligently pursued by the Golf Course Contractor.

EXHIBIT H-2

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY.
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT H (cont.)

5. There is no material adverse change in the condition of the Golf Course Contractor which in the reasonable judgment of the Golf Course Contractor would be likely to materially adversely affect the Golf Course Contractor's ability to perform its obligations under the Golf Course Construction Contract.

6. As of the date hereof, the "Contract Price" under and as defined in the Golf Course Construction Contract is \$_____.

The foregoing representations are true and correct, are made for the benefit of the Disbursement Agent, the Bank Agent, the FF&E Agent, the Indenture Trustee and the lenders providing financing for the Project, and may be relied upon for the purposes of making advances pursuant to the above referenced Disbursement Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Golf Course Contractor's Advance Certificate as of the [__] of [_____], 20[__].

[GOLF COURSE CONTRACTOR]

a [_____] [**corporation/limited liability company**]

By: _____

Name: _____

Title: _____

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT H (cont.)

Schedule 1 to Golf Course Contractor's Advance Certificate

List of Subcontractors/Vendors/Materialmen

EXHIBIT H-4

EXHIBIT I

[WYNN DESIGN AND DEVELOPMENT
GRAPHIC APPEARS HERE]

LE RÊVE

**FULL AND UNCONDITIONAL RELEASE OF
ALL CLAIMS AND WAIVER OF LIEN**

Project Description: _____

Work Performed: _____

Work Performed by: _____

Under Contract to: _____

Contract Date: _____

Original Contract Amount: _____

Change Order Amounts (increases in Contract Price):
+ _____

Change Order Amounts (decreases in Contract Price): - _____

Adjusted Contract Amount: _____

Work Completed to Date: _____

Less Retainage Not Yet Due:
- _____

Net Amount Due to Date: _____

Less Payments Received to Date: - _____

Total Payments Due: _____

The undersigned has been paid and has received final payment totaling \$ _____ for labor and/or materials furnished to WYNN LAS VEGAS, LLC; WYNN DESIGN & DEVELOPMENT, LLC; VALVINO LAMORE, LLC, for the WYNN LAS VEGAS, LLC Project # _____ Description _____, located at 3131 Las Vegas Blvd., South, Las Vegas, Nevada, and does hereby unconditionally release any mechanic's lien or claim upon any bond and any rights thereto that the undersigned has on the above referenced job for any and all materials and work furnished pursuant to the final contract sum of \$ _____.

The undersigned represents and warrants that all labor, services, equipment and/or materials performed or furnished by or through the undersigned or incorporated in the Project or Property are free from any claims, liens or encumbrances. The undersigned represents and warrants that payment has been made to all persons working on this Project or Property and entitled to compensation on said Project or Property, including trust funds and to all undersigned's workmen, (sub) subcontractors, suppliers, laborers and materialmen who may have delivered materials or rented equipment to or performed work at or on behalf of the Project. The undersigned shall and does hereby indemnify, save and hold Owner and Contractor harmless from any and all claims, damages, liens or losses, expenses, including all costs, professional fees and attorneys fees, which Owner and/or Contractor may suffer or incur by reason of the filing of any claims, notices, liens, encumbrances, suits against Owner, Contractor or the Property, or the failure of the undersigned to obtain cancellation and discharge thereof.

THIS RELEASE COVERS A FINAL PAYMENT FOR LABOR, SERVICES, EQUIPMENT AND/OR MATERIAL FURNISHED TO WYNN LAS VEGAS, LLC.

DATED this ____ day of _____, 200__ _____

By: _____

Title: _____

OWNER, OFFICER or PARTNER

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this ____ day of _____, 200 ____ personally appeared before me, a Notary Public, _____ who acknowledged to me that (s)he has read the foregoing, that the same is true and correct and that (s)he is authorized to execute the same.

NOTARY PUBLIC, in and for said County and State

EXHIBIT I-2

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT J

PROJECT CONSTRUCTION SAFETY AND HEALTH GUIDELINES

[See Attached]

EXHIBIT J-1

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT K

OCIP MANUAL

[See Attached]

EXHIBIT K-1

**LUMP SUM AGREEMENT
BY AND BETWEEN
WYNN LAS VEGAS, LLC
AND
WADSWORTH GOLF CONSTRUCTION COMPANY
FOR A GOLF COURSE
TO BE LOCATED AT
3131 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**

EXHIBIT L

UNIT PRICES

[See Attached]

EXHIBIT L-1

EXHIBIT M

**[THE CERTIFICATION DELIVERED BY THE GOLF COURSE CONTRACTOR MUST
BE IDENTICAL TO, AND HAVE NO CHANGES FROM WHAT IS DESCRIBED HEREIN,
AND NO ALTERATIONS WILL BE ACCEPTED]**

GOLF COURSE CONTRACTOR'S COMPLETION CERTIFICATE

[Letterhead of Golf Course Contractor]

Date: [____], 20[__]

Deutsche Bank Trust Company Americas,
as Disbursement Agent
31 West 52nd Street
New York, New York 10019
Attn: Amy Sinensky

with a copy to:

Deutsche Bank Trust Company Americas,
as Bank Agent
c/o Deutsche Bank Securities Inc.
200 Crescent Court, Suite 550
Dallas, Texas 75201
Attn: Gerald Dupont

Wells Fargo Bank Nevada, National Association,
as FF&E Agent
MAC: U1228-120
299 South Main Street, 12th Floor
Salt Lake City, Utah 84111
Attn: Corporate Trust Services

Wells Fargo Bank, National Association,
as Indenture Trustee
MAC: N9303-121
Corporate Trust Operations
6th & Marquette Avenue
Minneapolis, Minnesota 55479
Attn: Michael Slade

EXHIBIT M-1

Re: Master Disbursement Agreement dated as of October 30, 2002 (the "Disbursement Agreement") of Wynn Las Vegas, LLC, a Nevada limited liability company ("Wynn Las Vegas"), Wynn Las Vegas Capital Corp., a Nevada corporation ("Capital Corp."), and Wynn Design & Development, LLC, a Nevada limited liability company ("Wynn Design") and jointly and severally with Wynn Las Vegas and Capital Corp., the "Company").

Ladies and Gentlemen:

In connection with the development, construction and operation of the Le Rêve Casino Resort project (the "Project"), [_____] (the "Golf Course Contractor") hereby represents to its knowledge, information and belief as follows:

1. That certain construction contract, dated as of [_____] 20[___] between the Golf Course Contractor and Wynn Las Vegas (the "Golf Course Construction Contract") is in full force and effect. The Golf Course Contractor is not in default under any term of the Golf Course Construction Contract and, to the Golf Course Contractor's knowledge, the Company is not in default under any term of the Golf Course Construction Contract.
2. The construction of the Golf Course is substantially completed and has been performed in accordance with the plans and specifications for the golf course under the Golf Course Construction Contract.
3. Through the date hereof, the Golf Course Contractor has been paid \$_____, consisting of all amounts due to it through the date hereof under the Golf Course Construction Contract (other than (i) "Retainage" as defined in the Golf Course Construction Contract in the amount of \$[_____] (ii) amounts of \$[_____] incurred within the last thirty (30) days and to be paid under the current invoice dated [_____] 20[___] which has been submitted but not yet paid and (iii) amounts of \$[_____] being contested by the Company).
4. Attached hereto as Appendix I is a list of all remaining work on the Project required to be completed pursuant to the Golf Course Construction Contract in order to achieve "Final Completion" (as defined in the Golf Course Construction Contract). The cost to complete such items is not more than \$_____.
5. Except for the amounts set forth above, the Golf Course Contractor has no further claims under the Golf Course Construction Contract or otherwise against Company, the Disbursement Agent, the Bank Agent, the FF&E Agent, the Indenture Trustee or the lenders providing financing for the Project and no disputes have arisen which are outstanding as of the date hereof. The Golf Course Contractor has no knowledge of any facts or circumstances which may give rise to any claim or dispute under the Golf Course Construction Contract or otherwise with the Company.

EXHIBIT M-2

The foregoing representations are true and correct, are made for the benefit of the Disbursement Agent, the Bank Agent, the FF&E Agent, the Indenture Trustee and the lenders providing financing for the Project, and may be relied upon by such parties

EXHIBIT M-3

IN WITNESS WHEREOF, the undersigned has executed this Golf Contractor's Completion Certificate as of the [] of [], 20[].

[GOLF COURSE CONTRACTOR]

a [] [corporation/limited liability company]

By: _____

Name: _____

Title: _____

EXHIBIT M-4

Appendix I

Remaining Work on the Project to be Completed

EXHIBIT M-5

EMPLOYMENT AGREEMENT

("Agreement")

– by and between –

WYNN RESORTS, LIMITED

("Employer")

– and –

RONALD J. KRAMER

("Employee")

DATED: as of April 1, 2003

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the 1st day of April, 2003, by and between **WYNN RESORTS, LIMITED (“Employer”)** and **RONALD J. KRAMER (“Employee”)**.

WITNESSETH:

WHEREAS, Employer is a corporation duly organized and existing under the laws of the State of Nevada, maintains its principal place of business at 3145 Las Vegas Blvd. South, Las Vegas, Nevada 89109, and is engaged in the business of developing, constructing and operating casino resorts; and

WHEREAS, in furtherance of its business, Employer has need of qualified, experienced executive management; and

WHEREAS, Employee is an adult individual residing at 829 Park Avenue, New York, New York 10021; and

WHEREAS, Employer has determined, based upon prior experiences with Employee, that Employee possesses sufficient qualifications and expertise in order to fulfill the terms of the employment stated in this Agreement; and

WHEREAS, Employer is willing to continue to employ Employee, and Employee is willing to continue to be employed by Employer, under the terms and pursuant to the conditions set forth herein;

NOW, THEREFORE, for and in consideration of the foregoing recitals, and in consideration of the mutual covenants, agreements, understandings, undertakings, representations, warranties and promises hereinafter set forth, and intending to be legally bound thereby, Employer and Employee hereby covenant and agree as follows:

1. **DEFINITIONS**. As used in this Agreement, the words and terms hereinafter defined have the respective meanings ascribed to them herein, unless a different meaning clearly appears from the context:

(a) **“Affiliate”**—means with respect to a specified Person (as defined in Subparagraph 1(d) below), any other Person who or which is (i) directly or indirectly controlling, controlled by or under common control with the specified Person, or (ii) any member, director, officer or manager of the specified Person. For purposes of this definition only, “control”, “controlling” and “controlled” mean the right to exercise, directly or indirectly, more than fifty (50%) percent of the voting power of the

stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

(b) “**Anniversary**”—means each anniversary date of the Effective Date during the Term of this Agreement (as defined in Paragraph 6 hereof).

(c) “**Cause**”—means

(i) the willful destruction by Employee of the property of Employer or an Affiliate having a material value to Employer or such Affiliate;

(ii) fraud, embezzlement, theft or comparable dishonest activity committed by Employee involving Employer or an Affiliate (excluding acts involving a *de minimis* dollar value and not related to Employer or an Affiliate);

(iii) Employee’s conviction by a court of competent jurisdiction of or entering a plea of guilty or *nolo contendere* to any crime constituting a felony or any misdemeanor involving fraud, dishonesty or moral turpitude involving Employer or an Affiliate (excluding acts involving a *de minimis* dollar value and not related to Employer or an Affiliate);

(iv) Employee’s breach, neglect, refusal, or failure to materially discharge his duties (other than due to physical or mental illness) commensurate with his title, function and this Agreement, or Employee’s failure to comply with the lawful directions of Employer’s Board of Directors consistent with the terms of this Agreement;

(v) a willful and knowing material misrepresentation to Employer’s Board of Directors;

(vi) a willful violation of a material policy of Employer, which does or could result in material harm to Employer or to Employer’s reputation;

or

(vii) Employee’s material violation of a statutory or common law duty of loyalty or fiduciary duty to Employer,

provided, however, that Employee’s disability due to illness or accident or any other mental or physical incapacity shall not constitute “Cause” as defined herein and *provided further, however*, that for purposes of this Subparagraph 1(c), no act, or failure to act, by Employee shall be considered “willful” unless committed in bad faith and without a reasonable belief that the act or omission was in the best interests of Employer or any Affiliate. Employee shall have ten (10) days after receipt of a Notice of Termination to remedy the facts and circumstances claimed to provide the basis for termination for cause.

(d) “**Change of Control**”—means the occurrence, after the Effective Date, of any of the following events:

(i) any “Person” or “Group” (as such terms are defined in Section 13(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and the rules and regulations promulgated thereunder), excluding any Excluded Shareholder, is or becomes the “Beneficial Owner” (within the meaning of Rule 13d-3 promulgated under the Exchange Act) directly or indirectly, of securities of Employer, or of any entity resulting from a merger or consolidation involving Employer, representing more than fifty (50%) percent of the combined voting power of the then outstanding securities of Employer or such entity;

(ii) the individuals who, as of the time immediately following the closing of Employer’s initial public offering, are members of Employer’s Board of Directors (the “Existing Directors”) cease, for any reason, to constitute more than fifty (50%) percent of the number of authorized directors of Employer as determined in the manner prescribed in Employer’s Articles of Incorporation and Bylaws; provided, however, that if the election, or nomination for election, by Employer’s stockholders of any new director was approved by a vote of at least fifty (50%) percent of the Existing Directors, such new director shall be considered an Existing Director; provided further, however, that no individual shall be considered an Existing Director if such individual initially assumed office as a result of either an actual or threatened “Election Contest” (as described in Rule 14a-11 promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or by or on behalf of anyone other than the Board (a “Proxy Contest”), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest; or

(iii) the consummation of (x) a merger, consolidation or reorganization to which Employer is a party, whether or not Employer is the Person surviving or resulting therefrom, or (y) a sale, assignment, lease conveyance or other disposition of all or substantially all of the assets of Employer, in one transaction or a series of related transactions, to any Person other than Employer, where any such transaction or series of related transactions as is referred to in clause (x) or clause (y) above in this subparagraph (iii) (singly or collectively, a “Transaction”) does not otherwise result in a “Change in Control” pursuant to subparagraph (i) of this definition of “Change in Control”; provided, however, that no such Transaction shall constitute a “Change in Control” under this subparagraph (iii) if the Persons who were the stockholders of Employer immediately before consummation of such Transaction are the Beneficial Owners, immediately following the consummation of such Transaction, of fifty (50%) percent or more of the combined voting power of the then outstanding voting securities of the Person surviving or resulting from any merger, consolidation or reorganization referred to in clause (x) above in this subparagraph (iii) or the Person to whom the assets of Employer are sold, assigned, leased, conveyed or disposed of in any transaction or series of related transactions referred to in clause (y) above in this subparagraph (iii), in substantially the same proportions in which such Beneficial Owners held voting stock in Employer immediately before such Transaction

For purposes of the foregoing definition of “Change in Control,” the term “Excluded Stockholder” means Wynn (as defined in Subparagraph 1(j) below), the spouse, siblings, children, grandchildren or great grandchildren of Wynn, any trust primarily for the benefit of the foregoing persons, or any Affiliate of an of the foregoing persons.

(e) “**Complete Disability**”—means the inability of Employee, due to illness or accident or other mental or physical incapacity, to perform his obligations under this Agreement for a period as defined by Employer’s disability plan or plans.

(f) “**Effective Date**”—means April 1, 2003.

(g) “**Good Reason**”—means the occurrence of any of the following (except with Employee’s written consent or resulting from an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by Employer or its Affiliate promptly after receipt of notice thereof from Employee):

(i) Employer or an Affiliate reduces Employee’s Base Salary (as defined in Subparagraph 8(a) below);

(ii) Employer discontinues its bonus plan in which Employee participates without immediately replacing such bonus plan with a plan that is the substantial economic equivalent or such bonus plan, or amends such bonus plan so as to materially reduce Employee’s potential bonus at any given level of economic performance of Employer or its successor entity;

(iii) Employer materially reduces the aggregate benefits or perquisites to Employee;

(iv) Employer or any of its Affiliates requires Employee to change the location of Employee’s job or office, so that Employee will be based at a location more than 10 miles from Employee’s present residence in New York, New York;

(v) Employer or any of its Affiliates reduces Employee’s responsibilities or directs Employee to report to a person other than Wynn; or

(vi) any successor to Employer fails or refuses expressly to assume in writing the obligations of Employer under this Agreement.

For purposes of this Agreement, a determination by Employer that Employee has “Good Reason” shall be final and binding on Employer and Employee absent a showing of bad faith on Employee’s part.

(h) “**Gross-up Payment**”—means the payment required by Exhibit 1 to this Agreement, which is incorporated herein by reference.

(i) “**Separation Payment**”—means an amount to the sum of (A) Employee’s Base Salary (as defined in Subparagraph 8(a) of this Agreement) for the remainder of the Term, but not less than one (1) year of Base Salary , plus (B) the bonus that was paid to

Employee under Subparagraph 8(b) for the preceding bonus period, projected over the remainder of the Term (but not less than the preceding bonus that was paid, projected over one (1) year).

(j) “**Wynn**” means Stephen A. Wynn.

2. **PRIOR AGREEMENT.** Employee and Wynn Resorts LLC are parties to an Employment Agreement (the “Prior Agreement”) dated April 1, 2002, which was assigned to Employer. The Prior Agreement terminates by its terms on March 31, 2003. This Agreement is intended to set forth the terms and conditions of Employee’s employment by Employer for the Term but shall not supercede or replace other written agreements with Employee such as Employee’s Indemnification Agreement or Time Share Agreement respecting Employer’s aircraft.

3. **BASIC EMPLOYMENT AGREEMENT.** Employer shall employ Employee, and Employee accepts such employment, on the terms and conditions hereinafter set forth.

4. **POSITION AND DUTIES OF EMPLOYEE; PLACE OF PERFORMANCE.**

(a) During the Term, Employee shall serve as President of Employer, and shall report solely and directly to Wynn. Employee’s powers and duties primarily shall be advising Wynn, Employer or any Affiliate (as defined hereinafter) respecting acquisitions, mergers, strategic planning, financial strategies and the placement of debt and/or equity, and such other powers and duties as may be agreed to between Wynn and Employee, or as may be reasonably assigned to Employee by Employer’s Board of Directors, consistent with the primary duties herein described.

(b) The principal place of employment of Employee shall be at Employer’s principal executive offices in Las Vegas, Nevada; *provided, however,* that Employee shall not be required to reside in Las Vegas, Nevada, and specifically shall be permitted to reside in New York, New York.

5. **ACCEPTANCE OF EMPLOYMENT.** Employee hereby unconditionally accepts the employment set forth hereunder, under the terms and pursuant to the conditions set forth in this Agreement. Employee hereby covenants and agrees that, during the Term of this Agreement, Employee will devote the whole of Employee’s normal and customary working time and best efforts solely to the performance of Employee’s duties under this Agreement and that, except upon Employer’s prior express written authorization to that effect, Employee shall not perform any services for any casino, hotel/casino or other similar gaming or gambling operation not owned by Employer or any of Employer’s Affiliates. The foregoing notwithstanding, it shall not be a violation of this Agreement for Employee to (a) serve on corporate, civic or charitable boards or committees, (b) deliver lectures, fulfill speaking engagements or teach at educational institutions, (c) manage personal and family investments, or (d) perform consulting services, directly or through an affiliate, for the entities identified on Exhibit 2 to this Agreement, which is incorporated herein by reference, so long as such activities do not significantly interfere with the performance of Employee’s duties and obligations to Employer under this Agreement. It is expressly understood and agreed that, to the extent any such activities have been conducted by

Employee prior to the Effective Date, the continued conduct of such activities (or activities similar in nature and scope thereto) after the Effective Date shall be deemed not to interfere with Employee's duties and obligations to Employer under this Agreement.

6. **TERM.** Unless sooner terminated as provided in this Agreement, the term of this Agreement (the "Term") shall consist of five (5) years commencing as of the Effective Date of this Agreement and terminating on the fifth Anniversary Date of the Effective Date.

7. **SPECIAL TERMINATION PROVISIONS.** Notwithstanding the provisions of Paragraph 6 of this Agreement, this Agreement shall terminate upon the occurrence of any of the following events:

- (a) the death of Employee;
- (b) the giving of written notice from Employer to Employee of the termination of this Agreement upon the Complete Disability of Employee;
- (c) the giving of written notice by Employer to Employee of the termination of this Agreement upon the discharge of Employee for Cause;
- (d) the giving of written notice by Employer to Employee of the termination of this Agreement following a denial or revocation of Employee's License (as defined in Subparagraph 9(b) of this Agreement);
- (e) the giving of written notice by Employer to Employee of the termination of this Agreement without Cause, *provided, however,* that, within ten (10) calendar days after such notice, Employer must tender the Separation Payment, together with any accrued but unpaid vacation pay and any Gross-Up Payment, to Employee;
- (f) the giving of written notice by Employee to Employer upon a material breach of this Agreement by Employer, which material breach remains uncured for a period of thirty (30) days after the giving of such notice, *provided, however,* that, within ten (10) calendar days after the expiration of such cure period without the cure having been effected, Employer must tender the Separation Payment, together with any accrued but unpaid vacation pay and any Gross-Up Payment, to Employee;
- (g) at Employee's sole election in writing as provided in Paragraph 19 of this Agreement, as a result of both a Change of Control and Good Reason, *provided, however,* that, within ten (10) calendar days after Employer's receipt of Employee's written election, Employer must tender the Separation Payment, together with any accrued but unpaid vacation pay and any Gross-Up Payment, to Employee; or
- (h) the giving of written notice by Employee to Employer of the termination of this Agreement without Cause on or after April 1, 2005.

In the event of a termination of this Agreement pursuant to the provisions of Subparagraph 7(a), 7(b), 7(c), 7(d) or 7(h), Employer shall not be required to make any payments to Employee other than payment of Base Salary and vacation pay accrued but

unpaid through the termination date, reimbursement for expenses incurred but not paid prior to such termination, and payment of Bonus Compensation pursuant to Subparagraph 8(b)(i) earned but not paid prior to such termination. In the event of a termination of this Agreement pursuant to the provisions of Subparagraph 7(e), 7(f) or 7(g), Employee will also be entitled to receive health benefits coverage for Employee and Employee's dependents under the same plan(s) or arrangement(s) under which Employee was covered immediately before Employee's termination, or plan(s) established or arrangement(s) provided by Employer or any of its Affiliates thereafter. Such health benefits coverage shall be paid for by Employer to the same extent as if Employee were still employed by Employer, and Employee will be required to make such payments as Employee would be required to make if Employee were still employed by Employer. The health benefits provided under this Paragraph 7 shall continue until the earlier of (x) the expiration of the period covered by the Separation Payment, and (y) the date Employee becomes covered under any other group health plan not maintained by Employer or any of its Affiliates; *provided, however*, that if such other group health plan excludes any pre-existing condition that Employee or Employee's dependants may have when coverage under such group health plan would otherwise begin, coverage under this Paragraph 7 shall continue (but not beyond the period described in clause (x) of this sentence) with respect to such pre-existing condition until such exclusion under such other group health plan lapses or expires. In the event Employee is required to make an election under Sections 601 through 607 of the Employee Retirement Income Security Act of 1974, as amended (commonly known as COBRA) to qualify for the health benefits described in this Paragraph 7, the obligations of Employer and its Affiliates under this Paragraph 7 shall be conditioned upon Employee's timely making such an election. In the event of a termination of this Agreement pursuant to any of the provisions of this Paragraph 7, Employee shall not be entitled to any benefits pursuant to any severance plan in effect by Employer or any of Employer's Affiliates.

Employee shall not be required to mitigate amounts payable under this Agreement by seeking other employment or otherwise, and there shall be no offset against amounts due Employee under this Agreement on account of subsequent employment or earnings.

8. **COMPENSATION TO EMPLOYEE.** For and in complete consideration of Employee's full and faithful performance of Employee's duties under this Agreement, Employer hereby covenants and agrees to pay to Employee, and Employee hereby covenants and agrees to accept from Employer, the following items of compensation:

(a) **BASE SALARY.** Employer hereby covenants and agrees to pay to Employee, and Employee hereby covenants and agrees to accept from Employer, a base salary at the rate of (i) One Million One Hundred Thousand Dollars (\$1,100,000.00) per annum during the first year of the Term; (ii) One Million Two Hundred Thousand Dollars (\$1,200,000.00) per annum during the second year of the Term; and (iii) One Million Three Hundred Thousand Dollars (\$1,300,000.00) per annum during the third, fourth and fifth years of the Term (the "Base Salary"). Employee's Base Salary shall be payable in such weekly, bi-weekly or semi-monthly installments as shall be convenient to Employer. Employee's Base Salary shall be exclusive of and in addition to any other benefits which Employer may make available to Employee, including, but not limited to, those benefits

described in Subparagraphs 8(b) through (g) of this Agreement. Employee's benefits, taken as a whole, shall be no less favorable than any other executive employed by Employer or any of its Affiliates other than Wynn. Employee's Base Salary shall be subject to merit review by Employer's Board of Director periodically and may be increased, but not decreased, as a result of any such review.

(b) BONUS COMPENSATION.

(i) In addition to the Base Salary, Employee shall be paid a bonus of not less than fifty (50%) percent of his Base Salary for the first year of the Term earned upon the completion of third-party financing for the Macau project, provided such financing is committed on or before March 31, 2004, and payable from the first of such financing proceeds whenever received; and

(ii) In addition to the Base Salary and any bonus pursuant to Subparagraph 8(b)(i), Employee also will be eligible to receive a bonus at such times and in such amounts as Employer's Board of Directors, in its sole and exclusive discretion, may determine, until such time as the Board may adopt a performance-based bonus plan, and thereafter in accordance with such plan. Nothing in this Agreement shall limit the Board's discretion to adopt, amend or terminate any performance-based bonus plan at any time prior to a Change of Control.

(c) **EMPLOYEE BENEFIT PLANS.** Employer hereby covenants and agrees that it shall include Employee, if otherwise eligible, in any profit sharing plan, executive stock option plan, pension plan, retirement plan, disability or life insurance plan, medical and/or hospitalization plan, and/or any and all other benefit plans which may be placed in effect by Employer or any of its Affiliates for the benefit of Employer's executives during the Term. Unless prohibited by law or the terms of the applicable plan, Employee's eligibility for medical and/or hospitalization benefits shall commence on the Effective Date of this Agreement. Nothing in this Agreement shall limit (i) Employer's ability to exercise the discretion provided to it under any such benefit plan, or (ii) Employer's or its Affiliates' discretion to adopt, amend or terminate any benefit plan, at any time prior to a Change of Control.

(d) **EXPENSE REIMBURSEMENT.** During the Term and provided the same are authorized by Employer, Employer shall either pay directly or reimburse Employee for Employee's reasonable expenses incurred for the benefit of Employer in accordance with Employer's general policy regarding expense reimbursement, as the same may be amended, modified or changed from time to time, including first class airfare for all air travel, including flying from Employee's residence in New York to and from Las Vegas. Such reimbursable expenses shall include, but are not limited to, (i) reasonable entertainment and promotional expenses, (ii) gift and travel expenses, (iii) dues and expenses of membership in clubs, professional societies and fraternal organizations, and (iv) the like. Prior to reimbursement, Employee shall provide Employer with sufficient detailed invoices of such expenses as may be required by Employer's expense reimbursement policy.

(e) **COMPANY AUTOMOBILE**. Employer shall provide Employee with the use of an automobile when Employee is in Las Vegas, at Employer's sole cost and expense, including the cost of providing insurance, fuel and complete maintenance for such vehicle.

(f) **CORPORATE AIRCRAFT**. Employee shall have the right to the personal use of Employer's aircraft by Employee and his family, subject to Employee having entered into a separate time-sharing agreement with Employer or its Affiliate for such personal use.

(g) **VACATIONS AND HOLIDAYS**. Commencing as of the Effective Date of this Agreement, Employee shall be entitled to (i) annual paid vacation leave in accordance with Employer's standard policy, but in no event less than four (4) weeks each year of the Term, to be taken at such times as selected by Employee and approved by Employer, and (ii) paid holidays (or, at Employer's option, an equivalent number of paid days off) in accordance with Employer's standard policy.

(h) **WITHHOLDINGS**. All compensation to Employee identified in this Paragraph 8 shall be subject to applicable withholdings for federal, state or local income or other taxes, Social Security Tax, Medicare Tax, State Unemployment Insurance, State Disability Insurance, voluntary charitable contributions, and the like.

9. LICENSING REQUIREMENTS.

(a) Employer and Employee hereby covenant and agree that this Agreement may be subject to the approval of one or more gaming regulatory authorities (the "Gaming Authorities") pursuant to the provisions of the applicable gaming regulatory statutes and the regulations promulgated thereunder (the "Gaming Laws"). Employer and Employee hereby covenant and agree to use their best efforts, at Employer's sole cost and expense, to obtain any and all approvals required by the Gaming Laws. In the event that (i) an approval of this Agreement by the Gaming Authorities is required for Employee to carry out his duties and responsibilities set forth in Paragraph 4 of this Agreement, (ii) Employer and Employee have used their best efforts to obtain such approval, and (iii) this Agreement is not so approved by the Gaming Authorities, then this Agreement shall immediately terminate.

(b) Employer and Employee hereby covenant and agree that, in order for Employee to discharge the duties required under this Agreement, Employee may be required to apply for or hold a license, registration, permit or other approval as issued by the Gaming Authorities pursuant to the terms of the applicable Gaming Laws and as otherwise required by this Agreement (the "License"). In the event Employee fails to apply for and secure, or the Gaming Authorities refuse to issue or renew, or revoke or suspend any required License, then Employee, at Employer's sole cost and expense, shall promptly defend such action and shall take such reasonable steps as may be required to either remove the objections, secure the Gaming Authorities' approval, or reinstate the License, respectively. The foregoing notwithstanding, if the source of the objections or the Gaming Authorities' refusal to renew the License or their imposition of disciplinary

action against Employee is any of the events described in Subparagraph 1(c) of this Agreement, then Employer's obligations under this Paragraph 9 shall not be operative and Employee shall promptly reimburse Employer upon demand for any expenses incurred by Employer pursuant to this Paragraph 9.

(c) Employer and Employee hereby covenant and agree that the provisions of this Paragraph 9 shall apply in the event Employee's duties require that Employee also be licensed by such relevant governmental agencies other than the Gaming Authorities.

10. RESTRICTED STOCK GRANT; STOCK OPTIONS.

(a) On the Effective Date, the Compensation Committee of the Board of Directors of Employer (the "Committee") shall cause Employer to grant Employee an award of 189,723 shares of restricted common stock of Employer ("Restricted Stock") under and pursuant to Employer's 2002 Stock Incentive Plan (the "Stock Plan"). In addition to the terms of the Stock Plan (as it may be amended from time to time), any restrictions on the stock awarded will lapse with respect to one hundred (100%) percent of the shares of the Restricted Stock and such shares will become nonforfeitable on the earlier to occur of (i) May 31, 2005, provided Employee is still employed by Employer on that date, or (ii) the date Employee's employment is terminated by reason of his death or Complete Disability, by Employer for any reason other than Cause, or by Employee under Subparagraph 7(f) or 7(g).

(b) On the Effective Date, the Committee shall cause Employer to grant Employee an option to acquire two hundred thousand (200,000) shares of Employer's common stock (each, an "Option" and collectively the "Options"). All Options shall be granted subject to the following terms and conditions: (i) except as provided below, the Options shall be granted under and subject to the Stock Plan; (ii) the exercise price per share of each Option shall be equal to the last reported sale price of Employer's common stock on the Nasdaq National Market (or such other principal trading market for Employer's common stock) at the close of the trading day immediately preceding the date as of which the grant is made; (iii) the Options shall be vested and exercisable as to twenty five (25%) percent on each of the second, third, fourth and fifth anniversaries of the date of grant; provided, that, Employee is employed as of the relevant vesting date; provided, further, that, if Employee's employment is terminated by reason of his death, Complete Disability, by Employer for any reason other than Cause or by Employee under Subparagraph 7(f) or 7(g), the Options shall automatically become immediately vested and exercisable in full and remain exercisable for five (5) years following such termination of employment, but in no event beyond the ten (10) year term of each Option; (iv) each Option shall be exercisable for the ten (10) year period following the date of grant; and (v) each Option shall be evidenced by, and subject to, a stock option agreement whose terms and conditions are consistent with the terms hereof.

11. **CONFIDENTIALITY.** Employee hereby warrants, covenants and agrees that, (x) except as may be required or appropriate in connection with his carrying out his duties under this Agreement, (y) without the prior express written approval of Employer or (z) unless required by law or court order and for the Term, Employee shall hold in the strictest confidence, and shall

not disclose to any person, firm, corporation or other entity, any and all of Employer's confidential data, including, but not limited to, (a) information, drawing, sketches, plans or other documents concerning Employer's business or development plans, customers or suppliers or those of Employer's Affiliates, (b) Employer's or its Affiliates' development, design, construction or sales and marketing methods or techniques, or (c) Employer's trade secrets and other "know-how" or information not of a public nature, regardless of how such information came to the custody of Employee. For purposes of this Agreement, such confidential information shall include, but not be limited to, information, including a formula, pattern, compilation, program, device, method, technique or process, that (i) derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The warranty, covenant and agreement set forth in this Paragraph 11 shall not expire, shall survive this Agreement and shall be binding on Employee without regard to the passage of time or other events.

12. **RESTRICTIVE COVENANT/NO SOLICITATION.**

(a) Employee hereby covenants and agrees that, (i) during the Term or for such period as Employee receives cash compensation under this Agreement, whichever period is shorter, or (ii) in the event of a termination pursuant to Subparagraph 7(h), for one year after the date of such termination, Employee shall not directly or indirectly, either as a principal, agent, employee, employer, consultant, partner, member or manager of a limited liability company, shareholder of a closely held corporation, shareholder in excess of two percent (2%) of a publicly traded corporation, corporate officer or director, or in any other individual or representative capacity, engage or otherwise participate in any manner or fashion in any gaming business that is in competition in any manner whatsoever with the principal business activity of Employer or Employer's Affiliates, in or about any market in which Employer or Employer's Affiliates have or have publicly announced a plan for gaming operations. Employee hereby further covenants and agrees that the restrictive covenant contained in this Paragraph 12 is reasonable as to duration, terms and geographical area and that the same protects the legitimate interests of Employer, imposes no undue hardship on Employee, and is not injurious to the public. Notwithstanding the foregoing, the provisions of this Subsection 12(a) shall not apply in the event of a termination under Subparagraph 7(f) or 7(g).

(b) Employee hereby further covenants and agrees that, for the applicable period described in Subparagraph 12(a), Employee shall not directly or indirectly solicit or attempt to solicit for employment any management level employee of Employer or Employer's Affiliates with or on behalf of any business that is in competition in any manner whatsoever with the principal business activity of Employer or Employer's Affiliates, in or about any market in which Employer or Employer's Affiliates have or have publicly announced a plan for gaming operations.

13. **ARBITRATION.** If any contest or dispute arises between the parties with respect to this Agreement, or a breach thereof, such contest or dispute shall be submitted to binding arbitration for resolution in Las Vegas, Nevada, in accordance with Commercial

Arbitration Rules of the American Arbitration Association then in effect. The decision of the arbitrator shall be final and binding on both parties, and any court of competent jurisdiction may enter judgment upon the award. Each party shall pay its own legal fees and expenses relating to such arbitration, regardless of outcome, unless the arbitrator determines that the other party has acted in bad faith.

14. **BEST EVIDENCE.** This Agreement shall be executed in original and "Xerox" or photostatic copies and each copy bearing original signatures in ink shall be deemed an original.

15. **SUCCESSION.** This Agreement shall be binding upon and inure to the benefit of Employer and Employee and their respective successors and assigns.

16. **ASSIGNMENT.** Neither party shall assign this Agreement or delegate his or its duties hereunder without the express written prior consent of the other party. Any purported assignment violation of this Paragraph 16 shall be null and void and of no force or effect.

17. **AMENDMENT OR MODIFICATION.** This Agreement may not be amended, modified, changed or altered except by a writing signed by both Employer and Employee.

18. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with Nevada law, without regard to conflicts of law principles.

19. **NOTICES.** Any and all notices required under this Agreement shall be in writing and shall be either hand-delivered or mailed, certified mail, return receipt requested, addressed to:

TO EMPLOYER:

Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Stephen A. Wynn

WITH A COPY THAT SHALL NOT BE NOTICE TO:

Wynn Resorts, Limited
3145 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attn: Legal Department

TO EMPLOYEE:

Ronald J. Kramer
829 Park Avenue
New York, New York 10021

WITH A COPY THAT SHALL NOT BE NOTICE TO:

Steven M. Pesner, P.C.
Akin Gump Strauss Hauer & Feld, LLP
590 Madison Avenue
New York, New York 10022

All notices hand-delivered shall be deemed delivered as of the date actually delivered. All notices mailed shall be deemed delivered as of three (3) business days after the date postmarked. Any changes in any of the addresses listed herein shall be made by notice as provided in this Paragraph 19.

20. **INTERPRETATION.** The preamble recitals to this Agreement are incorporated into and made a part of this Agreement; titles of paragraphs are for convenience only and are not to be considered a part of this Agreement.

21. **SEVERABILITY.** In the event any one or more provisions of this Agreement is declared judicially void or otherwise unenforceable, the remainder of this Agreement shall survive and such provision(s) shall be deemed modified or amended so as to fulfill the intent of the parties hereto.

22. **WAIVER.** None of the terms of this Agreement, including this Paragraph 22, or any term, right or remedy hereunder shall be deemed waived unless such waiver is in writing and signed by the party to be charged therewith and in no event by reason of any failure to assert or delay in asserting any such term, right or remedy or similar term, right or remedy hereunder.

23. **PAROL.** This Agreement constitutes the entire agreement between the Employer and Employee with respect to the subject matter hereto and this Agreement supersedes any prior understandings, agreements, undertakings or severance policies or plans by and between Employer or Employer's Affiliates, on the one side, and Employee, on the other side, with respect to the subject matter hereof or Employee's employment with Employer or Employer's Affiliates.

24. **NONCONTRAVENTION.** Each party represents that neither he nor it is prevented from entering into, or performing this Agreement by the terms of any law, order, rule or regulation, its by-laws or declarations of trust, or any agreement to which he or it is a party.

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND THEREBY, the parties hereto have executed and delivered this Agreement as of the year and date first above written.

WYNN RESORTS, LIMITED

By: /s/ Stephen A. Wynn

Stephen A. Wynn
Chief Executive Officer

EMPLOYEE

/s/ Ronald J. Kramer

Ronald J. Kramer

EXHIBIT 1

Indemnification and Gross-Up for Excise Taxes

(a) Employer shall indemnify and hold Employee harmless from and against any and all liabilities, costs and expenses (including, without limitation, attorney's fees and costs) which Employee may incur as a result of the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") or any similar provision of state or local income tax law (the "Excise Tax"), to the end that Employee shall be placed in the same tax position with respect to the Severance Payment under Employee's Employment Agreement and all other payments from Employer to Employee in the nature of compensation as Employee would have been in if the Excise Tax had never been enacted. In furtherance of such indemnification, Employer shall pay to Employee a payment (the "Gross-Up Payment") in an amount such that, after payment by Employee of all taxes, including income taxes and the Excise Tax imposed on the Gross-Up Payment and any interest or penalties (other than interest and penalties imposed by reason of Employee's failure to file timely tax returns or to pay taxes shown due on such returns and any tax liability, including interest and penalties, unrelated to the Excise Tax or the Gross-Up Amount), Employee shall be placed in the same tax position with respect to the Severance Payment under this Plan and all other payments from Employer to Employee in the nature of compensation as Employee would have been in if the Excise Tax had never been enacted. When Employer pays Employee's Severance Payment, it shall also pay to Employee a Gross-Up Payment for the Severance Payment and any other payments in the nature of compensation that Employer determines are "excess parachute payments" under Section 280G(b)(1) of the Code ("Excess Parachute Payments"). If, through a determination of the Internal Revenue Service or any state or local taxing authority (a "Taxing Authority"), or a judgment of any court, Employee becomes liable for an amount of Excise Tax not covered by the Gross-Up Payment payable pursuant to the preceding sentence, Employer shall pay Employee an additional Gross-Up Payment to make Employee whole for such additional Excise Tax; provided, however, that, pursuant to Subparagraph (c) below, Employer shall have the right to require Employee to protest, contest, or appeal any such determination or judgment. For purposes of this Exhibit 1, any amount that Employer is required to withhold under Sections 3402 or 4999 of the Code or under any other provision of law shall be deemed to have been paid to Employee.

(b) Upon payment to Employee of a Gross-Up Payment, Employer shall provide Employee with a written statement showing Employer's computation of such Gross-Up Payment and the Excess Parachute Payments and Excise Tax to which it relates, and setting forth Employer's determination of the amount of gross income Employee is required to recognize as a result of such payments and Employee's liability for Excise Tax. Employee shall cause his federal, state, and local income tax returns for the period in which Employee receives such Gross-Up Payment to be prepared and filed in accordance with such statement, and, upon such filing, Employee shall certify in writing to Employer that such returns have been prepared and filed. Notwithstanding the provisions of this Exhibit 1, Employer shall not be obligated to indemnify Employee from and against any tax liability, cost or expense (including, without limitation, any liability for the Excise Tax or attorney's fees or costs) to the extent such tax

liability, cost or expense is attributable to your failure to comply with the provisions of this Exhibit 1.

(c) If any controversy arises between Employee and a Taxing Authority with respect to the treatment on any return of the Gross-Up Amount, or of any payment Employee receives from Employer as an Excess Parachute Payment, or with respect to any return which a Taxing Authority asserts should show an Excess Parachute Payment, including, without limitation, any audit, protest to an appeals authority of a Taxing Authority or litigation (“Controversy”), Employer shall have the right to participate with Employee in the handling of such Controversy. Employer shall have the right, solely with respect to a Controversy, to direct Employee to protest or contest any proposed adjustment or deficiency, initiate an appeals procedure within any Taxing Authority, commence any judicial proceeding, make any settlement agreement, or file a claim for refund of tax, and Employee shall not take any of such steps without the prior written approval of Employer, which Employer shall not unreasonably withhold. If Employer so elects, Employee shall be represented in any Controversy by attorneys, accountants, and other advisors selected by Employer, and Employer shall pay the fees, costs and expenses of such attorneys, accountants, or advisors, and any tax liability Employee may incur as a result of such payment. Employee shall promptly notify Employer of any communication with a Taxing Authority, and Employee shall promptly furnish to Employer copies of any written correspondence, notices, or documents received from a Taxing Authority relating to a Controversy. Employee shall cooperate fully with Employer in the handling of any Controversy by furnishing Employer an information or documentation relating to or bearing upon the Controversy; provided, however, that Employee shall not be obligated to furnish to Employer copies of any portion of his or her tax returns which do not bear upon, and are not affected by, the Controversy.

(d) Employee shall pay over to Employer, with ten (10) days after receipt thereof, any refund Employee receives from any Taxing Authority of all or any portion of the Gross-Up or Excise Tax, together with any interest Employee receives from such Taxing Authority on such refund. For purposes of this Exhibit 1, a reduction in Employee’s tax liability attributable to the previous payment of the Gross-Up Amount or the Excise Tax shall be deemed to be a refund. If Employee would have received a refund of all or any portion of the Gross-Up Payment or the Excise Tax, except that a Taxing Authority offset the amount of such refund against other tax liabilities, interest, or penalties, Employee shall pay the amount of such offset over to Employer, together with the amount of interest Employee would have received from the Taxing Authority if such offset had been an actual refund, within ten (10) days after receipt of notice from the Taxing Authority of such offset.

EXHIBIT 2

TMP Worldwide

Griffon Corp.

Aeroflex Inc.

Wynn Resorts, Limited
Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
(18 U.S.C. Section 1350)

Pursuant to the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Sections 1350(a) and (b)), the undersigned hereby certify as follows:

1. Stephen A. Wynn is the Chief Executive Officer of Wynn Resorts, Limited (the "Company").
2. The undersigned certifies to the best of his knowledge:
 - (A) The Company's Form 10-Q for the quarterly period ended March 31, 2003 accompanying this Certification, in the form filed with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (the "Exchange Act"); and
 - (B) The information in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: May 13, 2003

/s/ STEPHEN A. WYNN

Stephen A. Wynn
Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)

Wynn Resorts, Limited
Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
(18 U.S.C. Section 1350)

Pursuant to the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Sections 1350(a) and (b)), the undersigned hereby certify as follows:

1. John Strzemp is the Chief Financial Officer of Wynn Resorts, Limited (the "Company").
2. The undersigned certifies to the best of his knowledge:
 - (A) The Company's Form 10-Q for the quarterly period ended March 31, 2003 accompanying this Certification, in the form filed with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (the "Exchange Act"); and
 - (B) The information in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: May 13, 2003

/s/ JOHN STRZEMP

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