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

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**FORM 10-Q**

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

For the quarterly period ended June 30, 2005

OR

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

For the transition period \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 000-50028

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**WYNN RESORTS, LIMITED**

(Exact name of Registrant as specified in its charter)

**NEVADA**  
(State or other jurisdiction of  
incorporation or organization)

**46-0484987**  
(I.R.S. Employer  
Identification Number)

**3131 Las Vegas Boulevard South - Las Vegas, Nevada 89109**  
(Address of principal executive office) (Zip Code)

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

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

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☒ No ☐

Indicate 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 August 1, 2005</u>
Common stock, \$0.01 par value	99,503,517

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

	June 30, 2005	December 31, 2004
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 485,796	\$ 330,261
Restricted cash and investments	136,842	115,301
Receivables, net	55,544	227
Inventories	29,324	757
Prepaid expenses	6,976	4,683
Total current assets	714,482	451,229
Restricted cash and investments	455,170	827,066
Property and equipment, net	2,518,008	1,987,032
Water rights	6,400	6,400
Trademark	1,000	1,000
Deferred financing costs	89,782	88,565
Macau gaming concession, net	40,509	41,700
Deposits and other assets	82,427	61,220
Investment in unconsolidated affiliates	3,751	—
Total assets	\$3,911,529	\$3,464,212
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 739	\$ 718
Current portion of land concession obligation	9,137	9,483
Accounts and construction payable	115,698	86,520
Accrued interest	14,745	12,081
Accrued compensation and benefits	31,050	11,110
Other accrued expenses	21,754	9,918
Customer deposits and other related liabilities	27,722	1,006
Construction retention	66,910	39,117
Total current liabilities	287,755	169,953
Construction retention	5,760	21,140
Long-term debt	2,018,185	1,600,328
Long-term land concession obligation	23,764	27,640
Other long-term liabilities	287	860
Total liabilities	2,335,751	1,819,921
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value \$0.01; authorized 40,000,000 shares; zero shares issued and outstanding	—	—
Common stock, par value \$0.01; authorized 400,000,000 shares; 99,310,794 and 98,983,344 shares issued and outstanding	993	990
Additional paid-in capital	1,971,503	1,951,906
Deferred compensation - restricted stock	(18,884)	(4,079)
Accumulated other comprehensive income	9,488	10,007
Accumulated deficit	(387,322)	(314,533)
Total stockholders' equity	1,575,778	1,644,291
Total liabilities and stockholders' equity	\$3,911,529	\$3,464,212

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Operating revenues:				
Casino	\$ 98,715	\$ —	\$ 98,715	\$ —
Rooms	44,632	—	44,632	—
Food and beverage	48,056	—	48,056	—
Entertainment, retail and other	34,651	59	34,659	194
	<u>226,054</u>	<u>59</u>	<u>226,062</u>	<u>194</u>
Gross revenues	226,054	59	226,062	194
Less promotional allowances	(24,934)	—	(24,934)	—
	<u>201,120</u>	<u>59</u>	<u>201,128</u>	<u>194</u>
Operating costs and expenses:				
Casino	42,280	—	42,280	—
Rooms	11,780	—	11,780	—
Food and beverage	33,706	—	33,706	—
Entertainment, retail and other	20,262	143	20,266	368
General and administrative	31,010	—	31,014	—
Provision for doubtful accounts	8,599	—	8,599	—
Pre-opening costs	43,365	16,466	81,469	31,016
Depreciation and amortization	26,125	1,042	29,619	1,824
Loss on sale of assets	16	520	5	512
Loss from incidental operations	32	—	105	—
	<u>217,175</u>	<u>18,171</u>	<u>258,843</u>	<u>33,720</u>
Equity in income from unconsolidated affiliates	251	—	251	—
	<u>(15,804)</u>	<u>(18,112)</u>	<u>(57,464)</u>	<u>(33,526)</u>
Operating loss	(15,804)	(18,112)	(57,464)	(33,526)
Other income/(expense):				
Interest income	6,983	1,511	13,165	3,130
Interest expense, net	(26,341)	(94)	(28,490)	(197)
Loss on early extinguishment of debt	—	(25,628)	—	(25,628)
	<u>(19,358)</u>	<u>(24,211)</u>	<u>(15,325)</u>	<u>(22,695)</u>
Other income (expense), net	(19,358)	(24,211)	(15,325)	(22,695)
Minority interest	—	404	—	1,054
Net loss	(35,162)	(41,919)	(72,789)	(55,167)
Change in fair value of interest rate swaps	(5,814)	18,190	1,887	6,286
	<u>\$ (40,976)</u>	<u>\$ (23,729)</u>	<u>\$ (70,902)</u>	<u>\$ (48,881)</u>
Comprehensive loss	\$ (40,976)	\$ (23,729)	\$ (70,902)	\$ (48,881)
Basic and diluted earnings per common share:				
Net loss:				
Basic	\$ (0.36)	\$ (0.49)	\$ (0.74)	\$ (0.67)
Diluted	\$ (0.36)	\$ (0.49)	\$ (0.74)	\$ (0.67)
Weighted average common shares outstanding:				
Basic	98,203	84,687	98,132	82,764
Diluted	98,203	84,687	98,132	82,764

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

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

	Six Months Ended June 30,	
	2005	2004
Cash flows from operating activities:		
Net loss	\$ (72,789)	\$ (55,167)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	29,619	1,824
Minority interest	—	(1,054)
Amortization of deferred compensation	2,653	1,826
Amortization and writeoff of deferred financing costs	6,597	17,426
Provision for doubtful accounts	8,599	—
Loss on sale of assets	5	512
Incidental operations	—	4,163
Equity in income of unconsolidated affiliates	(251)	—
Increase (decrease) in cash from changes in:		
Receivables, net	(63,916)	70
Inventories and prepaid expenses	(31,433)	(81)
Accounts payable and accrued expenses	103,395	2,285
Net cash used in operating activities	(17,521)	(28,196)
Cash flows from investing activities:		
Capital expenditures, net of construction payables	(560,195)	(441,038)
Restricted cash and investments	350,355	180,287
Investment in unconsolidated affiliates	(3,500)	—
Other assets	(20,535)	(14,085)
Proceeds from sale of equipment	24	38
Net cash used in investing activities	(233,851)	(274,798)
Cash flows from financing activities:		
Exercise of stock options	1,065	—
Proceeds from issuance of common stock	—	271,250
Third party fees	—	(3,145)
Proceeds from issuance of long-term debt	437,186	187,138
Principal payments of long-term debt	(19,354)	(122,481)
Payments on long-term land concession obligation	(4,222)	—
Payment of deferred financing costs	(7,768)	(10,311)
Net cash provided by financing activities	406,907	322,451
Cash and cash equivalents:		
Increase in cash and cash equivalents	155,535	19,457
Balance, beginning of period	330,261	341,552
Balance, end of period	\$ 485,796	\$ 361,009

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

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

**1. Organization and Basis of Presentation**

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

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

The Company commenced operations with the opening of Wynn Las Vegas on April 28, 2005. The construction and development of Wynn Macau and the development of the Company’s expansion of Wynn Las Vegas, known as “Encore at Wynn Las Vegas” or “Encore,” are ongoing. For the periods presented prior to and including April 27, 2005, the Company was solely a development stage company.

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

The accompanying consolidated financial statements 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 and six months ended June 30, 2005 are not necessarily indicative of results to be expected for the full fiscal year. These financial statements should be read in conjunction with the consolidated financial statements and notes thereto of the Company as of and for the year ended December 31, 2004, included in the Company’s Annual Report on Form 10-K.

Certain amounts in the consolidated financial statements for the three and six months ended June 30, 2004 have been reclassified to conform to the 2005 presentation. During 2005, the Company recorded the amounts reimbursed by executive officers of the Company for use of the corporate aircraft in preopening expenses as a reduction of the cost of operating the aircraft. Previously, such amounts had been recorded as revenues in the Company’s statements of operations and comprehensive loss. Approximately \$44,000 and \$107,000, respectively, for the three and six months ended June 30, 2004 were reclassified from revenues to preopening expenses to conform to the 2005 presentation. The reclassification had no effect on the previously reported net loss.

**2. Summary of Significant Accounting Policies**

*Accounts receivable and credit risk*

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of casino accounts receivable. The Company issues credit in the form of “markers” to approved casino customers following investigations of creditworthiness. At June 30, 2005, approximately 47% of the

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

Company's receivables were due from customers residing in foreign countries. Business or economic conditions or other significant events in these countries could affect the collectibility of such receivables.

Accounts receivable, including casino and hotel receivables, are typically non-interest bearing and are initially recorded at cost. Accounts are written off when management deems the account to be uncollectible. Recoveries of accounts previously written off are recorded when received. An estimated allowance for doubtful accounts is maintained to reduce the Company's receivables to their carrying amount, which approximates fair value. The allowance is estimated based on specific review of customer accounts as well as management's prior experience with collection trends in the casino industry and current economic and business conditions. Management believes that, as of June 30, 2005, no significant concentrations of credit risk existed for which an allowance had not already been recorded.

As of June 30, 2005, the Company had total accounts receivable of \$55.5 million, net of an allowance for uncollectible accounts of \$8.5 million. Casino marker receivables, hotel receivables and other receivables as of June 30, 2005 totaled \$45.5 million, \$12.7 million and \$5.8 million, respectively.

*Revenue recognition and promotional allowances*

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

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

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

Rooms	\$ 4,150
Food & beverage	9,981
Entertainment, retail and other	2,258
	<hr/>
	\$16,389
	<hr/>

*Advertising*

The Company expenses advertising costs the first time the advertising runs. Advertising expense was, prior to opening Wynn Las Vegas, included in preopening expenses. From opening on April 28, 2005, advertising costs are included in general and administrative expenses. Total advertising expenses were \$8.5 million and \$11.0 million, respectively, for the three and six months ended June 30, 2005. Advertising expenses were \$765,000 and \$1.0 million, respectively, for the three and six months ended June 30, 2004.

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

*Recently Issued Accounting Standards*

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

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

**3. Earnings Per Share**

Earnings per share are calculated in accordance with Statement of Financial Accounting Standards (“SFAS”) No. 128, “Earnings Per Share.” SFAS No. 128 provides for the reporting of “basic”, or undiluted earnings per share (“EPS”), and “diluted” EPS. Basic EPS is computed by dividing net income by the weighted average number of shares outstanding during the period. Diluted EPS reflects the addition of potentially dilutive securities. For all periods presented, the Company has recorded net losses. As a result, basic EPS is equal to diluted EPS for all periods presented. The calculation of diluted EPS at June 30, 2005 excludes the following anti-dilutive securities: 2,674,300 shares issuable upon exercise of stock options, 1,033,892 shares under restricted stock grants that have not yet vested and 10,869,550 shares issuable upon conversion of the 6% Convertible Subordinated Debentures due 2015 (the “Debentures”). The calculation of diluted EPS at June 30, 2004 excludes the following anti-dilutive securities: 2,050,500 shares issuable upon exercise of stock options, 1,328,061 shares under restricted stock grants that have not yet vested and 10,869,550 shares issuable upon conversion of the Debentures.

**4. Employee Stock-Based Compensation**

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



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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
Net loss as reported	\$ (35,162)	\$ (41,919)	\$ (72,789)	\$ (55,167)
Less: total stock-based employee compensation determined under the fair-value based method for all awards	(2,182)	(992)	(3,998)	(2,256)
Proforma net loss	<u>\$ (37,344)</u>	<u>\$ (42,911)</u>	<u>\$ (76,787)</u>	<u>\$ (57,423)</u>
Basic and diluted loss per share:				
As reported	<u>\$ (0.36)</u>	<u>\$ (0.49)</u>	<u>\$ (0.74)</u>	<u>\$ (0.67)</u>
Proforma	<u>\$ (0.38)</u>	<u>\$ (0.51)</u>	<u>\$ (0.78)</u>	<u>\$ (0.69)</u>

## 5. Supplemental Disclosure of Cash Flow Information

Interest paid for the six months ended June 30, 2005 and 2004 totaled approximately \$63.4 million and \$49.8 million, respectively. Interest capitalized for the six months ended June 30, 2005 and 2004 totaled approximately \$41.3 million and \$55.4 million, respectively.

Amortization of deferred compensation related to employees dedicated to the construction of Wynn Las Vegas and Wynn Macau that was capitalized into construction in progress for the six months ended June 30, 2005 and 2004 totaled approximately \$1.1 million and \$1.1 million, respectively.

The increase in the fair value of interest rate swaps accounted for as cash flow hedges for the six months ended June 30, 2005 totaled approximately \$1.9 million. The fair value increased \$6.0 million during the six months ended June 30, 2004.

Aircraft purchased and financed by debt during the six months ended June 30, 2004 totaled \$11.7 million. No new aircraft were purchased in 2005.

## 6. Related Party Transactions

### *Amounts Due to Officers*

The Company periodically provides services to Stephen A. Wynn, Chairman of the Board of Directors and Chief Executive Officer (“Mr. Wynn”), and certain other officers of the Company, including the personal use of the corporate aircraft, household employees, construction work and other personal services. Mr. Wynn and other officers have deposits with the Company to prepay any such items, which are replenished on an ongoing basis as needed. At June 30, 2005 and December 31, 2004, the Company’s net liability to Mr. Wynn and other officers was approximately \$46,000 and \$71,000, respectively.

### *The Wynn Collection*

During the period from January 1, 2004 through May 6, 2004, the Company operated an art gallery at the former Desert Inn displaying The Wynn Collection, a collection of fine art owned by Mr. Wynn and his wife, Elaine P. Wynn (“Mrs. Wynn”), who is also a director of Wynn Resorts. The art gallery was closed on May 6, 2004, but a new art gallery featuring The Wynn Collection opened in Wynn Las Vegas on April 28, 2005. During the three and six month periods ended June 30, 2005 and 2004, Mr. and Mrs. Wynn leased The Wynn Collection

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

to the Company for an annual fee of one dollar (\$1). The Company retained all revenues from the public display of The Wynn Collection and the related merchandising revenues and was responsible for all the expenses incurred in exhibiting and safeguarding the collection. The current lease for The Wynn Collection extends through June 30, 2015. After specified notice periods, the Company or Mr. Wynn may terminate the lease. Subject to certain notice restrictions, Mr. Wynn has the right to remove or replace any or all of the works of art displayed in the gallery.

*The “Wynn” Surname*

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

*Villa Suite Lease*

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

**7. Property and Equipment**

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

	June 30, 2005	December 31, 2004
Land and improvements	\$ 588,627	\$ 353,544
Buildings and improvements	1,135,202	1,041
Airplanes	57,405	57,336
Furniture, fixtures and equipment	558,372	14,830
Leasehold interest	67,118	67,616
Construction in progress	144,335	1,499,083
	<u>2,551,059</u>	<u>1,993,450</u>
Less: accumulated depreciation	(33,051)	(6,418)
	<u>\$ 2,518,008</u>	<u>\$ 1,987,032</u>

Construction in progress for the three and six months ended June 30, 2005 and 2004 includes interest and other costs capitalized in conjunction with the Wynn Las Vegas, Encore and Wynn Macau projects.

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

Capitalization of interest and other costs relating to Wynn Las Vegas ceased upon completion and opening of Wynn Las Vegas. Costs, including interest, relating to the Encore and Wynn Macau projects will continue during their respective construction and development phases.

## 8. Long-Term Debt

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

	June 30, 2005	December 31, 2004
6-5/8% First Mortgage Notes, due December 1, 2014	\$ 1,300,000	\$ 1,300,000
\$400.0 million Delay Draw Term Loan Facility; interest at LIBOR plus 2.125% (approximately 5.475% and 4.575%, respectively)	400,000	26,564
6% Convertible Subordinated Debentures, due July 15, 2015	250,000	250,000
Notes payable - Aircraft; interest at LIBOR plus 2.375% (approximately 5.465%)	44,750	—
Notes payable - Aircraft; interest at 5.67%	14,328	14,659
12% Second Mortgage Notes, net of original issue discount of approximately \$486,000 and \$531,000, respectively, due November 1, 2010; effective interest at approximately 12.9%	9,656	9,611
Other	190	212
	2,018,924	1,601,046
Current portion of long-term debt	(739)	(718)
	\$ 2,018,185	\$ 1,600,328

### *Wynn Las Vegas Credit Facilities*

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

During the second quarter of 2005, Wynn Las Vegas, LLC, amended certain agreements pertaining to its credit facilities, specifically its Credit Agreement and its Master Disbursement Agreement, to among other things, (i) increase the limitation on expenditures for Encore project costs from \$950 million to \$1.4 billion; (ii) under certain circumstances, increase the annual limitation on capital expenditures for the year 2008 and each year thereafter from \$120 million to \$160 million; (iii) permit a transfer of up to five acres of the land currently owned by Wynn Golf, LLC, but not being used for the Wynn Las Vegas golf course, to Wynn Las Vegas, LLC for use in connection with Encore; (iv) extend the deadlines for certain deliverables related to Encore from various dates beginning April 15, 2005 to December 31, 2005; and (v) extend the dates for the opening and final completion of Encore to September 30, 2008 and December 31, 2008, respectively.

As of June 30, 2005, the Company is in compliance with all of the covenants governing its debts facilities.

### *Note Payable - Aircraft*

As provided for in Wynn Las Vegas, LLC's credit facilities, on May 24, 2005, World Travel, LLC, a subsidiary of Wynn Las Vegas, LLC, borrowed an aggregate amount of \$44.75 million under term loans which

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

terminate and are payable in full on May 24, 2010. The term loans are guaranteed by Wynn Las Vegas, LLC and secured by a first priority security interest in World Travel, LLC's corporate aircraft. Principal and interest is payable quarterly and interest is calculated at the London Interbank Offered Rate ("LIBOR") plus a margin of 2.375%. In addition to scheduled amortization payments, the Company is required to prepay the loans if certain events of loss with respect to the aircraft occur. Beginning on December 31, 2006, the Company may prepay all or any portion of the loans subject to a minimum prepayment of \$10.0 million.

*Wynn Las Vegas Interest Rate Swaps*

On December 14, 2004, Wynn Las Vegas, LLC terminated two interest rate swaps. As a result, Wynn Las Vegas, LLC received approximately \$9.6 million in settlement of the related asset, which is being amortized from accumulated other comprehensive income to reduce interest expense over the original contract life of the two interest rate swaps. Approximately \$1.2 million and \$2.4 million was amortized against interest expense during the three and six months ended June 30, 2005.

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

As of June 30, 2005, the Company recorded in other assets the fair value of the net effect of the two new interest rate swaps of approximately \$2.5 million, an increase of \$1.9 million compared to the value of \$583,000 at December 31, 2004. Because there has been no ineffectiveness in the hedging relationship, the corresponding change in fair value of equal amount is reported in other comprehensive income.

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

**9. Stockholders' Equity**

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

**10. Commitments and Contingencies**

*Wynn Las Vegas*

*Construction.* On April 28, 2005, Wynn Las Vegas opened to the public and construction was virtually complete. As of June 30, 2005, certain minor construction activities, primarily punchlist items and completion of

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a theater, continue. We expect that the total project cost will be in the range of \$2.7 to \$2.75 billion, however, consistent with large-scale construction projects, determination of the final Wynn Las Vegas project cost is subject to a complete accounting after the date of final completion (as defined in the contract with the general contractor), which will occur in late 2005.

Through June 30, 2005, the Company had funded approximately \$2.66 billion of Wynn Las Vegas project costs. As of June 30, 2005, the Company had certain restricted cash balances for Wynn Las Vegas, including a \$50.0 million completion guarantee balance and a \$30.0 million liquidity reserve, and availability under its credit facilities. The Company believes such balances and availability will be sufficient to pay the final project costs of Wynn Las Vegas.

*Encore Development.* Due to the strong demand for Wynn Las Vegas, continued strength in the Las Vegas market, and the Company's desire to maximize the potential of its substantial real estate assets, the Company continues to evaluate the scope of Encore as part of its overall master plan. The current Encore program features an approximately 1,550-room hotel tower fully integrated with Wynn Las Vegas, consisting of approximately 300 suites and approximately 1,250 guest rooms. Encore will have additional entertainment venues, restaurants, nightclubs, swimming pools, casino gaming, a spa and salon, convention and meeting space, and retail outlets.

In June 2005, the Company received the necessary consents from the holders of its 6-5/8% First Mortgage Notes due 2014 ("First Mortgage Notes") and the Company's lenders to extend the deadline for approval of the budget, plans and specifications for Encore (the "Encore Budget, Plans and Specifications") from June 30, 2005 to December 31, 2005 and to extend the outside date for completion of Encore from March 31, 2008 to December 31, 2008. The Company currently anticipates that Encore will open in the second or third quarter of 2008.

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

*Entertainment Productions.* The Company has entered into long-term agreements with Productions Du Dragon, S.A., a production services company ("Dragon"), and Calitri Services and Licensing Limited Liability Company, its affiliated creative production company ("Calitri"), for the licensing, creation, development and executive production of the water-based production show at Wynn Las Vegas named "Le Rêve, A Small Collection of Imperfect Dreams." Under these agreements, as amended, the Company paid certain up-front creation and licensing fees, production costs and, since opening of the production, pays royalties of up to 10% of net ticket revenues and 10% of gross retail sales, and 50% of the show profits to Dragon and Calitri as calculated in accordance with the terms of the agreements. The term of each of the agreements is ten years after the opening date of the show with one five-year renewal option.

The Company also has an option with Dragon and Calitri for the development of a second production show for Wynn Las Vegas or for another project. The exercise of the option will require the payment of an additional \$1.0 million and any additional project will require additional funds to develop.

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

In June 2004, the Company purchased the rights to stage “Avenue Q,” the Tony Award-winning musical production currently playing on Broadway in New York City. The Company also entered into a Production Services Agreement with Q Las Vegas, LLC, an affiliate of the New York producer, for all production services. The Company will present this show at Wynn Las Vegas’ second showroom, the Broadway Theater, which is scheduled to open on August 27, 2005.

At June 30, 2005 and December 31, 2004, other assets included \$35.6 million and \$32.9 million, respectively, of amounts paid or accrued for production rights and creation and development costs in conjunction with these entertainment agreements.

*Wynn Macau*

Under its casino concession agreement with the government of Macau, Wynn Macau, S.A. is obligated to invest 4.0 billion patacas (approximately US\$500.0 million) in one or more casino projects in Macau by June 2009, and to commence operations of its first permanent casino resort in Macau no later than December 2006. If Wynn Macau, S.A. does not invest 4.0 billion patacas by June 26, 2009, it must invest the remaining amount in projects related to its gaming operations in Macau that the Macau government approves, or in projects of public interest designated by the Macau government. The initial phase of the Wynn Macau project, currently under construction and expected to open in the third quarter of 2006, has a budget of approximately \$704.0 million, including contingencies but excluding up to \$20.5 million of post-opening land concession payments anticipated to be funded from operating cash flows.

In June 2004, Wynn Macau, S.A. entered into a land concession contract for the Wynn Macau project site in Macau’s inner harbor area. Under the land concession contract, Wynn Macau, S.A. leases a parcel of approximately 16 acres from the government for an initial term of 25 years, with a right to renew for additional periods. Wynn Macau, S.A. has made two payments to the Macau government under the land concession contract totaling approximately \$7.9 million and is required to make nine additional semi-annual payments (including interest) totaling approximately \$34.8 million. Wynn Macau, S.A. also paid approximately \$17.9 million to an unrelated third party for its relinquishment of rights to a portion of the land. During the term of the land concession contract, Wynn Macau, S.A. is required to make annual lease payments of up to \$400,000.

Construction of Wynn Macau commenced in June 2004 under a guaranteed maximum price construction contract between Wynn Macau, S.A. and Leighton Contractors (Asia) Limited, China State Construction Engineering (Hong Kong) Limited and China Construction Engineering (Macau) Company Limited, acting together as general contractor. Under the construction contract, the general contractor is responsible for both the construction and design of the project (other than certain limited portions to be designed by an affiliate of Wynn Macau, S.A.) based on an existing scope of work and design specifications provided by Wynn Macau, S.A. The general contractor is obligated to substantially complete the project by August 27, 2006 for a guaranteed maximum price of approximately \$285.0 million (including the contractors’ fee and contingency). The total design and construction costs are estimated to be approximately \$425.4 million. Both the contract time and guaranteed maximum price are subject to further adjustment under the circumstances specified in the contract. The performance of the contractors is backed by a full completion guarantee given jointly and severally by Leighton Holdings Limited and China Overseas Holdings Limited, the parent companies of the contracting entities, as well as a performance bond issued by a bank in an amount equal to \$28.5 million.

Through June 30, 2005, Wynn Macau, S.A. had funded approximately \$205.7 million of the total \$704.0 million of budgeted project costs. As of June 30, 2005, currently approved project costs still to be incurred

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

totalled approximately \$498.3 million. These costs are being and will be funded from the existing cash balances of Wynn Resorts and its subsidiaries in the form of base equity loans and subordinated funding, as well as the available Wynn Macau credit facilities. In addition, the Company has \$30.0 million of long-term restricted cash reserved as contingent equity and a \$30.0 million contingent debt facility from Wynn Macau, S.A.'s lenders.

In September 2004, in connection with the financing of the Wynn Macau project, Wynn Macau, S.A. entered into a Bank Guarantee Reimbursement Agreement with Banco Nacional Ultramarino ("BNU") for a guarantee in the amount of 700.0 million patacas (approximately US\$87.0 million). This guarantee, which is for the benefit of the Macau government, assures Wynn Macau, S.A.'s performance under the casino concession agreement, including the payment of premiums, fines and indemnity for any material failure to perform the concession agreement. To secure the guarantee, Wynn Macau, S.A. originally deposited \$50.0 million of the \$230.0 million base equity funding with BNU. As of June 30, 2005, however, Wynn Macau, S.A. has funded approximately \$16.3 million of its project costs with funds from the \$50 million on deposit with BNU. The guarantee is further secured by a second priority security interest in the senior lender collateral package. From and after repayment of all indebtedness under the senior bank facilities, Wynn Macau, S.A. is obligated to promptly, upon demand by BNU, repay any claim made on the guarantee by the Macau government. BNU will be paid an annual fee for the guarantee not to exceed approximately 12.3 million patacas (approximately US\$1.5 million).

The Company is finalizing the design for an estimated \$345.0 million expansion of Wynn Macau on approximately five acres of the Wynn Macau site. The Company is increasing the Wynn Macau senior debt facilities to finance the expansion and has engaged several lenders to arrange for the financing, which the Company expects to close in the third quarter of 2005.

*Leases*

The Company is the lessor under leases for five retail outlets and entered into license and distribution agreements for five additional retail outlets, and joint venture agreements for the operation of one other retail outlet and the Ferrari and Maserati automobile dealership at Wynn Las Vegas. Each of these retail outlets opened concurrently with the opening of Wynn Las Vegas. In connection with these arrangements, Wynn Las Vegas provided some of the retail tenants an allowance for improvements. These improvement allowances were included in the budgeted costs to construct Wynn Las Vegas.

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

*Self-insurance*

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

*Employment Agreements*

The Company has entered into employment agreements with several executive officers, other members of management and certain key employees. These agreements generally have three- to five-year terms and typically indicate a base salary with specified annual increases, and often contain provisions for guaranteed bonuses.

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

Certain of the executives are also entitled to a separation payment if terminated without “cause” or upon voluntary termination of employment for “good reason” following a “change of control” (as these terms are defined in the employment contracts).

*Litigation*

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

**11. Segment Information**

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

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

	<b>June 30, 2005</b>	<b>December 31, 2004</b>
<b>Total assets</b>		
Wynn Las Vegas	\$ 3,017,103	\$ 2,575,486
Wynn Macau	314,994	321,975
Corporate and other assets	579,432	566,751
<b>Total consolidated assets</b>	<b>\$ 3,911,529</b>	<b>\$ 3,464,212</b>



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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
<b>Revenues (1)</b>				
Casino	\$ 98,715	\$ —	\$ 98,715	\$ —
Rooms	44,632	—	44,632	—
Food and beverage	48,056	—	48,056	—
Entertainment, retail and other	34,651	59	34,659	194
	<u>226,054</u>	<u>59</u>	<u>226,062</u>	<u>194</u>
Gross revenues	226,054	59	226,062	194
Less promotional allowances	(24,934)	—	(24,934)	—
	<u>201,120</u>	<u>\$ 59</u>	<u>\$ 201,128</u>	<u>\$ 194</u>
<b>Adjusted Property EBITDA (1, 2)</b>	\$ 58,735	\$ (2)	\$ 58,735	\$ (2)
<b>Other operating costs and expenses</b>				
Preopening expenses:				
Wynn Las Vegas	(36,900)	(8,756)	(65,137)	(15,877)
Wynn Macau	(4,124)	(2,254)	(6,598)	(4,532)
Corporate and other	(2,341)	(5,456)	(9,734)	(10,608)
Depreciation and amortization:				
Wynn Las Vegas	(23,376)	(285)	(24,260)	(443)
Wynn Macau	(1,469)	(140)	(2,934)	(140)
Corporate and other	(1,280)	(617)	(2,425)	(1,241)
Corporate expenses and other	(5,049)	(602)	(5,111)	(683)
	<u>(74,539)</u>	<u>(18,110)</u>	<u>(116,199)</u>	<u>(33,524)</u>
<b>Operating loss</b>	(15,804)	(18,112)	(57,464)	(33,526)
<b>Other non-operating costs and expenses</b>				
Interest income	6,983	1,511	13,165	3,130
Interest expense, net	(26,341)	(94)	(28,490)	(197)
Loss on early extinguishment of debt	—	(25,628)	—	(25,628)
	<u>(19,358)</u>	<u>(24,211)</u>	<u>(15,325)</u>	<u>(22,695)</u>
<b>Minority interest</b>	—	404	—	1,054
<b>Net loss</b>	<u>\$ (35,162)</u>	<u>\$ (41,919)</u>	<u>\$ (72,789)</u>	<u>\$ (55,167)</u>

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

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

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

**12. Subsequent Events**

*Additional Entertainment Production*

On July 20, 2005, the Company entered into an agreement with Spamalot, LLC to produce and present “Monty Python’s Spamalot” in a new theater to be constructed at the Wynn Las Vegas casino resort. The new theater is expected to be adjacent to the existing Wynn Theater and will include a merchandise store, food and beverage facilities and a themed “Spamalot Environment.” Under the agreement, the Company is responsible for construction of the theater and related facilities, as well as advancing the initial production costs. The Company expects that these costs, together with certain rights fees, will exceed \$50 million. The construction cost and completion date for the theater, and the opening date for the production, have not yet been determined.

**13. Consolidating Financial Information of Guarantors and Issuers**

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

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

**WYNN RESORTS, LIMITED AND SUBSIDIARIES**  
**CONSOLIDATING BALANCE SHEET INFORMATION**  
**AS OF JUNE 30, 2005**  
**(amounts in thousands)**  
**(unaudited)**

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 310,056	\$ —	\$ 175,740	\$ —	\$ 485,796
Restricted cash and investments	—	—	136,842	—	136,842
Receivables, net	46	—	55,498	—	55,544
Inventories	—	—	29,324	—	29,324
Prepaid expenses	413	—	6,563	—	6,976
Total current assets	310,515	—	403,967	—	714,482
Restricted cash and investments	771	22,344	432,055	—	455,170
Property and equipment, net	770	—	2,517,238	—	2,518,008
Water rights	—	—	6,400	—	6,400
Trademark	—	—	1,000	—	1,000
Deferred financing costs	7,295	—	82,487	—	89,782
Macau gaming concession, net	—	—	40,509	—	40,509
Deposits and other assets	917	—	81,510	—	82,427
Investment in subsidiaries	1,316,804	—	—	(1,316,804)	—
Investment in unconsolidated affiliates	—	—	3,751	—	3,751
Intercompany balances	200,476	22,500	(222,976)	—	—
Total assets	\$1,837,548	\$ 44,844	\$ 3,345,941	\$(1,316,804)	\$3,911,529
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Current portion of long-term debt	\$ —	\$ —	\$ 739	\$ —	\$ 739
Current portion of land concession obligation	—	—	9,137	—	9,137
Accounts and construction payable	(5)	—	115,703	—	115,698
Accrued interest	6,875	—	7,870	—	14,745
Accrued compensation and benefits	4,106	—	26,944	—	31,050
Other accrued expenses	794	—	20,960	—	21,754
Customer deposits and other related liabilities	—	—	27,722	—	27,722
Construction retention	—	—	66,910	—	66,910
Total current liabilities	11,770	—	275,985	—	287,755
Construction retention	—	—	5,760	—	5,760
Long-term debt	250,000	—	1,768,185	—	2,018,185
Long-term land concession obligation	—	—	23,764	—	23,764
Other long-term liabilities	—	—	287	—	287
Total liabilities	261,770	—	2,073,981	—	2,335,751
Commitments and contingencies					
Stockholders' equity:					
Common stock	993	—	—	—	993
Additional paid-in capital	1,971,503	44,028	1,622,213	(1,666,241)	1,971,503
Deferred compensation - restricted stock	(18,884)	—	(2,034)	2,034	(18,884)
Accumulated other comprehensive income	9,488	—	9,488	(9,488)	9,488
Accumulated deficit	(387,322)	816	(357,707)	356,891	(387,322)
Total stockholders' equity	1,575,778	44,844	1,271,960	(1,316,804)	1,575,778
Total liabilities and stockholders' equity	\$1,837,548	\$ 44,844	\$ 3,345,941	\$(1,316,804)	\$3,911,529

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

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

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

	Parent	Convertible Debentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
Operating revenues:					
Casino	\$ —	\$ —	\$ 98,715	\$ —	\$ 98,715
Rooms	—	—	44,632	—	44,632
Food and beverage	—	—	48,056	—	48,056
Entertainment, retail and other	—	—	34,651	—	34,651
Gross revenues	—	—	226,054	—	226,054
Less promotional allowances	—	—	(24,934)	—	(24,934)
Net revenues	—	—	201,120	—	201,120
Operating costs and expenses:					
Casino	—	—	42,280	—	42,280
Rooms	—	—	11,780	—	11,780
Food and beverage	—	—	33,706	—	33,706
Entertainment, retail and other	—	—	20,262	—	20,262
General and administrative	3,070	4	27,936	—	31,010
Provision for doubtful accounts	(12)	—	8,611	—	8,599
Pre-opening costs	2,502	—	40,863	—	43,365
Depreciation and amortization	20	—	26,105	—	26,125
(Gain) / Loss on sale of assets	(1)	—	17	—	16
Loss from incidental operations	—	—	32	—	32
Total operating costs and expenses	5,579	4	211,592	—	217,175
Equity in income/(loss) from unconsolidated affiliates	(36,448)	—	251	36,448	251
Operating income/(loss)	(42,027)	(4)	(10,221)	36,448	(15,804)
Other income/(expense):					
Interest income	5,083	71	4,742	(2,913)	6,983
Interest expense, net	(2,719)	—	(26,535)	2,913	(26,341)
Management fees and royalties	4,501	—	(4,501)	—	—
Other income (expense), net	6,865	71	(26,294)	—	(19,358)
Net income/(loss)	\$ (35,162)	\$ 67	\$ (36,515)	\$ 36,448	\$ (35,162)

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

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
Operating revenues:					
Casino	\$ —	\$ —	\$ —	\$ —	\$ —
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	67	(8)	59
Gross revenues	—	—	67	(8)	59
Less promotional allowances	—	—	—	—	—
Net revenues	—	—	67	(8)	59
Operating costs and expenses:					
Casino	—	—	—	—	—
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	1,660	(1,517)	143
General and administrative	—	—	—	—	—
Provision for doubtful accounts	—	—	—	—	—
Pre-opening costs	5,024	3	11,430	9	16,466
Depreciation and amortization	20	—	1,022	—	1,042
Loss on sale of assets	—	—	520	—	520
Loss from incidental operations	—	—	—	—	—
Total operating costs and expenses	5,044	3	14,632	(1,508)	18,171
Equity in income/(loss) from unconsolidated affiliates	(39,439)	—	—	39,439	—
Operating income/(loss)	(44,483)	(3)	(14,565)	40,939	(18,112)
Other income/(expense):					
Interest income	1,064	111	520	(184)	1,511
Interest expense, net	—	—	(278)	184	(94)
Loss on early extinguishment of debt	—	—	(25,628)	—	(25,628)
Management fees and royalties	1,500	—	—	(1,500)	—
Other income (expense), net	2,564	111	(25,386)	(1,500)	(24,211)
Minority interest	—	—	404	—	404
Net income/(loss)	<u>\$(41,919)</u>	<u>\$ 108</u>	<u>\$ (39,547)</u>	<u>\$ 39,439</u>	<u>\$(41,919)</u>

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

	Parent	Convertible Debentures Guarantor	Non- guarantor Subsidiaries	Eliminating Entries	Total
Operating revenues:					
Casino	\$ —	\$ —	\$ 98,715	\$ —	\$ 98,715
Rooms	—	—	44,632	—	44,632
Food and beverage			48,056		48,056
Entertainment, retail and other	—	—	34,659	—	34,659
Gross revenues	—	—	226,062	—	226,062
Less promotional allowances	—	—	(24,934)	—	(24,934)
Net revenues	—	—	201,128	—	201,128
Operating costs and expenses:					
Casino	—	—	42,280	—	42,280
Rooms	—	—	11,780	—	11,780
Food and beverage	—	—	33,706	—	33,706
Entertainment, retail and other	—	—	20,266	—	20,266
General and administrative	3,075	4	27,935	—	31,014
Provision for doubtful accounts	(12)	—	8,611	—	8,599
Pre-opening costs	9,388	—	72,081	—	81,469
Depreciation and amortization	39	—	29,580	—	29,619
(Gain) / Loss on sale of assets	(1)	—	6	—	5
Loss from incidental operations	—	—	105	—	105
Total operating costs and expenses	12,489	4	246,350	—	258,843
Equity in income/(loss) from unconsolidated affiliates	(72,840)	—	251	72,840	251
Operating income/(loss)	(85,329)	(4)	(44,971)	72,840	(57,464)
Other income/(expense):					
Interest income	9,258	153	9,119	(5,365)	13,165
Interest expense, net	(2,719)	—	(31,136)	5,365	(28,490)
Management fees and royalties	6,001	—	(6,001)	—	—
Other income (expense), net	12,540	153	(28,018)	—	(15,325)
Net income/(loss)	\$ (72,789)	\$ 149	\$ (72,989)	\$ 72,840	\$ (72,789)

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

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
Operating revenues:					
Casino	\$ —	\$ —	\$ —	\$ —	\$ —
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	—	—	207	(13)	194
Gross revenues	—	—	207	(13)	194
Less promotional allowances	—	—	—	—	—
Net revenues	—	—	207	(13)	194
Operating costs and expenses:					
Casino	—	—	—	—	—
Rooms	—	—	—	—	—
Food and beverage	—	—	—	—	—
Entertainment, retail and other	3	—	3,416	(3,051)	368
General and administrative	—	—	—	—	—
Provision for doubtful accounts	—	—	—	—	—
Pre-opening costs	9,557	4	21,419	36	31,016
Depreciation and amortization	38	—	1,786	—	1,824
Loss on sale of assets	—	—	512	—	512
Loss from incidental operations	—	—	—	—	—
Total operating costs and expenses	9,598	4	27,133	(3,015)	33,720
Equity in income/(loss) from unconsolidated affiliates	(50,353)	—	—	50,353	—
Operating income/(loss)	(59,951)	(4)	(26,926)	53,355	(33,526)
Other income/(expense):					
Interest income	1,784	232	1,298	(184)	3,130
Interest expense, net	—	—	(381)	184	(197)
Loss on early extinguishment of debt	—	—	(25,628)	—	(25,628)
Management fees and royalties	3,000	—	—	(3,000)	—
Other income (expense), net	4,784	232	(24,711)	(3,000)	(22,695)
Minority interest	—	—	1,054	—	1,054
Net income/(loss)	<u>\$ (55,167)</u>	<u>\$ 228</u>	<u>\$ (50,583)</u>	<u>\$ 50,355</u>	<u>\$ (55,167)</u>



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

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
Cash flows from operating activities:					
Net income/(loss)	\$ (72,789)	\$ 149	\$ (72,989)	\$ 72,840	\$ (72,789)
Adjustments to reconcile net income/(loss) to net cash provided (used in)					
operating activities:					
Depreciation and amortization	39	—	29,580	—	29,619
Amortization of deferred compensation	2,653	—	—	—	2,653
Amortization of deferred financing costs	357	—	6,240	—	6,597
Provision for doubtful accounts	(12)	—	8,611	—	8,599
(Gain)/loss on sale of fixed assets	(1)	—	6	—	5
Equity in unconsolidated affiliates	72,840	—	(251)	(72,840)	(251)
Increase (decrease) in cash from changes in:					
Receivables, net	(15)	—	(63,901)	—	(63,916)
Inventories and prepaid expenses	(123)	—	(31,310)	—	(31,433)
Accounts payable and accrued expenses	(2,912)	—	106,307	—	103,395
Net cash provided by (used in) operating activities	37	149	(17,707)	—	(17,521)
Cash flows from investing activities:					
Capital expenditures, net of construction payables	—	—	(560,195)	—	(560,195)
Restricted cash and investments	(2)	7,347	343,010	—	350,355
Investment in unconsolidated affiliates	—	—	(3,500)	—	(3,500)
Other assets	7	—	(20,542)	—	(20,535)
Intercompany balances	6,686	(7,496)	810	—	—
Proceeds from sale of equipment	1	—	23	—	24
Net cash provided by (used in) investing activities	6,692	(149)	(240,394)	—	(233,851)
Cash flows from financing activities:					
Exercise of stock options	1,065	—	—	—	1,065
Proceeds from issuance of long-term debt	—	—	437,186	—	437,186
Principal payments of long-term debt	—	—	(19,354)	—	(19,354)
Payments on long-term land concession obligation	—	—	(4,222)	—	(4,222)
Deferred financing costs	—	—	(7,768)	—	(7,768)
Net cash provided by financing activities	1,065	—	405,842	—	406,907
Cash and cash equivalents:					
Increase in cash and cash equivalents	7,794	—	147,741	—	155,535
Balance, beginning of period	302,262	—	27,999	—	330,261
Balance, end of period	\$ 310,056	\$ —	\$ 175,740	\$ —	\$ 485,796

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

	Parent	Convertible Debentures Guarantor	Non-guarantor Subsidiaries	Eliminating Entries	Total
Cash flows from operating activities:					
Net income/(loss)	\$ (55,167)	\$ 228	\$ (50,583)	\$ 50,355	\$ (55,167)
Adjustments to reconcile net income/(loss) to net cash provided (used in)					
operating activities:					
Depreciation and amortization	38	—	1,786	—	1,824
Minority interest	—	—	(1,054)	—	(1,054)
Amortization of deferred compensation	1,826	—	—	—	1,826
Amortization of deferred financing costs	360	—	17,066	—	17,426
Loss on sale of assets	—	—	512	—	512
Equity in unconsolidated affiliates	50,355	—	—	(50,355)	—
Incidental operations	—	—	4,163	—	4,163
Increase (decrease) in cash from changes in:					
Receivables, net	36	—	34	—	70
Inventories and prepaid expenses	(93)	—	12	—	(81)
Accounts payable and accrued expenses	(341)	—	2,626	—	2,285
Net cash provided by (used in) operating activities	(2,986)	228	(25,438)	—	(28,196)
Cash flows from investing activities:					
Capital expenditures, net of construction payables	(19)	—	(441,019)	—	(441,038)
Restricted cash and investments	—	7,272	173,015	—	180,287
Other assets	(5,000)	—	(9,085)	—	(14,085)
Intercompany balances	(242,031)	(7,500)	249,531	—	—
Proceeds from sale of equipment	—	—	38	—	38
Net cash used in investing activities	(247,050)	(228)	(27,520)	—	(274,798)
Cash flows from financing activities:					
Proceeds from issuance of common stock	271,250	—	—	—	271,250
Third party fees	(3,145)	—	—	—	(3,145)
Deferred financing costs	(479)	—	(9,832)	—	(10,311)
Proceeds from issuance of long-term debt	—	—	187,138	—	187,138
Principal payments of long-term debt	—	—	(122,481)	—	(122,481)
Net cash provided by financing activities	267,626	—	54,825	—	322,451
Cash and cash equivalents:					
Increase in cash and cash equivalents	17,590	—	1,867	—	19,457
Balance, beginning of period	328,745	—	12,807	—	341,552
Balance, end of period	\$ 346,335	\$ —	\$ 14,674	\$ —	\$ 361,009

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

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

### **Forward-Looking Statements**

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

### **Overview**

Wynn Las Vegas, our first casino resort, opened on April 28, 2005. Including the on-site golf course, the resort occupies approximately 217 acres of land fronting the Las Vegas Strip and utilizes approximately 18 additional acres across Sands Avenue for employee parking. Wynn Las Vegas offers 2,716 rooms and suites, an approximately 111,000 square foot casino, 22 food and beverage outlets, an 18-hole golf course, approximately 223,000 square feet of meeting space, a Ferrari and Maserati automobile dealership and approximately 76,000 square feet of retail space. Until the opening of Wynn Las Vegas, we were solely a development stage company.

We are developing and constructing Wynn Macau, a destination casino resort in the Macau Special Administrative Region of the Peoples' Republic of China ("Macau"). Wynn Macau will initially utilize

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approximately 11 acres of the approximately 16 acres of land leased by Wynn Macau, S.A. from the government of Macau in Macau's inner harbor area, opposite the Hotel Lisboa, Macau's largest and best known casino and hotel. Wynn Macau will initially consist of approximately 600 hotel rooms, approximately 100,000 square feet of casino gaming space (including 200 table games and 350 slot machines), seven restaurants, approximately 28,000 square feet of retail space, a spa, a salon and entertainment facilities. We expect to open Wynn Macau in the third quarter of 2006.

In addition, we continue to develop the budget, plans and specifications for Encore and are finalizing the general scope and design and financing for an expansion of Wynn Macau.

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

### **Critical Accounting Policies and Estimates**

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

#### *Construction and Development Estimates*

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

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

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

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

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

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

A substantial portion of our outstanding receivables relates to casino credit play. Credit play represents a significant portion of the table games volume at Wynn Las Vegas. We maintain strict controls over the issuance of markers and intend to aggressively pursue collection from those customers who fail to pay their marker balances timely. These collection efforts may include the mailing of statements and delinquency notices, personal contacts, the use of outside collection agencies, and civil litigation and criminal proceedings. Markers are generally legally enforceable instruments in the United States. Markers are not legally enforceable instruments in some foreign countries, but the United States assets of foreign customers may be used to satisfy judgments entered in the United States. At June 30, 2005, approximately 47% of our casino accounts receivable were owed by customers from foreign countries. The collectibility of markers given by foreign customers is affected by a number of factors including changes in currency exchange rates and economic conditions in the customers' home countries.

Because individual customer account balances can be significant, the allowance and the provision can change significantly between periods, as information about a certain customer becomes known or as changes in a region's economy or legal system occur.

#### *Accruals*

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

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

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

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

## Results of Operations

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

We are currently reliant solely upon the operations of Wynn Las Vegas for our operating cash flow. Concentration of our cash flow in one property exposes us to certain risks that competitors, whose operations are more diversified, may be better able to control. In addition to the concentration of operations in a single property, many of our customers are high-end gaming customers who wager on credit, thus exposing us to increased credit risk. High-end gaming also increases the potential for variability in our results. Our interim period results will, to some degree, be affected by, among other things, major Las Vegas conventions, major sporting and other special events, and holidays; however, our operations are not expected to be highly impacted by seasonality.

We opened Wynn Las Vegas on April 28, 2005 and operated the casino resort for 64 days in the three and six-month periods ended June 30, 2005. Prior to opening Wynn Las Vegas, we were a development stage company and had not commenced operations, nor generated any significant revenues. We believe that our results of operations for the three and six month periods ended June 30, 2005 and 2004 are not indicative of results expected in the future.

Our net loss for the three months ended June 30, 2005 was \$35.2 million, which represents a \$6.7 million or 16% decrease from the net loss of \$41.9 million for the quarter ended June 30, 2004. Our net loss for the six months ended June 30, 2005 was \$72.8 million, which represents a \$17.6 million or 32% increase from the net loss of \$55.2 million for the six months ended June 30, 2004.

We expect that the operating revenues and expenses of Wynn Las Vegas will increase when we operate for a full quarter. We also expect that our preopening expenses, which were a significant contributor to the net losses incurred for the three and six months ended June 30, 2005 and 2004, will decrease in the near term. We will no longer incur preopening expenses associated with Wynn Las Vegas (excluding Encore), although preopening expenses relating to Encore, which to date have not been material, will increase as the scope and plans for Encore are completed, and preopening expenses associated with Wynn Macau will increase as the construction of Wynn Macau progresses.

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Financial results for the three and six months ended June 30, 2005 compared to the three and six months ended June 30, 2004.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2005	2004	2005	2004
<b>Revenues (1)</b>				
Casino	\$ 98,715	\$ —	\$ 98,715	\$ —
Rooms	44,632	—	44,632	—
Food and beverage	48,056	—	48,056	—
Entertainment, retail and other	34,651	59	34,659	194
	<u>226,054</u>	<u>59</u>	<u>226,062</u>	<u>194</u>
Gross revenues	226,054	59	226,062	194
Less promotional allowances	(24,934)	—	(24,934)	—
	<u>201,120</u>	<u>\$ 59</u>	<u>\$ 201,128</u>	<u>\$ 194</u>
<b>Adjusted Property EBITDA (1,2)</b>	\$ 58,735	\$ (2)	\$ 58,735	\$ (2)
<b>Other operating costs and expenses</b>				
Preopening expenses:				
Wynn Las Vegas	(36,900)	(8,756)	(65,137)	(15,877)
Wynn Macau	(4,124)	(2,254)	(6,598)	(4,532)
Corporate and other	(2,341)	(5,456)	(9,734)	(10,608)
Depreciation and amortization:				
Wynn Las Vegas	(23,376)	(285)	(24,260)	(443)
Wynn Macau	(1,469)	(140)	(2,934)	(140)
Corporate and other	(1,280)	(617)	(2,425)	(1,241)
Corporate expenses and other	(5,049)	(602)	(5,111)	(683)
	<u>(74,539)</u>	<u>(18,110)</u>	<u>(116,199)</u>	<u>(33,524)</u>
<b>Operating loss</b>	(15,804)	(18,112)	(57,464)	(33,526)
<b>Other non-operating costs and expenses</b>				
Interest income	6,983	1,511	13,165	3,130
Interest expense, net	(26,341)	(94)	(28,490)	(197)
Loss on early extinguishment of debt	—	(25,628)	—	(25,628)
	<u>(19,358)</u>	<u>(24,211)</u>	<u>(15,325)</u>	<u>(22,695)</u>
<b>Minority interest</b>	—	404	—	1,054
<b>Net loss</b>	<u>\$ (35,162)</u>	<u>\$ (41,919)</u>	<u>\$ (72,789)</u>	<u>\$ (55,167)</u>

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

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

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The 64 days of operations from the opening of Wynn Las Vegas on April 28, 2005 through June 30, 2005 have no comparisons to prior periods.

Wynn Las Vegas casino revenues were comprised of table games revenues, slot machine revenues and other gaming revenues of approximately \$62.0 million, \$34.2 million and \$2.5 million, respectively. The average table games win per table per day was \$7,117, and the average slot win per unit per day was \$273. Table games win percentage (before discounts) was 21.1%, which is within the expected range of 18% to 22%. Slot win percentage was within the expected range of 5% to 6% of handle.

During the same period, Wynn Las Vegas room revenues were approximately \$44.6 million. Average daily rate (“ADR”) and occupancy for that period were \$284 and 90.1%, respectively, generating revenues per available room (“REVPAR”) of \$255. Other non-gaming revenues included food and beverage revenues of approximately \$48.1 million, retail revenues of approximately \$16.9 million, entertainment revenues of approximately \$9.6 million, and other revenues from outlets such as the spa and salon of approximately \$8.2 million.

Wynn Las Vegas’ adjusted EBITDA was approximately \$58.7 million. Included in adjusted EBITDA are direct departmental expenses not present in the corresponding 2004 periods. These departmental expenses include casino expenses of \$42.3 million, rooms expenses of \$11.8 million, food and beverage expenses of \$33.7 million, and entertainment, retail and other expenses of \$20.3 million. We believe we appropriately staffed Wynn Las Vegas to account for increased needs during this opening period and expect that natural staffing attrition will coincide with improvements in operating efficiencies.

Wynn Las Vegas’ preopening expenses increased by \$28.1 million and \$49.3 million or 321% and 310%, respectively, for the three and six month periods in 2005 compared to 2004, due primarily to a substantial increase in staffing required in the period immediately before the opening of Wynn Las Vegas.

Wynn Macau’s preopening expenses increased by \$1.9 million and \$2.1 million, or 83% and 46%, respectively, for the three and six month periods in 2005 compared to 2004, due primarily to the increased preopening activity commensurate with the progress of the Wynn Macau construction project. We expect that Wynn Macau’s preopening expenses will continue to increase in future periods as Wynn Macau’s construction and development continues, similar to the trend experienced with Wynn Las Vegas.

Wynn Las Vegas’ depreciation and amortization increased by \$23.1 million and \$23.8 million for the three and six month periods ended June 30, 2005, compared to the same periods in 2004, as a result of the opening of Wynn Las Vegas. During construction of Wynn Las Vegas, costs incurred in the construction of the buildings, improvements to land and the purchases of assets for use in operations were capitalized. Once Wynn Las Vegas opened and these assets were placed into service, we began recognizing the associated depreciation expenses. The depreciation expenses will continue throughout the estimated useful lives of these assets and are a function of the total number of operating days in the period. Consequently, we expect depreciation expenses to increase in future periods.

Wynn Macau’s depreciation and amortization expenses also increased by \$1.3 million and \$2.8 million, respectively for the three and six month periods in 2005, compared to 2004, due primarily to the amortization of the capitalized intangible assets associated with the Macau casino and land lease concessions. In September 2004, we purchased the 17.5% minority interest in Wynn Macau for 1,333,333 shares of Wynn Resorts’ common stock. We allocated \$42.3 million of the value of the shares to the casino concession, which is charged to amortization expense over the concession’s term through June 2022. We also obtained a land lease concession during 2004, which we charge to depreciation and amortization over the 25-year lease term. Other than these charges to depreciation and amortization, Wynn Macau’s depreciation expenses will remain relatively insignificant until the resort opens and its assets are placed into service.



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Corporate expenses reflect costs such as salaries and other general and administrative expenses that are not allocated to our Wynn Las Vegas or Wynn Macau segments. Prior to opening Wynn Las Vegas, corporate expenses were reported as preopening expenses. Consequently the corporate expenses of approximately \$5.0 million represent those unallocated expenses incurred during 64 days of operations.

Interest income increased by \$5.5 million and \$10.0 million, respectively, for the three and six months ended June 30, 2005, compared to 2004, due to the significant increase in the amount of cash balances available and invested from the remaining proceeds of our 6-5/8% First Mortgage Notes due 2014 (the "First Mortgage Notes") and borrowings under the Wynn Las Vegas, LLC credit facilities that were invested during the three and six months ended June 30, 2005, compared to the same periods in 2004.

Interest expense, net, increased by \$26.2 million and \$28.3 million for the three and six months ended June 30, 2005, compared to 2004, due to the significant decrease in the amount of interest capitalized. During the construction of Wynn Las Vegas, a significant portion of the interest costs were capitalized. Upon opening Wynn Las Vegas, a substantial portion of our assets previously under construction were placed into service, and the majority of our interest cost was thereafter expensed.

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

Comprehensive loss of approximately \$5.8 million for the three months ended June 30, 2005 and the comprehensive income of approximately \$1.9 million for the six months ended June 30, 2005 decreased from the comprehensive income of \$18.2 million and \$6.3 million, respectively, for the three and six months ended June 30, 2004, due to the changes in the fair value of our two interest rate swaps during each of those periods. We seek to manage the interest rate risk associated with our variable rate borrowings, through balancing fixed-rate and variable-rate borrowings and the use of derivative financial instruments. Our interest rate swaps have been designated by us as cash flow hedges in accordance with prevailing accounting regulations. As of June 30, 2005 and December 31, 2004, we recorded approximately \$2.5 million and \$583,000 in other assets, respectively, to reflect their fair value. These fair value amounts approximate the amount we would pay or receive if these contracts were settled at these dates. The changes in fair value for the three and six months ended June 30, 2005, recorded as a component of comprehensive income during those periods, was primarily due to lower short-term interest rates at June 30, 2005, compared to those rates at March 31, 2005, but higher than those rates at December 31, 2004. Fair value is estimated based upon current, and predictions of future, interest rate levels along a yield curve, the remaining duration of the instruments and other market conditions. Therefore, the fair value is subject to significant estimation and a high degree of variability of fluctuation between periods.

## **Liquidity and Capital Resources**

### *Cash flows from operations*

Wynn Las Vegas primarily conducts its operations on a cash basis. The exceptions are our high-end credit table games play and group hotel business. Consequently, operating cash flows are primarily affected by our operating income and changes in our casino marker and other accounts receivable. The operations of Wynn Las Vegas, offset primarily by significant preopening expenditures of \$43.4 million and \$81.5 million for the three and six months ended June 30, 2005, respectively, resulted in net cash used in our operations of approximately \$11.6 million and \$17.5 million during those periods. We believe that current period cash flows from operations are not indicative of future results, primarily because of the preopening expenses that were incurred in connection with the opening of Wynn Las Vegas and included in the current periods.

### *Capital Resources*

We have financed each of our casino resort projects separately at the subsidiaries that own and operate, or will own and operate, them. Although Wynn Las Vegas opened on April 28, 2005, consistent with large-scale construction projects, the final determination of and payment for the total project costs have not yet been completed. Determination of the final project cost is subject to a complete accounting after the date of final completion (as defined in the contract with the general contractor), which will occur in late 2005. We also are constructing Wynn Macau and developing plans for Encore and an expansion of Wynn Macau. At June 30, 2005, we had approximately \$485.8 million of cash and cash equivalents. Approximately \$310.1 million of these funds are uncommitted and available for general corporate purposes. In addition, we had approximately \$592.0 million in restricted cash and investments from the proceeds of our debt and equity financings. The substantial majority of this amount is restricted for the final project costs of Wynn Las Vegas, the development and construction of Encore, the ongoing construction of Wynn Macau, and certain other specific costs in accordance with agreements governing our debt facilities. Approximately \$501.0 million, including \$80.0 million restricted for a Wynn Las Vegas liquidity reserve and completion guarantee (\$30.0 million of which must be retained for Encore for a completion guarantee if the Encore Budget, Plans and Specifications are approved), is restricted for the remaining costs of Wynn Las Vegas and the construction, development and preopening expenses of Encore. Approximately \$68.7 million is restricted for the ongoing development, construction and preopening expenses of Wynn Macau. Approximately \$22.3 million is restricted for the semi-annual interest payments through July 15, 2007, on our 6% Convertible Subordinated Debentures due 2015 (the “Debentures”). Cash equivalents are comprised of investments in overnight money market funds. Restricted investments are kept in money market funds or relatively short-term, government-backed, marketable debt securities as required by agreements governing the Company’s debt facilities.

### *Construction and Development*

#### *Wynn Las Vegas*

Construction of Wynn Las Vegas was virtually complete by the opening on April 28, 2005. Certain minor construction, consisting primarily of punchlist items and completion of the Broadway theater, which will open in late August 2005, continues. Although a final accounting will not be completed until late 2005, based on information available to us at June 30, 2005, the total cost of Wynn Las Vegas is estimated to be in the range of \$2.7 to \$2.75 billion. This includes the cost of acquiring approximately 235 acres of land, costs of design and construction, capitalized interest, pre-opening expenses, financing fees and construction contingencies, but excluding the incremental cost for Encore, other than the land for Encore. Through June 30, 2005, we had funded approximately \$2.66 billion of Wynn Las Vegas project costs primarily from a combination of contributed capital, proceeds from sales of our common stock, proceeds from the issuance of the Second Mortgage Notes which were discharged in December 2004, proceeds from the issuance of First Mortgage Notes, and a portion of the borrowings under our credit facilities. We have sufficient cash balances, including our completion guarantee and liquidity reserve, as well as availability under our credit facilities, to pay for all expected costs of the Wynn Las Vegas project.

Wynn Resorts is not a guarantor of Wynn Las Vegas, LLC’s debt and is not obligated to apply any of its funds to the Wynn Las Vegas project, although it has more than \$310.1 million in cash that can be made available.

#### *Encore at Wynn Las Vegas*

Due to the strong demand for Wynn Las Vegas, the continued strength in the Las Vegas market, and our desire to maximize the potential of our substantial real estate assets, we continue to evaluate the scope of Encore as part of our overall master plan. The current Encore program features an approximately 1,550-room hotel tower fully integrated with Wynn Las Vegas, consisting of approximately 300 suites and approximately 1,250 guest rooms. Encore will have additional entertainment venues, restaurants, nightclubs, swimming pools, casino gaming, a spa and salon, convention and meeting space, and retail outlets.

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In June 2005, we amended the indenture governing the First Mortgage Notes and documents governing certain of our credit facilities to among other things, increase the limitation on expenditures for Encore project costs from \$950.0 million to \$1.4 billion, to extend the deadline for approval of the budget, plans and specifications for Encore (the “Encore Budget, Plans and Specifications”) from June 30, 2005 to December 31, 2005 (subject to further extension to March 31, 2006 if approved by a majority of the Arrangers (as defined) or the Required Lenders (as defined)), and to extend the deadlines for the opening and completion of Encore to September 30, 2008 and December 31, 2008, respectively. We currently anticipate that Encore will open in the second or third quarter of 2008.

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

### *Wynn Macau*

We commenced construction of Wynn Macau in June 2004, and in September 2004 completed the financing necessary to fund its budgeted development, construction and pre-opening costs. Construction is ongoing and we expect to open Wynn Macau in the third quarter of 2006. Design and construction of Wynn Macau is progressing on schedule and within budget. Detailed interior design work is continuing, with the majority of architectural and structural design work now complete. Construction is progressing well with piling and other in-ground activities substantially complete, and superstructure works well underway. Construction milestones since groundbreaking include the following:

- Hotel tower structure has reached the twenty-third floor level;
- Parking garage ground level, mezzanine and first through third floor slabs are complete;
- Main casino area superstructure (columns and roof slab) is complete;
- Structural floor slabs for the main casino area are approximately 95% complete; and
- Construction of basement plant and tunnel areas is substantially complete;

Excluding the planned expansion, Wynn Macau’s project budget is approximately \$704.0 million. This includes construction and design costs of approximately \$425.4 million, land acquisition costs of approximately \$40.6 million, and capitalized interest, preopening expenses, financing fees and construction contingencies totaling in the aggregate approximately \$238.0 million. The budget excludes up to \$20.5 million of post-opening land concession payments that are anticipated to be funded from operating cash flows. As of June 30, 2005, we had funded approximately \$205.7 million of project costs and estimated that approximately \$498.3 million would be required to complete Wynn Macau. These costs are being, and will continue to be, funded from the existing cash balances of Wynn Resorts and its subsidiaries in the form of capital contributions, intercompany loans (including up to \$122.0 million from Wynn Las Vegas, LLC as provided under its existing indebtedness) and/or subordinated funding, as well as a \$397.0 million senior secured credit facility.

### *Wynn Macau Expansion*

The design of Wynn Macau’s expansion is substantially complete. The expansion plans include an additional 85,000 square feet of casino space featuring approximately 150 table games; 500 slots; two restaurants; a theater; a dramatic front feature attraction at the entrance of the expansion and, potentially, a sports

book. The expansion is on the remaining approximately five acres of the Wynn Macau site and is designed to seamlessly integrate into the Wynn Macau property. Our preliminary budget for the expansion is approximately \$345.0 million. We intend to begin construction of the expansion in the third quarter of 2005 and open the expansion in the first half of 2007.

#### *Financing Activity*

##### *Wynn Las Vegas and Encore*

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

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

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

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

Through June 30, 2005, we have funded approximately \$52.1 million of costs associated with the design and predevelopment of Encore (including \$25.6 million since December 14, 2004). Until such time as the Encore Budget, Plans and Specifications have been submitted by us and approved by a majority of the arrangers or a majority of the lenders under the agreement governing the disbursement of funds for Wynn Las Vegas and Encore, we may make disbursements of up to \$100.0 million after December 14, 2004 to pay for development costs for Encore. If the Encore Budget, Plans and Specifications are approved by December 31, 2005 (which may be further extended to March 31, 2006 upon receiving certain approvals), then we expect to fund construction of Encore with remaining proceeds of the First Mortgage Notes, borrowings under the Wynn Las Vegas, LLC credit facilities and future cash flows from the operations of Wynn Las Vegas. We will fund the costs of development and construction of Encore pursuant to the disbursement agreement, with funds utilized in the same order of priority as indicated above for Wynn Las Vegas. If the Encore Budget, Plans and Specifications are not approved by December 31, 2005 (or March 31, 2006, if further extended), then the amount available under the new credit facilities, and the amount of indebtedness that the indenture for the First Mortgage Notes will permit us to incur for this purpose, will be reduced by \$550.0 million.

##### *Wynn Macau and its Expansion*

On September 14, 2004, we completed the financing for the design, development, construction and pre-opening expenses of Wynn Macau. Wynn Macau, S.A. executed a definitive credit agreement and related ancillary agreements for a senior secured bank facility of \$397.0 million. The senior secured bank facility consists of term loan facilities in the amount of \$382.0 million (which will be borrowed in a combination of Hong Kong and US dollars) and a revolving working capital facility of HK\$117.0 million (approximately US\$15.0 million).

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We are increasing our current Wynn Macau senior debt facilities to finance the expansion, have engaged several lenders for this purpose, and expect to close the additional financing for the expansion in the third quarter of 2005.

### *Other*

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

### *Other Liquidity Matters*

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

New business developments or other unforeseen events may occur, resulting in the need to raise additional funds. We continue to explore opportunities to develop additional gaming or related businesses in Las Vegas or other international or domestic markets such as Singapore, whether through acquisition, investment or development. There can be no assurances regarding the business prospects with respect to the Singapore proposal or any other opportunity. This or any other development would require us to obtain additional financing. We may decide to conduct any such development through Wynn Resorts or through a line of subsidiaries separate from the Las Vegas or Macau-related 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 our Board of Directors. The redemption price may be paid in cash, by promissory note or both, as required by the applicable gaming authority and, if not, as we elect. Any promissory note that we issue to an unsuitable person or its affiliate in exchange for its shares could increase our debt to equity ratio and will increase our leverage ratio.

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

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

#### *Interest Rate Risks*

Market risk is the risk of loss arising from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates and commodity prices. Our primary exposure to market risk is interest rate risk associated with our debt facilities that bear interest based on floating rates. We attempt to manage interest rate risk by managing the mix of long-term fixed rate borrowings and variable rate borrowings supplemented by hedging activities as considered necessary. We cannot assure you that these risk management strategies will have the desired effect, and interest rate fluctuations could have a negative impact on our results of operations.

On December 14, 2004, concurrent with refinancing Wynn Las Vegas, LLC's indebtedness, we terminated the two interest rate swaps we had previously entered into as required under the terms of our original financing documents. As a result of the termination, we received approximately \$9.6 million in settlement of the related asset, which is being amortized from accumulated other comprehensive income to reduce interest expense over the original contract life of the two interest rate swaps. Approximately \$1.2 million and \$2.4 million was amortized against interest expense during the three and six months ended June 30, 2005, respectively.

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

As of June 30, 2005, we recorded in other assets the fair value of the net effect of the two new interest rate swaps of approximately \$2.5 million, an increase of \$1.9 million compared to the value of \$583,000 at December 31, 2004. Because there has been no ineffectiveness in the hedging relationship, the corresponding change in fair value of equal amount is reported in other comprehensive income for the year ended December 31, 2004.

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

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

For the three and six months ended June 30, 2005, we incurred approximately \$36.8 million and \$69.8 million, respectively, in interest. A 1% increase in the LIBOR would have increased our interest cost by approximately \$1.1 million and \$1.5 million for the three and six months ended June 30, 2005, based upon the average amounts outstanding during those periods.

#### *Foreign Currency Risks*

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

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In July 2005, officials from the People's Bank of China announced the adoption of a new foreign exchange policy that will move away from a U.S. dollar peg of 8.28 Chinese renminbi to one U.S. dollar. The renminbi will instead trade based on a basket of currencies. The currency components of the basket have not been announced. The new trading parameter is plus or minus 0.3% against the U.S. dollar on a base exchange rate with the U.S. dollar at 8.11 Chinese renminbi to one U.S. dollar. The immediate effect is a 2.1% increase in the value of the renminbi. Management believes that the current revaluation of the renminbi will not have a material effect on our financial position or results of operations.

Certain Asian countries have publicly asserted their desire to eliminate the linkage of the Hong Kong dollar to the U.S. dollar. As a result, we cannot assure you that the Hong Kong dollar, and the Macau pataca will continue to be linked to the U.S. dollar, which may result in severe fluctuations in the exchange rate for these currencies. We also cannot assure you that the current rate of exchange fixed by the applicable monetary authorities for these currencies will remain at the same level.

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

### **Item 4. Controls and Procedures**

(a) *Disclosure Controls and Procedures.* The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act and are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

(b) *Internal Control Over Financial Reporting.* Concurrent with the opening of the Wynn Las Vegas casino resort on April 28, 2005, the Company was no longer solely a development stage enterprise. Although there were no material changes to any of the Company's internal controls over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) which existed as of December 31, 2004 and March 31, 2005, the business processes of our Wynn Las Vegas casino resort are governed by a system of internal controls which were being established during our development and preopening period, and placed into operation concurrent with the opening of our Wynn Las Vegas casino resort. These include internal controls over our revenue centers, cash management, inventories and other components of our casino resort operations. The internal controls put into place are those common to the large casino resort operations on the Las Vegas Strip.

**Part II—OTHER INFORMATION**

**Item 1. Legal Proceedings**

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

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

The Company's Annual Meeting of Stockholders was held on May 2, 2005. Three proposals were presented to a vote of the stockholders.

*Proposal No. 1* – Election of Directors (Class III), with terms expiring in 2008.

<u>Director</u>	<u>Votes For</u>	<u>Votes Against</u>	<u>Votes Withheld</u>
Kazuo Okada	93,798,986	—	823,882
Robert J. Miller	94,231,064	—	391,804
Kiril Sokoloff	94,480,688	—	142,180
Allan Zeman	94,534,201	—	88,667

The following Class I directors remain in office with their terms expiring in 2006 – Elaine P. Wynn, Ronald J. Kramer and John A. Moran. The following Class II directors remain in office with their terms expiring in 2007 – Stephen A. Wynn, Alvin V. Shoemaker, D. Boone Wayson and Stanley R. Zax.

*Proposal No. 2* – A proposal to approve an amendment to the Wynn Resorts, Limited Annual Performance-Based Incentive Plan for Executive Officers.

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>
85,394,812	1,297,575	67,463

*Proposal No. 3* – Ratification of the appointment of Deloitte & Touche LLP as the Company's independent registered public accounting firm.

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>
94,339,226	253,233	30,409

**Item 6. Exhibits**

(a) Exhibits

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
3.1	Second Amended and Restated Articles of Incorporation of the Registrant. (1)
3.2	Third Amended and Restated Bylaws of the Registrant, as amended. (2)
4.1	First Supplemental Indenture, dated as of June 29, 2005, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., the Guarantors set forth therein and U.S. Bank National Association, as trustee. (5)
10.1	First Amendment to Credit Agreement, dated April 26, 2005, among Wynn Las Vegas, LLC, Wynn Las Vegas Capital Corp., Wynn Golf, LLC, Wynn Show Performers, LLC, Wynn Sunrise, LLC, World Travel, LLC and Deutsche Bank Trust Company Americas, as administrative agent. (3)
10.2	Second Amendment to Credit Agreement, dated as of June 29, 2005, among Wynn Las Vegas, LLC, the Wynn Amendment Parties (as defined therein) and Deutsche Bank Trust Company Americas, as administrative agent on behalf of the Lenders (as defined therein). (5)



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<u>Exhibit No.</u>	<u>Description</u>
10.3	First Amendment to Master Disbursement Agreement, dated April 26, 2005, among Wynn Las Vegas, LLC, Deutsche Bank Trust Company Americas, as bank agent and Deutsche Bank Trust Company Americas, as disbursement agent. (3)
10.4	Second Amendment to Master Disbursement Agreement, dated as of June 29, 2005, between Wynn Las Vegas, LLC and Deutsche Bank Trust Company Americas. (5)
10.5	Promissory Note and Agreement, dated May 24, 2005, by Wells Fargo Northwest, National Association, not in its individual capacity but solely as owner trustee, and World Travel, LLC; and accepted and agreed to by Bank of America, N.A., as lender and Wells Fargo Bank, National Association, not in its individual capacity but solely as collateral agent. (4)
10.6	Promissory Note and Agreement, dated May 24, 2005, by Wells Fargo Northwest, National Association, not in its individual capacity but solely as owner trustee, and World Travel, LLC; and accepted and agreed to by The CIT Group / Equipment Financing, Inc., as lender and Wells Fargo Bank, National Association, not in its individual capacity but solely as collateral agent. (4)
10.7	Aircraft Security Agreement, dated May 24, 2005, between Wells Fargo Northwest, National Association, not in its individual capacity but solely as owner trustee, World Travel, LLC and Wells Fargo Bank, National Association, not in its individual capacity but solely as collateral agent. (4)
10.8	Guaranty, dated May 24, 2005, by Wynn Las Vegas, LLC in favor of The CIT Group / Equipment Financing, Inc., Bank of America, N.A. and Wells Fargo Bank, National Association, not in its individual capacity but solely as collateral agent. (4)
*10.9	Agreement of Termination, dated June 30, 2005, by and between Stephen A. Wynn and Wynn Las Vegas, LLC.
*10.10	Fourth Amended and Restated Art Rental and Licensing Agreement, dated as of June 30, 2005, between Stephen A. Wynn, as lessor, Wynn Gallery, LLC, as lessee.
*10.11	Art Gallery Lease, dated June 30, 2005, between Wynn Las Vegas, LLC, as landlord and Wynn Gallery, LLC, as tenant.
*31.1	Certification of Chief Executive Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).
*31.2	Certification of Chief Financial Officer of Periodic Report Pursuant to Rule 13a – 14(a) and Rule 15d – 14(a).
*32.1	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350.

\* Filed herewith.

- (1) Previously filed with Amendment No. 4 to the Form S-1 filed by the Registrant on October 7, 2002 (File No. 333-90600) and incorporated herein by reference.
- (2) Previously filed with the Quarterly Report on Form 10-Q filed by the Registrant on December 9, 2002 and incorporated herein by reference.
- (3) Previously filed with the Current Report on Form 8-K filed by the Registrant on April 27, 2005 and incorporated herein by reference.
- (4) Previously filed with the Current Report on Form 8-K filed by the Registrant on May 25, 2005 and incorporated herein by reference.
- (5) Previously filed with the Current Report on Form 8-K filed by the Registrant on June 29, 2005 and incorporated herein by reference.

**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: August 2, 2005

By: /s/ JOHN STRZEMP  
John Strzemp  
Executive Vice President, Chief Financial Officer and  
Treasurer (Principal Financial and Accounting Officer)

## AGREEMENT OF TERMINATION

This AGREEMENT OF TERMINATION (the “Termination”) is made, entered into and effective as of June 30, 2005, by and between Stephen A. Wynn (“Mr. Wynn”) and Wynn Las Vegas, LLC, a Nevada limited liability company (“Wynn Las Vegas”).

## RECITALS

WHEREAS, Mr. Wynn and Wynn Las Vegas entered into that certain Third Amended and Restated Art Rental and Licensing Agreement, dated as of August 6, 2004 (the “Agreement”); and

WHEREAS, the parties hereto desire to terminate the Agreement, including, without limitation, all rights and obligations thereunder.

## AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mr. Wynn and Wynn Las Vegas hereby declare and agree that the Agreement is hereby terminated, extinguished and of no further force or effect from this date forward.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the undersigned have set forth their hands on the day and year first above mentioned.

“Mr. Wynn”:

/s/ Stephen A. Wynn

Stephen A. Wynn

“Wynn Las Vegas”:

Wynn Las Vegas, LLC,  
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC,  
a Nevada limited liability company,  
its sole member

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

By: /s/ Marc D. Schorr

Marc D. Schorr, Chief Operating Officer

**FOURTH AMENDED AND RESTATED**

**ART RENTAL**

**AND**

**LICENSING AGREEMENT**

**between**

**STEPHEN A. WYNN**

**(Lessor)**

**and**

**WYNN GALLERY, LLC**

**(Lessee)**

**Dated June 30, 2005**

---

**FOURTH AMENDED AND RESTATED  
ART RENTAL AND LICENSING AGREEMENT**

This Fourth Amended and Restated Art Rental and Licensing Agreement ("Agreement"), is entered into this 30th day of June, 2005 (the "**Effective Date**"), by and between STEPHEN A. WYNN ("**Lessor**") and WYNN GALLERY, LLC ("**Lessee**").

**RECITALS**

A. Lessor is the owner of the paintings and other art works identified in Exhibit A attached hereto and incorporated herein by this reference (collectively, the "**Works**"), which may be updated from time to time in accordance with this Agreement.

B. Lessor wishes to lease to Lessee, and Lessee wishes to lease from Lessor, the Works, in order to publicly display the Works in a gallery located at the Wynn Las Vegas resort (the "**Resort**") at 3131 Las Vegas Boulevard South, Las Vegas, Nevada (the "**Gallery**").

C. By publicly displaying the Works, Lessor and Lessee desire to promote the Works and to enhance the cultural and educational opportunities for Nevada residents and visitors.

**AGREEMENT**

Based upon the foregoing and the following terms and conditions, the parties hereto agree that the foregoing recitals are true and correct and as follows:

1. **Rental**. Upon the terms and subject to the conditions of this Agreement, Lessor hereby grants to Lessee a continuing right to publicly display the Works in the Gallery, and Lessee hereby accepts from Lessor the rental of the works. The installation layout and plan for the Works shall be subject to Lessor's prior approval.

2. **Compliance with Law**. Lessee agrees to maintain the Works on public display, make the Gallery available for student tours, and take such other actions as may be necessary or appropriate for meeting the requirements of Sections 361.068,

3. Exhibition and Promotion. Lessee agrees (a) to exhibit the Works under the title “The Wynn Collection” or such other title as may be approved by Lessor, (b) to transport, handle, care for, and display the Works in a manner consistent with the world-class quality of the Works, (c) to maintain the Gallery as a first-class facility, and (d) to promote the Works through “Openings,” “Receptions,” and public events.

4. Merchandising. To the extent, if any, that he possesses the required rights, Lessor hereby authorizes Lessee to develop, manufacture (by subcontract or otherwise), and sell such merchandising and promotional items based upon the Works as Lessee may determine in its best business judgment. To the extent, if any, that he possesses any such rights in any Work, Lessor hereby grants to Lessee a nonexclusive license for such purposes for the period of the rental of such Work hereunder. In the event that any Work is withdrawn or rental terminated, the corresponding license shall automatically terminate; *provided, however*, that following such termination, Lessee shall have six (6) months to discontinue sales and use of the applicable merchandise. The merchandise and promotional items based on the Works may include, but are not limited to, educational catalogues, educational works (including audiovisual and audio recordings), fine art reproductions, and retail merchandise based upon the Works. Lessee shall be solely responsible for clearing and/or obtaining such rights, for obtaining all required permissions, and for taking all reasonable steps necessary to obtain intellectual property protection for said items based on the Works, all of which shall, with respect to any Work, inure to the benefit of Lessee during the rental of such Work hereunder and to the benefit of Lessor thereafter. Notwithstanding any other provision of this Agreement (including without limitation this Section 4 and Section 11 below), Lessor does not make (and hereby disclaims) any and all representations and/or warranties to Lessee or otherwise in respect of the Works or any rights in the

Works, including, but not limited to, title, quiet enjoyment, authenticity, copyright, or moral rights. Lessor shall not have any liability to Lessee in respect of any, and Lessee hereby expressly and to the full extent permitted by law waives as against Lessor all, claims, damages, expenses, fees, or losses that may be incurred by or threatened against Lessee as a result of the Works being leased to Lessee, in the possession of Lessee during the term hereof, displayed at the Gallery and/or reproduced (by, on behalf of, or with the consent of Lessee) in merchandising, promotional, or other items relating to the Works.

5. Rental Fees. Lessee agrees to pay to Lessor a rental fee of One Dollar (\$1.00) on the Effective Date and each anniversary of the Effective Date.

6. Additions, Withdrawals, and Termination. Lessor and Lessee may, by mutual agreement, add other art works from time to time to the Works covered by this Agreement. Lessor shall have the right to withdraw any but not all of the Works from this Agreement and terminate the rental of such Work(s) hereunder on fifteen (15) days' written notice to Lessee. Lessee shall have the right to return any or all Works covered by this Agreement and terminate the rental of such Work(s) hereunder on thirty (30) days' written notice to Lessor. Upon termination of the rental of any Work hereunder, Lessee shall have no further right or license with respect to such Work, except to the extent that, under Section 4 and Section 11 hereof, Lessee is specifically provided with a six-month period to discontinue sales and use of merchandise. The parties shall amend Exhibit A hereto to reflect Works added to or withdrawn from this Agreement. Notwithstanding the foregoing, and without prejudice to any other rights or remedies that Lessor may have hereunder, Lessor may terminate the rental of all Works hereunder (a) by delivery of notice to Lessee no less than ninety (90) days in advance of the date selected by Lessor for termination, or (b) immediately by delivery of notice to Lessee at any time if any of the following events occurs: (i) Lessor ceases to be the Chairman of the Board and Chief Executive Officer of Wynn Resorts, Limited ("Wynn



**Resorts**”), or any successor company; (ii) there is filed any petition in bankruptcy by or against Lessee or any of Wynn Resorts’ other subsidiary companies (collectively, the “**Lessee Parties**”), which petition is not dismissed within ninety (90) days of its filing, or there is appointed a receiver or trustee to take possession of any of the Lessee Parties or of all or substantially all of the assets of any Lessee Parties, or there is a general assignment by any of the Lessee Parties for the benefit of creditors, or any action is taken by or against any of the Lessee Parties under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, including, without limitation, the filing of execution or attachment against any of the Lessee Parties and such levy continues in effect for a period of sixty (60) calendar days; or (iii) Lessee defaults under any material provision of this Agreement and fails to cure such default within seven (7) days after it receives written notice of such default from Lessor unless such default relates to the care, custody, or protection of any of the Works, in which event such default must be cured immediately upon notice from Lessor. Upon termination of the rental of all Works hereunder, this Agreement shall automatically terminate; provided, however, that the termination of this Agreement shall not affect the obligations of the parties under Sections 5, 7, 9 or 10 hereof or any other provision that can be fulfilled only after the termination date.

7. Insurance. Lessee shall, at its expense, insure the Works on a “wall-to-wall” basis, for the full rental period hereunder (including, without limitation, terrorism insurance), in an amount equal to the value of the Works as stipulated in writing by Lessor, provided, however that Lessee shall not be responsible for insuring the Works during any period when the Works are not on display or are in transit to or from the Gallery (the “**Non-Displayed Period**”). Upon reasonable prior notice to Lessee, Lessor shall have the right from time to time to reasonably increase the stated value of any one or more of the Works, and require Lessee to increase the amount of insurance required by this Section 7. Lessor shall be named as an additional insured on Lessee’s

insurance policy. A certificate of insurance and a copy of those portions of the insurance policy covering the Works and setting forth any exclusions to coverage shall be furnished by Lessee to Lessor, and shall be subject to Lessor's reasonable approval as to form and content (including, without limitation, any deductible). The foregoing insurance policy shall include coverage against all risk of physical loss or damage from any external cause while in transit and on location in the Gallery during the rental period hereunder. Lessee shall bear sole responsibility and shall be liable to Lessor for all loss, damage, or destruction of the Works and any of them during the rental period hereunder (including, without limitation, loss, damage, or destruction incurred during packing or crating or while in transit) other than during any Non-Displayed Period, regardless of any exceptions, exclusions, or limitations to its insurance policy covering the Works, regardless of fault or the degree of care exercised by Lessee, and regardless of the presence or supervision of, or any direction or approval by, Lessor or any Lessor's representative; provided, however, that Lessee's liability in the event of such loss, damage, or destruction shall not exceed the value of the Works as stipulated in writing by Lessor. Lessee shall be responsible to pay any and all deductibles relating to the insurance coverage required by this Section 7. In the event any Work is lost or stolen, and then recovered after Lessor has obtained insurance proceeds, Lessor shall have the option to exchange those insurance proceeds for such Work. In the event any Work is damaged but not destroyed, Lessee agrees to be responsible for both the cost of repairing and restoring such Work and the loss in value of such Work as determined by an appraiser mutually agreed upon by the parties.

8. Security. Lessee agrees to take all reasonable steps necessary to secure and protect the Works from loss, theft or injury and to treat them in a manner consistent with maintaining its own most valuable assets at all times the Works are in its possession, control or custody, or in transit to or from Lessor. Without limiting the generality of the foregoing, Lessee shall provide for an adequate number of guards to

be on duty in and around the Gallery at all times while the Works are in the Gallery. All Works shall be within direct sight lines of at least one guard and under direct video surveillance at all times during the rental period hereunder. Lessee shall comply with further reasonable security restrictions and arrangements as directed in writing by Lessor. Lessee represents and warrants to Lessor that the Gallery is and shall be equipped with adequate fire detection/prevention systems and protected by alarm systems that are activated at all times.

9. Indemnification. Lessee shall indemnify, defend, protect, and hold harmless Lessor, his agents, heirs, assigns, and successors (collectively, “**Indemnitees**”) from and against any and all claims, damages, liabilities, losses, actions, complaints, or judgments, including, without limitation, attorneys’ fees, threatened against, incurred, or suffered by the Indemnitees, arising out of Lessee’s breach of or failure to perform, under this Agreement, the inaccuracy when made of any representation or warranty made by Lessee, or any act or omission by or on behalf of Lessee or its respective officers, agents, employees, contractors, or representatives, relating to the Works or this Agreement.

10. Taxes. Lessee shall pay all of the following Nevada state and local taxes, along with all interest, penalties, and other additions related thereto: (a) sales and use taxes applicable to the rental of the Works pursuant hereto; and (b) except to the extent provided otherwise in the following sentence, personal property taxes applicable to each of the Works for each fiscal year during which Lessee is renting such Work hereunder. In the event that Lessor withdraws any Work from this Agreement and terminates the rental of such Work hereunder pursuant to the second sentence of Section 6 hereof, Lessor and Lessee shall make an equitable allocation of the personal property taxes applicable to such Work for the fiscal year in which such withdrawal occurs.

11. Intellectual Properties. Lessor consents to the photography, filming, videotaping and recordation of the Works for the purpose of obtaining photographic and

other copyrights in the new derivative works, which shall be owned and controlled by Lessor, but which is hereby licensed to Lessee for use in advertising, promotion, and merchandising of, and education relating to, the Works, such license to run concurrently, with respect to any Work, with the rental of such Work hereunder. In the event that any Work is withdrawn or rental terminated, the corresponding license shall automatically terminate; provided, however, that following such termination, Lessee shall have six (6) months to discontinue sales and use of the applicable merchandise.

12. Notice. Any notice to be given pursuant to this Agreement by either party to the other shall be in writing and may be effected either by personal delivery, by mail, registered or certified, postage prepaid, with return receipt requested, or by facsimile. Notice by mail shall be sent concurrently with any facsimile notice. Notices shall be addressed to the parties at the address specified below, but each party may change such party's address by written notice in accordance with this Section 12. Notices delivered personally shall be deemed communicated as of actual receipt; and mailed notices and facsimile notices (with a concurrent mailing) shall be deemed communicated three (3) days after mailing. Notices shall be given as follows:

Wynn Gallery, LLC  
Legal Department  
3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109  
Telephone: 702-770-2111  
Fax: 702-770-1520

Mr. Stephen A. Wynn  
One Shadow Creek Drive  
North Las Vegas, Nevada 89031  
Telephone: 702-733-4123  
Fax: 702-791-0167

13. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties and supersedes any oral or written communications between Lessor and Lessee, with respect to its subject matter, including, without limitation, that certain Third Amended and Restated Art Rental Licensing Agreement, as amended, between Lessor and Lessee's affiliate, Wynn Las Vegas, LLC, and that certain Second Amended and Restated Art Rental and Licensing Agreement, as

amended, between Lessor and Lessee's affiliate, Wynn Resorts Holdings, LLC. This Agreement may be amended only if such amendment is set forth in writing and executed by each of the parties.

14. Governing Law. This Agreement shall in all respects be construed according to the laws of the State of Nevada, regardless of the choice or conflict of laws provisions of Nevada or any other jurisdiction.

15. Assignment; Binding Effect. Lessor may assign any or all of his rights and obligations under this Agreement. Lessee may not assign all or any portion of its rights or obligations under this Agreement without Lessor's prior consent. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns. This Agreement does not create, and shall not be construed or deemed to create, any rights or benefits enforceable by or for the benefit of any person or entity other than the parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

16. Headings; Context. All headings herein are inserted only for convenience and ease of reference and shall not be considered in the construction or interpretation of any provision of this Agreement. Whenever used in this Agreement, the singular shall include the plural and the plural shall include the singular, and the neuter gender shall include the male and female as well as an entity, all as the context and meaning of this Agreement may require.

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

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

“Lessor”

/s/ Stephen A. Wynn

Stephen A. Wynn

“Lessee”

Wynn Gallery, LLC,  
a Nevada limited liability company

By: Wynn Resorts, Limited,  
a Nevada corporation

By: /s/ John Strzemp

John Strzemp, Executive Vice President  
and Chief Financial Officer

**ART GALLERY LEASE**

**between**

**WYNN LAS VEGAS, LLC,**

**Landlord**

**and**

**WYNN GALLERY, LLC,**

**Tenant**

**Dated June 30, 2005**

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## ART GALLERY LEASE

**THIS ART GALLERY LEASE** (this "Lease") is entered into as of June 30, 2005 (the "Commencement Date") by and between Wynn Las Vegas, LLC, a Nevada limited liability company ("Landlord"), and Wynn Gallery, LLC, a Nevada limited liability company ("Tenant").

### **WITNESSETH:**

**WHEREAS**, Landlord is the owner of the Wynn Las Vegas resort located at 3131 Las Vegas Blvd. South, in Clark County, Nevada (the "Hotel");

**WHEREAS**, pursuant to that certain Fourth Amended and Restated Art Rental and Licensing Agreement, dated June 30, 2005, between Stephen A. Wynn and Tenant (the "Art Rental Agreement"), Tenant leases certain works of art from Mr. Wynn;

**WHEREAS**, Tenant desires to lease space in the Hotel to display such works of art; and

**WHEREAS**, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, an area located in the Hotel in which to operate an art gallery (the "Gallery") subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, it is hereby mutually agreed by and between Landlord and Tenant as follows:

### **SECTION 1 DEMISED PREMISES**

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord commercial premises within the Hotel, consisting of 1361 square feet (the "Total Square Feet") for the Gallery, as more particularly depicted on Exhibit "A" attached hereto, plus all furnishings, fixtures, equipment, decorations and property located therein or thereon (collectively, the "Premises"). Landlord reserves to itself the use of the roof, exterior walls and the area above and below the Premises together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and structural elements now or in the future leading through the Premises and which serve other parts of the Hotel, except that such rights shall not materially interfere with Tenant's right to visibility, egress and operations.

### **SECTION 2 TERM**

2.1 The term of this Lease (the "Lease Term") shall commence on the Commencement Date and shall terminate upon the earlier of (a) the ten (10) year anniversary of the Commencement Date; (b) the date that the Art Rental Agreement terminates in accordance with the terms thereof; (c) sixty days following the date that either Landlord or Tenant delivers

notice of termination of this Lease to the other; or (d) the date on which Tenant has paid to Landlord solely pursuant to the terms of this Lease an aggregate amount of Twenty-Four Million Nine Hundred Thousand Dollars (\$24,900,000); unless terminated earlier as elsewhere herein provided.

2.2 Should Tenant hold possession of the Premises with the consent of Landlord after the expiration of the Lease Term, such holding over shall create a tenancy from month-to-month only, upon the same terms and conditions as are hereinafter set forth, except that the Base Rent (as defined in Section 3.1 below) shall be one hundred twenty-five percent (125%) of the Base Rent being charged at the time of expiration of the Lease Term.

### SECTION 3 RENT

3.1 During the Lease Term, Tenant shall pay as monthly rent for the Premises the sum of Eleven Thousand Three Hundred Forty-One and 67/100ths Dollars (\$11,341.67) per month (the "Base Rent"). The Base Rent shall be due and payable in advance on the first (1st) day of each month during the Lease Term. The Base Rent shall be pro-rated for any partial month.

3.2 During the Lease Term and in addition to Base Rent, Tenant shall pay Landlord as "Additional Rent" the amount of fifty percent (50%) of the Net Profits (as defined in this Section 3.2 below) of the Gallery, which shall be payable quarterly on or before the thirtieth (30<sup>th</sup>) day following the expiration of the applicable calendar quarter, but only to the extent that the quarterly amount of Additional Rent exceeds the total Base Rent paid that quarter. Concurrently with each payment of Additional Rent, Tenant shall provide Landlord with an unaudited quarterly sales report statement setting forth a true, detailed statement of Net Profits and the amount of Additional Rent for such calendar quarter. "Net Profits" shall mean (a) gross receipts from Gallery admission ticket sales and annual pass revenues, including, without limitation, complementary admissions, but excluding any taxes applicable to admission charges, Nevada resident discounts and complementary student tours minus (b) Included Operating Expenses (as defined in this Section 3.2 below). "Included Operating Expenses" shall mean all costs relating to: (i) insurance costs associated with the Gallery, including, without limitation, costs related to insuring the works of fine art; (ii) costs related to the repair, maintenance and conservation of fine art for exhibition in the Gallery, including, without limitation, cleaning and framing; (iii) costs related to moving and storing works of fine art for display in the Gallery; (iv) salaries and employee benefits for Persons (as defined in Section 16.1 below) employed by the Gallery; (v) costs related to communication devices that are used for informing Gallery visitors about the art; (vi) costs related to uniforms for Gallery employees, including, without limitation, costs of laundry and maintenance; (vii) Gallery advertising costs; (xi) credit card commissions and fees charged on Gallery admission receipts; (viii) costs for utilities, HVAC, Personnel (as defined in Section 11.1(d) below), pest control, janitorial and telecommunication services and other direct Gallery costs paid directly by Tenant or invoiced by Landlord to Tenant pursuant to the terms hereof.

3.3 The term “Rent” shall mean Base Rent and Additional Rent and any other amounts payable hereunder. All Rent and other monies required to be paid by Tenant hereunder shall be paid to Landlord, without deduction or offset, prior to notice or demand, in lawful money of the United States of America, at the Hotel or at such other place as Landlord may from time to time designate in writing.

3.4 If Tenant fails to pay, when due and payable, any Rent or any other amounts or charges to be paid by Tenant hereunder within ten (10) days after written notice from Landlord that the amount is past due, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to the prime rate of interest last ascertained by the Commissioner of Financial Institutions of the State of Nevada pursuant to Nevada Revised Statutes Section 99.040, plus five (5) percentage points (the “Default Rate”).

#### **SECTION 4 GAMING**

4.1 No slot machines or other gambling game or device shall be permitted on the Premises. Tenant acknowledges that Landlord conducts gaming operations in the Hotel and that Landlord shall have the absolute right to terminate this Lease in the event any Governmental Authority (as defined in Section 11.3(b) below) regulating gaming activities orders or requests that Landlord do so.

4.2 Tenant acknowledges that Landlord and its Affiliates (as defined in Section 17 below) have obtained gaming licenses and that such licenses are of vital importance to Landlord’s business. In this regard, Tenant agrees to comply with all reasonable requests made by Landlord for information concerning Tenant’s background, which may include, without limitation, completion by Tenant of Landlord’s standard form of Corporate Background Questionnaire and/or Personal Background Questionnaire, as appropriate. Landlord may immediately terminate this Lease in the event that (a) Tenant fails to comply with information requests as set forth in the foregoing sentence; or (b) Landlord determines, in its sole discretion, that continued association with Tenant would jeopardize any gaming license held or pursued by Landlord or any of its Affiliates.

#### **SECTION 5 POSSESSION AND SURRENDER OF THE PREMISES**

5.1 Tenant shall, by entering upon and occupying the Premises, be deemed to have accepted the Premises in their existing condition, and Landlord shall not be liable for any patent defect therein. Landlord warrants only that it has no actual knowledge of any existing defects as of the effective date of this Lease.

5.2 Upon the expiration or sooner termination of the Lease Term, Tenant shall, at its sole cost and expense, within fifteen (15) days after receipt of written notice, remove all personal property and trade fixtures which Tenant has installed or placed on the Premises (“Tenant’s Property”) from the Premises and repair all damage thereto resulting from such removal, and

Tenant shall thereupon surrender the Premises in the same condition as on the Commencement Date, reasonable wear and tear excepted, broom clean. In the event Tenant fails to remove any of Tenant's Property as provided herein, Landlord may, but is not obligated to, at Tenant's expense, remove all of such property not so removed and repair all damage to the Premises resulting from such removal, and Landlord shall have no responsibility to Tenant for any loss or damage to Tenant's Property caused by, or resulting from, such removal or otherwise. In the event any amount due Landlord pursuant to this Lease has not been paid at the expiration or termination of this Lease, Landlord shall have the right to sell or dispose of Tenant's Property as Landlord so chooses as partial satisfaction of the amount past due.

## **SECTION 6**

### **USE OF PREMISES; EXCLUSIVITY**

6.1 The Premises are leased to Tenant solely for the purpose of the operation of an art gallery and museum and uses incidental thereto. Tenant shall not use or suffer to be used the Premises, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's prior written consent, which consent may be withheld in Landlord's absolute discretion.

6.2 Tenant shall not permit or suffer anything to be done, or kept upon the Premises which will obstruct or interfere with the rights of other tenants, Landlord or the patrons and customers or any of them, or which will annoy any of them by reason of unreasonable noise or otherwise, nor will Tenant commit or permit any nuisance on the Premises or commit or suffer any immoral or illegal act to be committed thereon. Tenant shall not, without Landlord's prior consent:

- (a) Distribute or place anywhere on Landlord's property any notice, advertisement or other written solicitation, except upon the Premises;
- (b) Display on the Premises advertising, brochures, material or posters from any hotel, casino or entertainment facility other than those of Landlord;
- (c) Do or permit anything to be done in or about the Premises, which will in any way affect fire or other insurance upon the Hotel, or any of its contents, or which shall in any way conflict with any Applicable Law (as defined in Section 11.3(b) below) affecting the occupancy or use of the Premises, or in any way obstruct or interfere with the rights of any other Persons in the Hotel;
- (d) Operate or permit to be operated on the Premises, any coin or token-operated vending machines or similar devices unless for the sole use of Tenant's employees on the Premises; or
- (e) Use the Premises or any portion thereof as living quarters or sleeping quarters.

6.3 Tenant shall, at all times during the Lease Term, comply with all Applicable Laws pertaining to the Hotel, the Premises or Tenant's use thereof.

6.4 Tenant hereby covenants and agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by any and all reasonable rules and regulations as Landlord may, from time to time, adopt for the safety, care and cleanliness of the Premises and/or the Hotel.

6.5 Tenant intends to conduct its business in the Premises no less than six (6) hours per day. Tenant may reduce its hours of operation with prior written consent from Landlord, which consent shall not be unreasonably withheld. Notwithstanding anything herein to the contrary, Tenant shall have the right to close the Premises for up to thirty (30) days each calendar year for refurbishment of the Premises.

6.6 All of Tenant's signage is subject to Landlord's prior consent. Tenant understands and agrees that all of its signage must be compatible with the Hotel's décor. Therefore, and without limiting the generality of the foregoing provisions of this Section, Tenant agrees that Landlord may limit the size of Tenant's logo on any signage. Additionally, Tenant shall be allowed to attach signage to the exterior of the Premises as permitted by local permitting authorities and as approved by Landlord. Landlord shall cooperate with Tenant in seeking necessary permits or licenses for any such exterior signage. Notwithstanding the foregoing, all of Tenant's signage which is attached to the Premises as of the Commencement Date is hereby approved by Landlord.

6.7 Tenant acknowledges that the maintenance of Landlord's and the Hotel's reputation and the goodwill of all of Landlord's guests and invitees is absolutely essential to Landlord and that any impairment thereof whatsoever will cause great damage to Landlord. Tenant therefore covenants that it shall operate the Premises in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Landlord and the Hotel. Tenant shall continuously monitor the performance of each of Tenant's employees at the Premises to insure that such standards are consistently maintained. Tenant further agrees, as a material inducement to Landlord, that repeated failure to maintain such standards or repeated complaints from customers or guests which Landlord after consultation with Tenant determines have a factual basis shall be deemed a material breach of this Lease by Tenant and a Tenant Event of Default (as defined in Section 23.1 below).

6.8 Tenant's employees shall enter and exit the Hotel wherever specified by Landlord, shall utilize only those parking areas designated by Landlord for such use, shall comply with all Landlord's rules, regulations and requirements with respect to parking, employee dining and deliveries, and shall also comply with Landlord's regulations applicable to Landlord's employees or the employees of Landlord's tenants in general.

6.9 Tenant shall, in its sole discretion, fix the salary rate and provisions of employee benefits of its employees and shall be responsible for all such salaries, employee benefits, social security taxes, federal and state unemployment insurance and any and all similar taxes relating to its employees and for workers' compensation coverage with respect thereto pursuant to Applicable Law.

6.10 Tenant shall not use the Premises for the generation, storage, manufacture, production, releasing, discharge, or disposal of any Hazardous Substance (as defined in this Section 6.10 below) or allow or suffer any other Person to do so. Tenant shall protect, indemnify and hold harmless Landlord, its partners, members, managers, employees, agents, officers, successors and assigns, the Premises and the Hotel in general from and against any and all claims, losses, damages, costs, expenses, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind (including, without limitation, attorneys' fees and costs at trial and on appeal) directly or indirectly arising out of or attributable to, in whole or in part, the breach of any of the covenants, representations and warranties of this Section 6.10, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, from or about the Premises. Landlord reserves the right to request appropriate governmental officials to inspect the Premises, from time to time, in order to determine Tenant's compliance herewith. "Hazardous Substance" shall mean any flammable or related material and any other substance or material defined or designated as a hazardous or toxic substance, material or waste by any Environmental Law (as defined in this Section 6.10 below) and shall include, without limitation, asbestos, asbestos-containing materials, petroleum, polychlorinated biphenyls and those substances included within the definitions of "hazardous substance", "hazardous waste", "hazardous material" or "regulated substance" as defined by Chapter 459 of the Nevada Revised Statutes. "Environmental Laws" shall mean all federal, state and local environmental, health or safety laws, orders, ordinances, regulations, rules of common law or policies regulating Hazardous Substances, now or hereafter in effect or as amended or promulgated in the future, and shall include, without limitation, those governing the generation, use, refinement, handling, treatment, removal, storage, production, manufacture, transportation or disposal of Hazardous Substances, as such laws, ordinances, regulations, rules and policies may be in effect from time to time and be applicable to the Premises.

## **SECTION 7 ALTERATIONS AND IMPROVEMENTS**

Tenant shall not make any alterations, improvements or changes ("Improvements") in or to the Premises without the prior consent of Landlord, which consent shall not be unreasonably withheld or delayed. Any Improvements shall be at the sole cost and expense of Tenant. Landlord may require Tenant, at Tenant's sole cost and expense, to furnish a bond, or other security satisfactory to Landlord, to assure diligent and faithful performance of any work to be performed by Tenant. Any Improvements shall be made promptly, in good and workmanlike manner by duly licensed union contractors and in compliance with all insurance requirements and with all applicable permits, authorizations, building regulations, zoning laws and all other Applicable Laws, pertaining to the Premises or Tenant's use thereof. Upon termination of this

Lease, Tenant shall not remove any Improvements and shall surrender the Premises in the same condition as they were on the Commencement Date, any Improvements and ordinary wear and tear excepted. Notwithstanding the above, Tenant shall have the right to remove any trade fixtures installed by Tenant upon the Premises.

## **SECTION 8 PARKING AND COMMON AREAS**

Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers and business invitees shall have the non-exclusive right to access and use such common areas of the Hotel as are designated from time to time by Landlord, subject to such rules and regulations as Landlord may from time to time impose; provided, however, that Tenant shall cause its employees to park in those same areas designated as "employee parking" for employees of Landlord. All common areas which Tenant may be permitted to use are to be used under a revocable license, and if any such license is revoked, or if the amount of such area is diminished, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation or diminution of such areas be deemed constructive or actual eviction. Landlord shall not unreasonably revoke any such license in such a manner as to prevent access to the Premises by Tenant, its employees, invitees and patrons.

## **SECTION 9 TAXES**

9.1 Landlord shall pay all real property taxes and general and special assessments levied and assessed against the land, the Hotel and other improvements of which the Premises are a part.

9.2 Tenant shall be liable for and shall pay before delinquency (and, upon five (5) days of written demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all taxes, fees and assessments of whatsoever kind or nature, and penalties and interest thereon, if any, levied against Tenant's Property or any other personal property of Tenant situate or installed in or upon the Premises, whether or not affixed to the realty. If at any time during the Lease Term any such taxes on personal property are assessed as part of the tax on the real property of which the Premises is a part, then in such event Tenant shall pay to Landlord the amount of such additional taxes as may be levied against the real property by reason thereof.

9.3 Tenant shall pay when due all taxes, assessments or fees for which Tenant is liable and which arise directly or indirectly from Tenant's operations in the Premises. Within five (5) days of written demand from Landlord, Tenant shall furnish Landlord evidence satisfactory to Landlord of the timely payment of any such tax, assessment or fee.

9.4 Whenever Landlord shall receive any statement or bill for any tax, payable in whole or in part by Tenant as additional Rent, or shall otherwise be required to make any payment on account thereof, except as otherwise provided herein, Tenant shall pay the amount



due hereunder within ten (10) days after demand therefor accompanied by delivery to Tenant of a copy of such tax statement, if any.

**SECTION 10**  
**MAINTENANCE AND REPAIRS**

10.1 Landlord agrees to keep in good order, condition and repair (including any such replacement and restoration as is required for that purpose) the Hotel and the Premises, including, without limitation, (a) the exterior walls, floor and roof of the Premises, the common areas of the Hotel, including, without limitation, cleaning, removal of trash, dirt and debris, sweeping and janitorial services, lighting of the Hotel and service corridors, repair and replacement of sprinkler systems, HVAC systems and directional signs and other markers; (b) any and all appurtenances of the Premises wherever located, including, without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, store front, all plumbing and sewage facilities within the Premises that exclusively service the Premises, walls, floors, ceilings and all interior lighting; and (c) any Improvements, special equipment, furnishings, fixtures or facilities installed on the Premises; except for, in the case of any of the foregoing, reasonable wear and tear and any damage to any of the foregoing caused by any act or negligence of Tenant or its agents, employees, servants, contractors, subtenants or licensees.

10.2 Landlord shall not be obligated to provide any service or maintenance or to make any repairs pursuant to this Lease when such service, maintenance or repair is made necessary because of the negligence or misuse of Tenant, Tenant's agents, employees, servants, contractors, subtenants or licensees. Landlord reserves the right to stop any service when Landlord reasonably deems such stoppage necessary, whether by reason of accident or emergency, or for repairs or Improvements or otherwise. Landlord shall not be liable under any circumstances for loss or injury however occurring, through or in connection with or incident to any stoppage of such services, provided, however, that Rent and other charges hereunder shall be abated during the period that Tenant cannot open for business due to such stoppage. Landlord shall have no responsibility or liability for failure to supply any services or maintenance or to make any repairs when prevented from doing so by any cause beyond Landlord's reasonable control unless caused by the negligence of Landlord, its agents, customers, or contractors. Landlord shall not be obligated to inspect the Premises and shall not be obligated to make any repairs or perform any maintenance hereunder unless first notified of the need thereof in writing by Tenant, or unless actually known to Landlord.

10.3 Tenant shall store all trash and garbage in containers located where designated by Landlord and so as not to be visible or create a nuisance to guests, customers and business invitees of the Hotel, and so as not to create or permit any health or fire hazard.

**SECTION 11**  
**LANDLORD'S ADDITIONAL OBLIGATIONS**

11.1 For the Lease Term, Landlord agrees to make available and provide or supply to Tenant in connection with the operation of the Gallery at the Premises, the following services (collectively, the "Landlord Services"), on the terms provided herein:

- (a) All utility services with respect to the operation of the Gallery, including, without limitation, HVAC systems, together with the costs of utility consumption at the Premises, in each case to the extent not separately metered;
- (b) All light and heavy cleaning of the Premises in order to maintain the Premises in a first-class condition;
- (c) Extermination of vermin, rats and mice in the Premises;
- (d) Personnel (other than the Director of the Gallery and the General Manager of the Gallery) sufficient to operate the Gallery (the "Personnel"), as mutually determined by the Tenant and Landlord; and
- (e) All insurance policies required to be maintained pursuant to the terms hereof.

11.2. Standard of Conduct. In providing the Landlord Services to Tenant, Landlord's officers, agents, representatives and employees shall provide the Landlord Services with the same degree of care, skill and prudence customarily exercised by such officers, agents, representatives and employees for the benefit of Landlord in connection with Landlord's operations.

11.3. Personnel. In connection with Landlord providing Tenant with the Personnel pursuant to Section 11.1(d) above, Landlord and Tenant agree as follows:

- (a) The Personnel shall at all times be employees of Landlord and not employees of Tenant, and Tenant shall not have any input into or control over Landlord's employment practices with respect to the Personnel;
- (b) Landlord shall be responsible for (i) all recruiting, hiring, interviewing, testing, selecting, training, evaluating, replacing, supervising, disciplining and terminating of Personnel and the development and implementation of all policies with respect thereto; (ii) determining and paying (subject to reimbursement by Tenant pursuant to Section 11.4(a) below) all wages, salaries and bonuses of the Personnel and procuring, maintaining and administering all employee benefit plans for the Personnel; (iii) complying with all statutes, laws, rules, regulations, orders, codes, permits and authorizations now or hereinafter in effect (each an "Applicable Law" and collectively, "Applicable Laws") issued by all federal, state and local governmental, regulatory and administrative authorities, agencies, boards, officials and courts of the United States of America and the State of Nevada and its political subdivisions (collectively, "Governmental");

Authorities”) applicable to Landlord, Tenant and the Personnel with respect to Landlord’s employment of the Personnel, including, without limitation, all taxes, withholdings, contributions and filings with respect thereto; and (iv) procuring, maintaining and administering workers’ compensation coverage required by the provisions of any Applicable Laws;

(c) Tenant may, from time to time, designate one or more individuals to supervise and manage the Personnel such as a Director of the Gallery and the General Manager of the Gallery, which individuals shall be the employees of Tenant and not employees of Landlord; and

(d) Tenant shall promptly comply with all reasonable directions and instructions from Landlord regarding the Personnel, including, without limitation, as follows: (i) Tenant shall use the Personnel to operate the Gallery and for no other business or purpose whatsoever unless and until Tenant receives prior written consent from Landlord to do so in each instance, deliverable in Landlord’s sole and absolute discretion; and (ii) Tenant shall comply with all Applicable Laws, and all orders, directives, notices and other requirements of all Governmental Authorities, with respect to Tenant’s use of the Personnel.

#### 11.4. Reimbursement of Costs; Service Fee.

(a) Tenant agrees to reimburse Landlord, within thirty (30) days of its receipt of invoices therefor, for all reasonable out-of-pocket expenses incurred by Landlord in providing the Landlord Services, including, without limitation, (i) reasonable expenses for outside professional services incurred by Landlord for the benefit of Tenant; (ii) the actual costs of the Personnel, including, without limitation, their salaries, wages, benefits, bonuses and taxes; and (iii) insurance premiums.

(b) Landlord shall maintain a “city ledger” account for purposes of recording Gallery admission charges collected by Landlord (the “Admission Charges”) and the expenses incurred by Landlord in connection with the Landlord Services (the “Expenses”). Within thirty (30) days of the end of each calendar quarter, Landlord shall (i) submit to Tenant a reconciliation of all Admission Charges and all Expenses (the “Reconciliation”), which Reconciliation shall set forth the amount of the Service Fee (as defined in Section 11.4(c) below); and (ii) remit to Tenant any balance owing to Tenant (less the Service Fee) as shown on the Reconciliation.

(c) In consideration for the Landlord Services, Tenant shall pay to Landlord a fee of five percent (5%) multiplied by the total dollar amount of the Expenses (the “Service Fee”), which Service Fee shall be payable quarterly on or before the thirtieth (30<sup>th</sup>) day following the expiration of each calendar quarter. Landlord shall be entitled to offset the Admission Charges payable to Tenant by the amount of the Service Fee during the same period.

**SECTION 12**  
**LIENS**

12.1 Tenant, at all times, whether by bond or otherwise, shall keep Landlord, the Hotel, the Premises, the leasehold estate created by this Lease, and any trade fixtures, equipment or personal property within the Premises, free and clear from any claim, lien or encumbrance (other than personal property consensual security interests for lines of credit or inventory financing in the ordinary course of Tenant's business), tax lien or levy, mechanic's lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Tenant whatsoever, except to the extent permitted under Sections 17 and 18 below and except for "Permitted Liens" as defined in the Bank Credit Agreement and the 2014 Notes Indenture (each as defined in the Deed of Trust, which is defined in Schedule I attached hereto and incorporated herein by this reference).

12.2 Tenant shall give Landlord at least ten (10) business days' prior written notice before the commencement of any work, construction, alteration or repair on the Premises that could be the subject of a mechanic's lien to afford Landlord the opportunity to file appropriate notices of non-responsibility.

**SECTION 13**  
**INSURANCE**

13.1 Landlord and Tenant are covered under the same policies of comprehensive public liability insurance and all-risk, commercial property insurance. Landlord will bill Tenant for, and Tenant shall pay, Tenant's share of such insurance costs.

13.2 If at any time during the Lease Term Tenant ceases to be covered by common insurance with Landlord, Tenant will, at its sole cost and expense, maintain in full force and effect:

(a) a policy of comprehensive public liability insurance issued by an insurance carrier approved by Landlord, insuring against loss, damage or liability for injury or death to Persons and loss or damage to property occurring from any cause whatsoever in connection with the Premises or Tenant's use thereof. Landlord shall be named as an additional insured under each such policy of insurance; and

(b) a standard form of all-risk, commercial property insurance with extended coverage insurance covering leasehold improvements, furniture, fixtures and equipment, and personal property located in or on the Premises whether owned by Landlord or Tenant, and the personal property of others in Tenant's possession in, upon or about the Premises. Such insurance shall be in an amount equal to the current replacement value of the property required to be insured. Tenant and Landlord, as their interests may appear, shall be the named insureds under each such policy of insurance.

13.3 A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant under Section 13.2 above, if any, or a copy of each such policy, shall be delivered to Landlord on or before the Commencement Date and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the terms of each such policy. Each of said certificates of insurance and each such policy of insurance shall be from an insurer and in a form and substance satisfactory to Landlord, shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days written notice to Landlord and all other named insureds prior to the cancellation, diminution in the perils insureds against, or reduction of the amount of coverage of, the particular policy in question. In addition to the foregoing certificates, Tenant shall at all times during the Lease Term maintain (either through common insurance with Landlord or otherwise), at Tenant's sole cost and expense, worker's compensation coverage evidencing coverage at Nevada statutory limits.

13.4 Tenant shall not use or occupy, or permit the Premises to be used or occupied, in a manner that will make void any insurance then in force or increase the rates of fire or any other insurance on the Premises. If by reason of the failure of Tenant to comply with the provisions of this Section, the fire or any other insurance rates of the Premises are increased, Tenant shall reimburse Landlord, as additional Rent, on the first day of the calendar month next succeeding notice by Landlord to Tenant of said increase, for that part of all insurance premiums thereafter paid by Landlord which shall have been charged because of such failure of Tenant.

13.5 Tenant hereby waives any and all rights of recovery from Landlord, its members, managers, officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) that are caused by or result from risks insured against under any form of insurance policy required to be maintained by Tenant hereunder.

13.6 Each policy of insurance provided for in this Section 13 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against the other party, its officers, directors, managers, members, agents and employees. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Notwithstanding any other provision contained in this Section 13 or elsewhere in this Lease, the amounts of all insurance required hereunder to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord from becoming a co-insurer. The limits of the public liability insurance required to be maintained by Tenant under this Lease shall in no way limit or diminish Tenant's liability under Section 15 hereof and such limits shall be subject to increase at any time and from time to time during the Lease Term if Landlord, in the exercise of reasonable discretion, deems such an increase necessary for its adequate protection; provided, however, Landlord may not exercise its right under this sentence more frequently than one time every two years during the Lease Term.

13.7 Landlord shall maintain insurance covering the Premises (and all improvements therein or additions thereto other than those items which Tenant is required to insure, Tenant's improvements, fixtures and stock in trade) and the Hotel against loss or damage by fire or

casualty in amounts not less than the replacement value thereof, from financially responsible insurers and in amounts as determined in Landlord's reasonable discretion provided such amounts are customary for the industry. Tenant shall be solely responsible for insuring art works displayed or stored in its Gallery or storage areas, at Tenant's sole expense. In no event shall Landlord be responsible for insuring any such art works.

13.8 Landlord shall maintain public liability insurance on an occurrence basis in amounts that are customary for the industry insuring against all claims, demands, or actions for personal injury or death, or damage to property, made by or on behalf of any Person, while in the Hotel, or arising from the conduct and operation of the common areas or arising from any acts or omissions of Landlord or any of Landlord's agents, employees or contractors.

13.9 All of the provisions of this Section 13 are subject to, and shall be modified as reasonably necessary to be consistent with, the requirements of the Bank Credit Agreement.

#### **SECTION 14**

#### **DESTRUCTION OF PREMISES; CONDEMNATION**

14.1 In the case of the total destruction of the Premises, or any portion thereof or of the Hotel substantially interfering with Tenant's use of the Premises not caused by the fault or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees or customers ("Destruction"), this Lease shall terminate except as herein provided. If Landlord notifies Tenant in writing within forty-five (45) days of Destruction of Landlord's election to repair said damage to the Premises, and if Landlord proceeds to and does repair such damage with reasonable dispatch, the Lease shall not terminate, but shall continue in full force and effect, except that Tenant shall be entitled to a reduction in the Rent in an amount equal to that proportion of the Rent which the number of square feet of floor space in the unusable portion of the Premises bears to the Total Square Feet, and provided further that if such portion of the Premises is damaged or destroyed such that the remainder will not be suitable for the purpose for which Tenant has leased the Premises, Tenant may close for business until such time as Landlord has repaired such damage and Rent and all other charges hereunder shall be suspended until such time as Tenant is able to reopen for business. Said reduction shall be prorated so that the Rent shall only be reduced for those days that any given area is actually unusable. If this Lease is terminated pursuant to this Section 14, and if Tenant is not in default hereunder, Rent shall be prorated as of the date of termination and all further rights and obligations hereunder shall cease and terminate.

14.2 The provisions of this Section 14 with respect to repair by Landlord shall be limited to such repair as is necessary to place the Premises in the condition they were in immediately prior to Destruction and when placed in such condition, the Premises shall be deemed restored and rendered tenantable. Tenant shall replace its own art works, stock in trade and trade fixtures (to the extent not previously installed by Landlord) at its own expense.

14.3 Notwithstanding the foregoing provisions, in the event the Premises or any portion thereof shall be damaged by fire or other casualty due to the fault, negligence or willful

misconduct of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, then this Lease shall not terminate, the damage shall be repaired by Tenant, and there shall be no apportionment or abatement of any Rent.

14.4 All insurance proceeds payable under any fire and extended coverage risk insurance covering the Premises and maintained by Landlord shall be payable to Landlord in the event of Destruction, and Tenant shall have no interest therein, except to the extent of such insurance separately carried by Tenant. Tenant shall in no case be entitled to compensation for damages on account of any annoyance or inconvenience in making repairs under any provision of this Lease. Except to the extent provided for in this Section 14, neither the Rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any Destruction.

14.5 Should the whole of the Premises be condemned or taken by a competent Governmental Authority for any public or quasi-public purpose, then this Lease shall terminate upon such taking and neither party shall have any further rights or obligations hereunder. If such portion of the Premises is condemned or taken such that the remaining portion thereof will not be reasonably adequate for the operation of Tenant's business after Landlord completes such repairs or alterations as Landlord elects to make, either Landlord or Tenant shall have the option to terminate this Lease by notifying the other party hereto of such election in writing within twenty (20) days after such taking. If by such condemnation and taking a portion of the Premises is taken and the remaining part thereof is suitable for the purposes for which Tenant has leased the Premises, this Lease shall continue in full force and effect, but the Rent and all other charges hereunder shall be reduced in an amount equal to that proportion of such charges which the number of square feet of floor space of the portion taken bears to the Total Square Feet, and Rent and other charges shall be suspended during any period of time that Tenant is closed for business. In the event a partial taking does not terminate this Lease, Landlord, at Landlord's expense, shall repair the damage to the Premises with reasonable dispatch and restore it as nearly as reasonably possible to its condition as immediately before the taking. If any part of the Hotel other than the Premises shall be taken or appropriated so as to materially and adversely affect the ability of Tenant's customers to reach the Premises, either party shall have the right, at its option to terminate this Lease by notifying the other party within twenty (20) days of such taking. For the purposes hereof, a deed in lieu of condemnation shall be deemed a taking.

## **SECTION 15 INDEMNIFICATION**

15.1 Landlord hereby covenants and agrees to indemnify, defend, save and hold Tenant, its Affiliates and their respective members, managers, directors, officers, agents, representatives and employees (collectively, the "Tenant Parties"), the Premises and the leasehold estate created by this Lease free, clear and harmless from any and all losses, liabilities, demands, claims, liens, actions or causes of action, judgments, assessments, fines, penalties, costs, damages and/or expenses (including, without limitation, the reasonable fees and expenses of attorneys and other professionals) and demands of any kind whatsoever (collectively, "Losses") arising out of, or by reason of any act, omission, or negligence of Landlord, its agents,

employees, servants, contractors, subtenants or licensees while in, upon, about, or in any way connected with, the Premises or the Hotel, or in connection with the performance of the Landlord Services hereunder, except in circumstances where the Tenant Party to be indemnified itself acted with gross negligence or engaged in willful misconduct.

15.2 Tenant hereby covenants and agrees to indemnify, defend, save and hold Landlord, its Affiliates and their respective members, managers, directors, officers, agents, representatives and employees (collectively, the "Landlord Parties"), the Premises and the leasehold estate created by this Lease free, clear and harmless from any and all Losses arising out of, or by reason of any act, omission, or negligence of Tenant, its agents, employees, servants, contractors, subtenants or licensees while in, upon, about, or in any way connected with, the Premises or the Hotel, or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any Person or property whatsoever, occurring in, upon, about or in any way connected with the Premises or any portion thereof, except in circumstances where the Landlord Party to be indemnified itself acted with gross negligence or engaged in willful misconduct.

15.3 Notwithstanding anything herein to the contrary, in the absence of intentional or grossly negligent acts of Landlord, Landlord shall not be liable to Tenant, or to any other Person whatsoever, for any damage occasioned by falling plaster, electricity, plumbing, gas, water, steam, sprinkler or other pipe and sewage system or by the bursting, running or leaking of any tank, washstand, closet or waste of other pipes, nor for any damages occasioned by water being upon or coming upon the Premises or for any damage arising from any acts or neglect of co-tenants or other occupants of the Hotel or of adjacent property or of the public, nor shall Landlord be liable in damage or otherwise for any failure to furnish, or interruption of, service of any utility beyond the control of Landlord.

15.4 Notwithstanding anything herein to the contrary, in no event shall any Landlord Party or any Tenant Party be liable for any Losses which constitute indirect, special or consequential damages.

## **SECTION 16**

### **LANDLORD FINANCING; SUBORDINATION**

16.1 Landlord may obtain loans from time to time from third parties to finance acquisition and development of Landlord's and its Affiliates' real property, including, without limitation, the Premises. For purposes of this Lease, "Affiliate" shall mean with respect to a specified Person, any other Person who or which is directly or indirectly controlling, controlled by or under common control with the specified Person. For purposes of this definition, (a) "control", "controlling" and "controlled" shall mean the right to exercise, directly or indirectly, more than twenty percent (20%) 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; and (b) "Person" shall mean a natural person, any form of business or social organization and any other non-governmental legal entity including, but not



limited to, a corporation, partnership, association, trust, unincorporated organization, estate or limited liability company. By its execution of this Lease, Tenant (i) acknowledges and consents to Landlord's collateral assignment of its rights hereunder to its and its Affiliates' lenders, including the beneficiaries under the Deed of Trust (collectively, "Lenders"); (ii) acknowledges and affirms Tenant's agreement to attorn performance obligations to the benefit of Lenders in the same manner as it would with respect to Landlord if any such Lender exercises its rights under any collateral assignment from Landlord; and (iii) agrees to execute such separate consents and acknowledgements to and of Landlord's collateral assignment of this Lease to such Lenders; provided, however, any Lender or its successor which acquires the Premises (through foreclosure or deed in lieu of foreclosure) shall not disturb Tenant's lease of the Premises pursuant to the terms hereof and shall respect Tenant's rights under this Lease

16.2 Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any renewals, extensions or replacements thereof now or hereafter placed, charged or enforced against the Premises, or any portion thereof, and to execute and deliver at any time, and from time to time, upon demand by Landlord, such documents as may be reasonably required to effectuate such subordination within ten (10) days after receiving such documents, provided that in connection with such subordination agreement Landlord's lender agrees to provide a non-disturbance agreement for the benefit of Tenant in form and substance reasonably acceptable to Tenant and its lenders.

## **SECTION 17 ASSIGNMENT AND SUBLETTING**

17.1 Except as otherwise set forth herein, Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, or sublet the Premises or any portion thereof, or license the use of all or any portion of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Tenant shall have the right, upon giving written notice to Landlord, to assign this Lease and the leasehold estate hereby created to an Affiliate of Tenant so long as Tenant remains as guarantor and liable for all payments due pursuant to this Lease. The restriction or limitation on use of the Premises shall continue to apply to any subtenant or assignee hereunder. Any consent by Landlord to any act requiring consent pursuant to this Section 17.1 shall not constitute a waiver of the necessity for such consent to any subsequent act. Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Section 17.1.

17.2 Landlord may reasonably require that each proposed assignee or sublessee agree, in a written agreement satisfactory to Landlord, to assume and abide by all the terms and provisions of this Lease, including those which govern the permitted uses of the Premises.

17.3 In the absence of an express agreement in writing to the contrary executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant from any of the provisions, covenants and conditions of this Lease on the part of Tenant to be kept and performed.

## **SECTION 18**

### **LEASEHOLD FINANCING**

18.1 Leasehold Mortgage Permitted. Nothing in this Lease shall be construed as restricting in any manner the right of Tenant, from time to time, or at any time, to create one or more liens on, or encumber, by mortgage, deed of trust or trust deed in the nature of a mortgage (each, a "Leasehold Mortgage") the leasehold interest of Tenant in the Premises, and subject to the restrictions and limitations contained in any such instrument as to further conveyances, transfers and assignments, Tenant will have the right at any time, and from time to time, to convey, transfer and assign its interest under this Lease to a mortgagee, trustee or beneficiary, of its designee (each "Leasehold Mortgagee"), under a Leasehold Mortgage given to secure any note or other obligation of Tenant or an Affiliate of Tenant.

18.2 Certain Benefits to Leasehold Mortgage. If Tenant shall execute any Leasehold Mortgage, then, in such event and so long as such Leasehold Mortgage shall constitute a lien or encumbrance against the leasehold estate of Tenant hereunder, the following provisions shall apply:

18.2.1 Amendment of Lease. No agreement by Landlord and Tenant for the assignment, cancellation, surrender, acceptance of surrender or termination, modification or amendment of this Lease shall be effective as to any Leasehold Mortgagee without the written consent of such Leasehold Mortgagee. If the Leasehold Mortgagee whose lien has first priority consents to an amendment, any Leasehold Mortgagee of a junior lien on the Premises will not unreasonably withhold its consent to such amendment.

18.2.2 Exercise of Section 365(h)(i) Rights. Landlord agrees, for the benefit of such Leasehold Mortgagee, that the right of election arising under Section 365(h)(i) of the Bankruptcy Code (as defined in this Section 18.2.2 below) shall be exercised by the most senior Leasehold Mortgagee at such time and not by Tenant. Any attempted exercise by Tenant of such right of election in violation hereof shall be void. "Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute thereto.

18.2.3 Loss Payee. The name of each such Leasehold Mortgagee shall be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease.

18.2.4 Proceeds of Casualty and Condemnation. Notwithstanding anything in this Lease to the contrary, in the event of any casualty to or condemnation of the Premises or any portion thereof, the Leasehold Mortgagees shall be entitled to receive all insurance proceeds and/or condemnation awards as their interests appear (up to the amount of the indebtedness

secured by the Leasehold Mortgage) otherwise payable to Tenant or Landlord or both and apply them in accordance with the Leasehold Mortgage and shall have the right, but not the obligation, to restore the Premises.

18.2.5 Merger. If Tenant shall acquire fee title, or any other estate, title or interest in the Premises which is the subject of this Lease, or any part thereof, or if the leasehold estate created by this Lease, or any portion thereof, shall be assigned, sold or otherwise transferred to the owner of such fee title or other estate, title or interest in the Premises which is the subject of this Lease, then in either such event, upon the election of the Leasehold Mortgagee first in priority expressly made in writing at any time thereafter, each Leasehold Mortgage shall attach to and be a lien upon such fee title and/or other estate so acquired (but only as the same pertains to the Premises), and such fee title and/or other estate so acquired shall be considered as mortgaged, assigned and conveyed to each Leasehold Mortgagee and the lien of each such Leasehold Mortgage shall be spread to cover such estate with the same force and effect as though specifically mortgaged, assigned or conveyed in such Leasehold Mortgage (and upon request of any Leasehold Mortgagee, either or both Landlord and Tenant shall execute further mortgages, assignments of leases and rents, amendments to documents and instruments as such Leasehold Mortgagee may reasonably require for such purpose); provided, however, that notwithstanding the foregoing, if and so long as any of the indebtedness secured by any such Leasehold Mortgage shall remain unpaid, unless the Leasehold Mortgagee thereunder shall otherwise in writing expressly consent, the fee title to the Premises which is the subject of this Lease and the leasehold estate created by this Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in Landlord or in Tenant, or in a third party, by purchase or otherwise. Nothing in this Section 18.2.5 shall be deemed to subordinate or require Landlord to subordinate the fee interest of Landlord in the Premises to the lien of a Leasehold Mortgage.

18.2.6 Right of Entry. Each Leasehold Mortgagee shall have the right to enter upon the Premises at any time for any purpose, including curing any defaults by Tenant under this Lease, and Landlord hereby agrees to accept performance and compliance by any such Leasehold Mortgagee of any covenants, agreements, provisions, conditions and limitations on Tenant's part to be kept, observed or performed hereunder, with the same force and effect as though kept, observed and performed by Tenant. Any default by Tenant that is not susceptible to being cured by a Leasehold Mortgagee shall be deemed waived by Landlord.

18.2.7 Notice to Tenant. Landlord shall serve Tenant with notice if Landlord files, or has filed against it, a petition under Chapters 7 or 11 of the Bankruptcy Code. Such notice shall be served within twenty-four (24) hours of such filing. Landlord shall, upon serving Tenant with any notice of (a) a bankruptcy filing as herein described, (b) default pursuant to the provisions of this Lease, or (c) a matter on which Landlord may predicate or claim a default, at the same time serve a copy of such notice upon every Leasehold Mortgagee that has provided Landlord with notice of its identity and address, and no such notice by Landlord to Tenant hereunder shall have been deemed duly given unless and until a copy thereof has been so served on every such Leasehold Mortgagee.

18.2.8 Termination. Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, or to exercise any other rights, powers or remedies available to it under this Lease, Landlord shall have no right to terminate this Lease or to exercise any of such rights, powers or remedies unless following the expiration of the period of time given Tenant to cure such default (or the act or omission which gave rise to such default), Landlord shall notify every Leasehold Mortgagee of Landlord's intent to so terminate or exercise any such rights, powers or remedies ("Default Notice") at least (a) sixty (60) days in advance of the proposed effective date of such termination, or exercise of any rights, powers or remedies if such default is capable of being cured by the payment of money, and (b) ninety (90) days in advance of the proposed effective date of such termination, or exercise of any such rights, powers or remedies if such default is not capable of being cured by the payment of money ("Default Notice Period"). The provisions of Subsection 18.2.9 below shall apply if during such sixty (60) or ninety (90) day Default Notice Period, any Leasehold Mortgagee shall notify Landlord of such Leasehold Mortgagee's desire to nullify such notice (the "Nullification Notice").

18.2.9 Procedure on Default.

(a) If Landlord shall elect to terminate this Lease or obtain possession of the Premises by reason of any default of Tenant, and a Leasehold Mortgagee shall have delivered the Nullification Notice set forth in Subsection 18.2.8, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice or for the obtaining of possession shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period:

(i) pay or cause to be paid the monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (i) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee and (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (including by reason of a bankruptcy stay or if possession of the Premises is required in order to cure such default); provided that Leasehold Mortgagee may offset amounts it expends to cure any defaults by Landlord under this Lease; and

(ii) if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with Subsection 18.2.9(a) then this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence.

Nothing in this Subsection 18.2.9, however, shall be construed to extend this Lease beyond the original term thereof or to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Subsection 18.2.9(a) of this Section, then upon the acquisition of Tenant's estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise (and the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease) this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

18.2.10 Receiver. A Leasehold Mortgagee shall have the right after institution of foreclosure proceedings to apply to the court for the appointment of a receiver of the Premises. In the event foreclosure proceedings have been instituted, any money held by Landlord which becomes payable to Tenant shall be payable upon demand to such Leasehold Mortgagee as the interest of such Leasehold Mortgagee may appear when the same so becomes payable to Tenant. If Landlord shall at any time be in doubt as to whether such monies are payable to such Leasehold Mortgagee or to Tenant, Landlord may pay such monies into court and file an appropriate action of interpleader in which event all of Landlord's costs and expenses (including attorneys' fees) shall first be paid out of the proceeds so deposited.

18.2.11 No Assumption. For purposes of this Subsection 18.2.11, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created, so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Subsection 18.2.11 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder arising and accruing from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

18.2.12 Successive Sales. Any Leasehold Mortgagee or other acquiror of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord, sell and assign the leasehold estate so acquired on such terms and to such Persons or organizations as are acceptable to such Leasehold Mortgagee or acquiror and thereafter be relieved of all obligations under this Lease; provided that such assignee has delivered to Landlord

its written agreement to be bound by all of the provisions of this Lease from and after the date of such assignment.

18.2.13 Leasehold Mortgagee Need Not Cure Specified Defaults. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to the exercise of its rights hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

18.2.14 Lease Proceedings. Landlord shall give each Leasehold Mortgagee that has provided Landlord with notice of its interest and address, prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. Tenant agrees that each Leasehold Mortgagee shall also have the right to intervene in, and be made a party to, any such proceedings.

18.2.15 Future Leasehold Mortgage: Amendment of Lease.

(a) Notwithstanding anything in this Lease to the contrary, each Leasehold Mortgagee shall have the right (if it has such right under its loan documents) to restrict, limit or prohibit the execution of any other Leasehold Mortgage junior in priority to the lien of such senior Leasehold Mortgage, or, in the event of the execution of any such junior Leasehold Mortgage, to accelerate or increase the interest rate under the indebtedness secured by such senior Leasehold Mortgage; and

(b) In the event of a Leasehold Mortgage (each, a "Successor Leasehold Mortgage") the proceeds of which are used to pay off in its entirety the indebtedness secured by any existing Leasehold Mortgage (each such existing Leasehold Mortgage, an "Initial Leasehold Mortgage"), then the Successor Leasehold Mortgage shall be deemed to have succeeded to the position and all of the rights and priorities of the mortgagee under the Initial Leasehold Mortgage with respect to the mortgagor under the Initial Leasehold Mortgage and with respect to third parties.

18.2.16 Certificate. Landlord shall, without charge, at any time and from time to time within ten (10) business days after written request of Tenant to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or purchaser, or proposed Leasehold Mortgagee or proposed purchaser, or any other Person specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor; (c) as to the existence of any default hereunder or any event which with the passage of time or notice would constitute a default hereunder; (d) as to the existence of any offsets, claims, counterclaims or defenses hereto on the part of Landlord or, to

Landlord's knowledge, on the part of Tenant; (e) as to the commencement and expiration dates of this Lease; and (f) as to any other matters as may be reasonably so requested. Any such certificate may be relied upon by Tenant and any other Person to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on Landlord.

18.2.17 Nominee. Any acquisition by a Leasehold Mortgagee of the leasehold estate under this Lease, or any rights or privileges thereunder may be taken in the name of such Leasehold Mortgagee or in the name of any nominee or designee selected by it.

18.2.18 New Lease. In the event of the termination of this Lease as a result of Tenant's default prior to the expiration of the term, or in the event of a rejection by Landlord or Tenant of this Lease under Chapter 11 of the Bankruptcy Code, Landlord shall, in addition to providing the notices of default and termination as required by this Lease, provide each Leasehold Mortgagee with written notice that the Lease has been terminated or that Landlord has filed a request with the United States Bankruptcy Court seeking to reject the Lease, together with a statement of all sums which would at that time be due under this Lease but for such termination or rejection, and of all other defaults, if any, then known to Landlord. Upon any request of the Leasehold Mortgagee, or its designee, Landlord agrees to enter into a new lease ("New Lease") of the Premises with such Leasehold Mortgagee or its designee for the remainder of the term of this Lease, effective as of the date of termination or rejection, as the case may be, at the Rent, and upon the terms, covenants and conditions (including all transfer rights, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease; provided, however, that (a) the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (the "Senior Leasehold Mortgage") shall have the right to give notice of its intent to enter into a New Lease to the Landlord for a period of sixty (60) days from its receipt of the notice referred to in the first sentence of this Section 18.2.18 and (b) if the Senior Leasehold Mortgagee does not exercise its right to enter into the New Lease during this 60-day period, then the Leasehold Mortgagee whose lien upon the Premises is superior to the lien of any other Leasehold Mortgage (other than the Senior Leasehold Mortgagee) shall have the right to give notice of its intent to enter into a New Lease to the Landlord during the remainder of the period(s) specified below; and provided further, however,

(i) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease at the later of (A) within one hundred (100) days after the date such Leasehold Mortgagee receives Landlord's notice of termination or rejection of this Lease given pursuant to this Subsection 18.2.18; or (B) within forty-five (45) days after the actual termination of the Lease as same may have been extended by Subsection 18.2.18 hereof.

(ii) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, court costs and costs and disbursements which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from or on behalf of Tenant. Upon the execution of such

New Lease, Landlord shall allow to Tenant named therein as an offset against the sums otherwise due under this Subsection 18.2.18 or under the New Lease, an amount equal to the net income derived by Landlord from the Premises during the period from the effective date of termination of this Lease to the date of the beginning of the lease term under the New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 18.2, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and such Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due.

(iii) Such Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which said Leasehold Mortgagee was notified by Landlord's notice of termination or rejection and which are reasonably susceptible of being so cured by such Leasehold Mortgagee or its designee.

(iv) The tenant under any New Lease shall have the same right, title and interest in and to the Premises and buildings and improvements thereon as Tenant under this Lease. Any holder of any such lien, charge or encumbrance or sublease shall execute such instruments of non-disturbance and/or attornment as the tenant under the New Lease may at any time require.

(v) The tenant under any New Lease shall be liable to perform the obligations imposed on such tenant by such New Lease only for and during the period such Person has ownership of the Premises.

(vi) If more than one (A) Leasehold Mortgagee shall request a New Lease pursuant to this Section 18.2.18, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is in the first lien position, or with the designee of such Leasehold Mortgagee.

(vii) Concurrently with the execution and delivery of any New Lease, Landlord shall assign to the tenant named therein all of the right, title and interest in and to moneys (including insurance proceeds and condemnation awards), if any, then held by and payable by Landlord which Tenant would have been entitled to receive but for the termination of the Lease. Upon the execution of any New Lease, the tenant named therein shall be entitled to any rent received under any sublease in effect during the period from the date of termination of the Lease to the date of execution of such New Lease.



**SECTION 19**  
**RECORDS AND BOOKS OF ACCOUNT**

19.1 Tenant and any other Person selling merchandise or services in, upon or from the Premises or any part thereof shall keep and maintain complete, accurate and customary records and books of account of all sales and all business transactions made in, upon or from the Premises and the same shall be retained intact for a period of not less than seven (7) years after the end of the fiscal year to which said records and books of account pertain. Landlord shall be entitled at all reasonable times during business hours, through Landlord's duly authorized agents, attorneys, or accountants, to inspect and make copies of any and all such records and books of account.

**SECTION 20**  
**RIGHT OF ACCESS**

Landlord and its authorized agents and representatives shall be entitled to enter the Premises immediately in the case of an emergency or with reasonable notice for the purpose of observing, posting or keeping posted thereon notices provided for hereunder, and such other notices as Landlord may deem necessary or appropriate; for the purpose of inspecting the Premises; for the purpose of exhibiting the Premises to prospective purchasers or lessees; and for the purpose of making repairs to the Premises or the Hotel and performing any work upon the Premises which Landlord may elect or be required to make.

**SECTION 21**  
**ESTOPPEL CERTIFICATE**

Tenant agrees that within ten (10) business days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord a certificate stating that this Lease is in full force and effect without amendment, or if amended attaching a copy thereof to the certificate, the date to which all rentals have been paid, any defaults or offsets claimed by Tenant and such other information concerning the Lease, the Premises or Tenant as Landlord may request. Landlord will provide a similar document to Tenant upon request by Tenant within ten (10) business days after request.

**SECTION 22**  
**EXPENDITURES BY LANDLORD**

Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required after notice and an opportunity to cure (which shall be deemed to be twenty (20) days unless provided for specifically herein), Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount thereof with interest thereon at the Default Rate, shall constitute and be collectable as additional Rent on demand.

**SECTION 23**  
**DEFAULT**

23.1 Tenant shall be in default of this Lease if (each a “Tenant Event of Default”):

(a) Tenant shall fail to make timely and full payment of any sum of money required to be paid hereunder and such failure continues for ten (10) days after written notice thereof from Landlord;

(b) Tenant shall fail to perform any other term, covenant or condition of Tenant contained in this Lease, and such failure continues for twenty (20) days after written notice thereof from Landlord; provided, however, that if correction is impossible to correct within twenty (20) days, Tenant shall not be deemed in default if Tenant commences correction within said twenty (20) day period, and diligently pursues such correction to completion;

(c) Tenant should vacate or abandon the Premises or cease operations during the Lease Term;

(d) There is filed any petition in bankruptcy by or against Tenant, which petition is not dismissed within ninety (90) days of its filing, or there is appointed a receiver or trustee to take possession of Tenant or of all or substantially all of the assets of Tenant, or there is a general assignment by Tenant for the benefit of creditors, or any action is taken by or against Tenant under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, including, without limitation, the filing of execution or attachment against Tenant and such levy continues in effect for a period of sixty (60) calendar days; or

(e) Notwithstanding anything to the contrary contained above, if Tenant shall breach any covenant hereof, or do or permit, or omit to do, any act or thing, which results in a nuisance or an offensive or illegal condition, or which causes or threatens serious damage or injury to life, limb or property, or in the event of a breach of Sections 13.1, 13.2 or 17.1.

23.2 Upon the occurrence of a Tenant Event of Default, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

(a) The right to declare the Lease Term ended and to re-enter the Premises and take possession thereof, and to terminate all of the rights of Tenant in and to the Premises;

(b) The right, without declaring the Lease Term ended, to re-enter the Premises and to occupy and/or relet the same, or any portion thereof, for and on account of Tenant, applying any monies received first to the payments of such reasonable expenses as Landlord may have incurred in recovering possession of the Premises, including, without limitation, costs and attorneys’ fees, and then to the fulfillment of the covenants of Tenant. Landlord may enter into any lease concerning the Premises either in Landlord’s name or in the name of Tenant without expanding Tenant’s obligations hereunder, or assume Tenant’s interest

in and to any existing subleases of the Premises, as Landlord may see fit, and Tenant shall have no right whatsoever to collect any rent from such tenants or subtenants. In any case, Tenant, until the end of what would have been the Lease Term, shall remain liable to Landlord for the Rent hereunder, less the net proceeds for said month, if any, of any reletting, after deducting all of Landlord's expenses in connection with such reletting, together with interest thereon at the rate of twelve percent (12%) per annum, compounded monthly, until paid. Landlord reserves the right to bring such actions for the recovery of any deficits remaining unpaid by Tenant to Landlord hereunder as Landlord may deem advisable from time to time without being obligated to await the end of the Lease Term or a final determination of Tenant's account and the commencement or maintenance of one or more actions by Landlord in this connection shall not bar Landlord from bringing any subsequent actions for further accruals pursuant hereto; or

(c) The right, even though it may have relet all or any portion thereof of the Premises, to thereafter at any time terminate this Lease, and to terminate all of the rights of Tenant in and to the Premises. On termination, Landlord has the right to recover from Tenant any Rent required to be paid hereunder and damages that may be due or sustained prior to such termination, and for all reasonable costs, fees and expenses incurred by Landlord in pursuit of its remedies hereunder, including, without limitation, attorneys', brokers' and other professional fees, plus the following:

- (i) The worth at the time of the award of the unpaid Rent that had been earned at the time of termination of this Lease;
- (ii) The worth at the time of the award of the amount by which the unpaid Rent that would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant affirmatively proves could have been reasonably avoided;
- (iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Lease Term of this Lease after the time of the award exceeds the amount of loss of Rent that Tenant affirmatively proves could be reasonably avoided;
- (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and
- (v) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under Applicable Law.

As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the rate of fifteen percent (15%) per annum. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate at the time of the award, plus one percent (1%).

(d) Pursuant to its rights of re-entry, Landlord may, but shall not be obligated to (a) remove all Persons from the Premises, (b) remove all Tenant's Property therefrom, and (c) enforce any rights Landlord may have against said property or store the same in any warehouse or elsewhere at the cost and for the account of Tenant. Tenant agrees to hold Landlord free and harmless of any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever, except for damage caused by the willful misconduct or gross negligence of Landlord, its agents or subcontractors.

(e) Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any Rent or other sum of money accruing hereunder, by any such re-entry, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall specifically notify Tenant in writing that it has so elected to terminate this Lease.

23.3 In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its reasonable costs and legal expenses, including, without limitation, reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

23.4 The waiver by Landlord of any breach of this Lease by Tenant shall not be a waiver of any preceding or subsequent breach of this Lease by Tenant. The subsequent acceptance of Rent or any other payment hereunder by Landlord shall not be construed to be a waiver of any preceding breach of this Lease by Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein provided shall be deemed to be other than on account of the earliest Rent due and payable hereunder.

23.5 It is agreed that in the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease, Tenant, prior to exercising any right or remedy Tenant may have against Landlord, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within twenty (20) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within that twenty (20) day period, then such default shall be deemed to be rectified or cured if Landlord within that twenty (20) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

#### **SECTION 24 MISCELLANEOUS**

24.1 Tenant, upon paying the rentals and other payments herein required and upon performance of all of the terms, covenants and conditions of this Lease on its part to be kept, may quietly have, hold and enjoy the Premises during the Lease Term without any disturbance from

Landlord or from any other Person claiming through Landlord, except as expressly provided otherwise in this Lease.

24.2 In the event of any sale or exchange of the Premises by Landlord, Landlord shall be, and is, hereby relieved of all liability under and all of its covenants and obligations contained in or derived from this Lease. Tenant agrees to attorn to such purchaser or transferee, provided that such purchaser or transferee agrees to be bound as Landlord under all of the terms and conditions of this Lease. Any sale of the Hotel or the Premises by Landlord shall be subject to this Lease.

24.3 Neither party shall be in breach of this Lease if it fails to perform as required hereunder due to labor disputes, civil commotion, war, warlike operation, terrorism, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any Rent or charge required of Tenant hereunder.

24.4 Any and all notices, demands and consents required or desired to be given hereunder shall be in writing and shall be validly given or made (and effective) if served personally, delivered by a nationally recognized overnight courier service, or deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, to the following addresses:

If to Landlord:           Wynn Las Vegas, LLC  
                                  3131 Las Vegas Boulevard South  
                                  Las Vegas, Nevada 89109  
                                  Attention: Legal Department  
                                  Telephone: 702-770-2111  
                                  Facsimile: 702-770-1520

If to Tenant:             Wynn Gallery, LLC  
                                  3131 Las Vegas Boulevard South  
                                  Las Vegas, Nevada 89109  
                                  Attention: Legal Department  
                                  Telephone: 702-770-2111  
                                  Facsimile: 702-770-1520

Either party may change its address for the purpose of receiving notices by providing written notice to the other.

24.5 The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

24.6 The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted in Section 17 hereof. Without limiting the generality of the foregoing, the terms of this Lease, including, without limitation Section 16 hereof, shall inure to the benefit of and be enforceable by the Administrative Agent (as defined in the Bank Credit Agreement), any successor representative of the Lenders (as defined in the Bank Credit Agreement), or any Person to whom the Administrative Agent or such Lenders transfer their interest in the Deed of Trust.

24.7 If any term, covenant or condition of this Lease, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Lease, and all applications thereof, not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.8 Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

24.9 This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

24.10 Nothing contained herein shall be deemed to create any partnership, joint venture, agency or other relationship between Landlord and Tenant other than the relationship of landlord and tenant.

24.11 The captions are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

24.12 The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Lease or any alleged breach thereof. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

24.13 In the event Tenant now or hereafter shall consist of more than one Person, then and in such event, all such Persons shall be jointly and severally liable as Tenant hereunder.

24.14 Landlord and Tenant shall execute, and Landlord shall cause to be recorded, a memorandum of this Lease in form and substance mutually agreeable to the parties; provided, however, that a memorandum of termination of Lease in form and substance mutually agreeable

to the parties shall also be executed by the parties, shall be held by Landlord, and shall be recorded by Landlord upon termination of the Lease.

24.15 All necessary actions have been taken under the parties' respective organizational documents to authorize the individuals signing this Lease on behalf of the respective parties to do so.

24.16 The prevailing party in any action regarding this Lease shall be entitled to receive its costs and legal expenses including, without limitation, reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

24.17 Landlord and Tenant each represents and warrants to the other that it has not entered into any written contractual arrangement with, or promised to pay any broker's fee, finder's fee, commission or other similar compensation to, or otherwise agreed to compensate, any real estate agent or broker in connection with this transaction. Landlord and Tenant each agrees to indemnify, defend, save and hold the other harmless from and against all loss, cost and expense incurred by reason of the breach of the foregoing representation and warranty arising from any claim for compensation founded upon or as a result of acts asserted to have been performed on their respective behalf. Such indemnification obligation shall survive any termination of the Lease.

24.18 Landlord and Tenant agree to maintain the confidentiality of all terms and provisions of this Lease, as well as all discussions and negotiations relating to any of the foregoing and any and all documents, data or other information that may be generated in relation thereto, except that each party hereto may disclose the foregoing described information in connection with obtaining legal or financial advice from such party's attorneys, accountants or financial advisors, or pursuant to due diligence conducted in connection with the obtaining of financing by either party hereto (including, without limitation, delivery of estoppel certificates), provided that any recipient of such information is notified of its confidential nature. The foregoing obligations apply to all principals, directors, officers, managers, members, employees, agents and representatives of the undersigned parties, except that such obligations do not apply to the extent that such information is (a) required to be disclosed by Applicable Law, or (b) was already in the possession of the receiving party, or (c) becomes generally available to the public other than as a result of disclosure by either of the undersigned or their respective representatives, or (d) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party, or (e) is furnished to third parties who execute a confidentiality agreement concerning the information furnished.

24.19 This Lease may be executed in one or more counterparts, all of which executed counterparts shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

24.20 It is understood and agreed that neither this Lease nor any interest herein or hereunder, nor any estate hereby created in favor of Tenant, shall pass by operation of law under any state of federal insolvency, bankruptcy or inheritance act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, heirs, legatees, devisees, or any other Person whomsoever without the prior written consent of Landlord.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above-written.

“Landlord”

Wynn Las Vegas, LLC,  
a Nevada limited liability company

By: Wynn Resorts Holdings, LLC  
a Nevada limited liability company,  
its sole member

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

By: /s/ Marc D. Schorr  
Name: Marc D. Schorr  
Title: Chief Operating Officer

“Tenant”

Wynn Gallery, LLC,  
a Nevada limited liability company

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

By: /s/ John Strzemp  
Name: John Strzemp  
Title: Executive Vice President and Chief Financial Officer



**Certification of the Chief Executive Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Stephen A. Wynn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2005

/s/ Stephen A. Wynn

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

**Certification of the Chief Financial Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, John Strzemp, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wynn Resorts, Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2005

/s/ John Strzemp

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

**Certification of CEO and CFO Pursuant to  
18 U.S.C. Section 1350, as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q of Wynn Resorts, Limited (the "Company") for the quarter ended June 30, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Stephen A. Wynn, as Chief Executive Officer of the Company and John Strzemp, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Stephen A. Wynn

Name: Stephen A. Wynn  
Title: Chairman and Chief Executive Officer  
(Principal Executive Officer)  
Date: August 2, 2005

/s/ John Strzemp

Name: John Strzemp  
Title: Executive Vice President, Chief  
Financial Officer and Treasurer  
(Principal Financial and Accounting Officer)  
Date: August 2, 2005

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Wynn Resorts, Limited and will be retained by Wynn Resorts, Limited and furnished to the Securities and Exchange Commission or its staff upon request.